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**Chapter 43**

**Article 01 General Provisions**

**Division 1 Authority**

**43.01.11 Purpose**

- A) Purpose. This chapter is enacted for the purpose of:
- 1) ~~P~~romoting public health, safety, morals, comfort and general welfare;
  - 2) ~~T~~o conserve and protect property and property values;
  - 3) ~~T~~o secure the most appropriate use of land, ~~and~~
  - 4) ~~T~~o facilitate adequate and economical provisions for public improvements,
  - 5) ~~To implement the all in accordance with a comprehensive plan for the desirable future development of the city,~~
  - 6) ~~and T~~o provide a method of administration and to prescribe penalties for violation of provisions hereafter described.

**43.01.12 Title**

- A) Title. These regulations shall be known and may be cited as the "City of Winona Unified Development Code," or "Chapter 43", or referred to as the "UDC" or the "code"

**43.01.13 Applicability and Effect of Chapter**

- A) Compliance with ~~Chapter~~UDC. Except as hereinafter specified, no land, building, structure or premises shall hereafter be used and no building or part thereof or other structure shall be located, erected, moved, reconstructed, extended, enlarged or altered, except in conformity with the regulations herein specified for the district in which it is located, such regulations including, but without limitation, the following: The use of buildings, structures or land, including performance standards for the control of any "dangerous and objectionable elements", as defined in this chapter, in connection with such use; the height, size, dimensions of buildings or structures, the size or dimensions of lots, yards and other open spaces surrounding buildings; the provision, location, size, improvement and operation of off-street parking, loading and unloading spaces.

**43.01.14 Severability**

- A) Separability Clause/Penalties. If any paragraph, part or portion of this section is declared invalid by a court of competent jurisdiction, it shall not be held to invalidate any other portion thereof.

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- B) A violation of any provision of this section shall be declared to be a nuisance which shall be remedied pursuant to Chapter 32.
- C) If any court invalidates any condition attached to the approval granted through this UDC, then such judgement shall not affect any other conditions or requirements attached to the same approval that are not specifically included in that judgment.

#### 43.01.15 Effective Date

- A) Effective date. The effective date of this UDC is [DATE].

#### 43.01.16 Zoning Administrator

- A) Appointment. The city manager shall appoint a zoning administrator.
- B) Duties. It shall be the duty of the zoning administrator and the building official to enforce this ~~chapter~~ UDC in accordance with the administrative provisions of the Building Code of the city and this ~~UDC~~chapter. All departments, officials and public employees of the city, vested with the duty or authority to issue permits or licenses, shall conform to the provisions of this ~~chapter~~ UDC and shall issue no permit or license for any use, building or purpose in conflict with the provisions of this chapter. Any permit or license issued in conflict with the provisions of this ~~chapter~~ UDC shall be null and void.

#### 43.01.17 Penalties

- A) It shall be unlawful to locate, erect, construct, reconstruct, enlarge, change, maintain or use any building or land in violation of any of the provisions of this chapter or any amendment or supplement thereto adopted by the city council. Any person violating any of the provisions of this ~~chapter~~ UDC or any amendment or supplement thereto shall be deemed guilty of a misdemeanor. Each and every day during which such illegal location, erection, construction, reconstruction, enlargement, change, maintenance or use continues shall be deemed a separate offense.

#### 43.01.18 Injunctions against illegal uses

- A) In case any building is or is proposed to be located, erected, constructed, reconstructed, enlarged, changed, maintained or used or any land is or is proposed to be used in violation of this chapter or any amendment or supplement thereto, the city council, the city attorney, the building official or any adjacent or neighboring property owner who would be specially damaged by such violation may, in addition to other remedies provided by law, institute appropriate action or proceedings to prevent the unlawful conversion, maintenance or use to restrain, correct or abate such violations, to prevent the occupancy of such building structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

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## Division 2 Interpretation

#### 43.01.21 Relationship to Comprehensive Plan

- A) The Comprehensive Plan for the City of Winona or "comprehensive plan", adopted in August of 2007 and as amended, is the guiding policy document for the UDC. A primary intent ~~enof~~ of the UDC is to implement the goals and objectives of the comprehensive plan while remaining consistent with all applicable requirements of federal and state laws.

#### 43.01.22 Conflicting Regulations or Provisions

- A) Requirement of chapter deemed minimums. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements. Wherever ~~this the chapter~~ UDC imposes a greater restriction than is imposed or required by other provisions of law or by other rules or regulations or ordinances, the provisions of ~~this chapter~~ the UDC shall govern.

#### 43.01.23 Use of Graphics, Illustrations, Figures, Photos, and Cross-References

- A) Graphics, illustrations, figures, and photos are provided for illustrative purposes only and shall not be construed as regulations. Where a conflict may occur between the text and any graphic, illustration, figure, or photo, the text shall control.
- B) In some instances, cross-references between articles, divisions, sections, and subsections are provided that include the article, division, section or subsection number along with the name of the reference. Where a conflict may occur between the given cross-reference number and name, the name shall control.

#### 43.01.24 Transitional Rules

- A) Approved projects.
- 1) Permits and approvals that are valid on [DATE] shall remain valid until their expiration date. Projects with valid approvals or permits may be carried out in accordance with the standards in effect at the time of approval, provided that the permit or approval is valid and has not lapsed. Any reapplication for an expired permit or approval shall meet the standards in effect at the time of reapplication.
  - 2) If a building or structure is not completed within the time allowed under the original building permit or any extension granted thereof, then the building, structure, or development may be constructed, completed, or occupied only in compliance with this UDC.
  - 3) Any subdivision which received city approvals prior to [DATE], but which has not yet received final approvals, shall be reviewed by the city planner to determine how nonconforming aspects of the subdivision can reasonably be brought into compliance with this UDC.
  - 4) Any subdivision that has received final approval by the City Council prior to the adoption of this UDC shall be considered an approved final subdivision. If the approved final plat is not recorded within 180 days after the date of the City Council's approval, such approval shall be termed null and void. In the event a plat is considered invalid, the plat shall then be resubmitted as a preliminary plat and shall meet the requirements of this UDC.
- B) Applications in progress.
- 1) Complete applications for permits and approvals pursuant to [SECTION] may, at the applicant's option, be reviewed wholly under the terms of the previous chapters of the City Code. If approved, these projects may be carried out in accordance with the standards in effect at the time of application. The applicant may not choose to have some parts of the previous chapters and other parts of the current UDC apply to the project.
  - 2) Projects for which an application, including all required supporting materials, has not been submitted and accepted as completed prior to [DATE], shall be subject to all requirements and standards of this UDC.

- 3) An applicant with a pending application may waive review available under prior regulations through a written letter to the City and request the review under the provisions of the UDC.

C) Violations continue.

- 1) Any violation occurring under previous chapters of the City Code will continue to be a violation under this UDC and be subject to penalties and enforcement unless the use, development, construction, or other activity complies with the provisions of this UDC.
- 2) Any violation issued prior to the effective date of this Chapter shall be subject to the fines and penalties of the previous chapters, even if the original violation is no longer considered to be a violation under this UDC.
- 3) Any violation issued prior to the adoption date of this Chapter shall be subject to the fines and penalties of the previous chapters unless the violation is not addressed by the property owner and is reissued by the city after the effective date of this Chapter, in which case the violation shall be subject to the fines and penalties in [SECTION].

**43.01.25 Nonconformities**

D)A) Purpose and Intent. It is the purpose and intent of this section to:

- 1) allow nonconforming structures, uses, site characteristics and lots to continue to exist and be put to reasonable and productive use;
- 2) encourage such nonconformities to be brought into compliance when reasonable to do so;
- 3) establish the requirements under which nonconformities may be operated and maintained;
- 4) diminish the impacts of nonconformities on adjacent properties by limiting the expansion of nonconformities; and
- 5) comply with Minnesota Statutes Section 462.357, Subd. 1e, as amended from time to time.

E)B) Continuation Rights. Pursuant to Minnesota Statutes Section 462.357, Subd. 1e, any legal nonconformity, including, the lawful use or occupation of land or premises existing at the time a City Code amendment created the nonconformity may be continued with any necessary approvals, including through repair, structural alteration, replacement, restoration, maintenance, and improvement, but not including expansion, unless authorized by this Section.

F)C) Termination of rights. A legal nonconforming use must not resume where:

- 1) The nonconformity or occupancy is discontinued for a period of more than one year. Further, there shall be a showing of intent to abandon the use or premises including some overt act expressing that intent shall be made.
- 2) A structural alteration increases usable floor area.
- 3) Any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value, and no building permit has been applied for within 180 days of when the property is damaged. The assessed market value (including buildings and land) must be determined by the most recent valuation of the County Assessor.
- 4) Where any right to continue the nonconformity is terminated, any future use of land must comply fully with the City Code.

G)D) Substitution. Nonconforming uses may be substituted for another not more objectionable nonconforming use when authorized by the board in accordance with Section 43.30.

~~H)E)~~ Expansion. Nonconformities may not be expanded, unless expressly permitted as discussed below.

- 1) For purposes of this section, expansion of a nonconformity shall include:
  - a) An increase in: structure dimension(s), size, area, height, width, number of units, usable floor area, and/or the land area of use;
  - b) Addition of a structure or part thereof;
  - c) Addition of equipment. This shall not apply to new equipment which constitutes merely an improvement over the previous method and does not constitute a change in the nature and purpose of the original use of a property.
  - d) Relocation of operations to a new location on the property not previously used unless the relocation reduces or eliminates the nonconformity;
- 2) Nonconformities may be expanded as follows:
  - a) Nonconforming uses may expand upon issuance of a conditional use permit only when listed as a conditional use within the applicable zoning district.
  - b) Nonconforming uses not listed as a conditional use may only expand if changed to a conforming use.
  - c) Nonconforming lots, structures or site characteristics may expand only upon approval of a variance.

~~H)F)~~ Reasonable Regulations or Conditions. Pursuant to Minnesota Statutes, Section 462.357, Subd. 1e, the City may impose upon any nonconformity reasonable regulations or conditions to prevent and abate nuisances and to protect the public health, safety or welfare. Reasonable regulations or conditions may be imposed by the City on a nonconformity through a recordable instrument approved by the City Council, including a nonconformity agreement, or otherwise by permit or order of the City Council.

~~43.01.25~~ **43.01.26 Lots of Record**

- A) Erection of Dwellings and Accessory Buildings on Lots of Record. In any district where dwellings are permitted, a one-family detached dwelling or accessory structure may be erected on any lot of official record at the effective date of the original regulations of this chapter, irrespective of its area or width; provided that the applicable yard and other open space requirements are complied with as nearly as possible; provided further that the following minimum requirement shall be observed:
- 1) Principal Dwelling:
    - a) Side yard: 10% times the width of the lot;
    - b) Rear yard: 10 feet;
    - c) Yard requirements: Front, side, or rear yard encroachments as specified in Section 43.53 (f) and (g) shall be prohibited and the yard width shall be measured from the edge of any projection or overhang to the lot line.
  - 2) Accessory Structures:
    - a) Side yard: Lots greater than 30 feet in width – 3 feet; lots less than 30 feet in width – 2 1/2 feet;
    - b) Rear yard: 3 feet;

- c) Yard encroachments: Front yard encroachments shall be the same as required for principal dwellings. However, the outside edge of any projection or overhang may be located no closer than two feet to any side or rear lot line.
- 3) Corner Lots:
  - a) On a corner lot, the width of the side yard adjoining the side street lot line shall not be less than 8 feet or 20 percent of the frontage, whichever is greater.
- 4) Winona Township lots of record.
  - a) Any lot of record existing within the limits of the former Winona Township as of January 22, 1996, and prior to the enactment of this provision, which conforms in respect to use, but not in respect to height, area, yards ~~of courts~~, or distance requirements from more restrictive districts of the underlying zoning district, shall continue to be recognized as a conforming use of land provided that all structures constructed following the enactment date of this provision shall meet yard and other setback requirements of the underlying zoning district.
  - b) In addition to the previous, the use of any lot of record, which is not, following enactment of this provision, consistent with permitted use requirements of the underlying base/primary zoning district, shall be classified as a nonconforming use and shall continue to be permitted subject to the requirements of Section 43.01.25.

## Article 02 Zoning Districts

### Division 1 General Provisions

#### 43.02.11 Purpose

- A) This article establishes the base and overlay zoning districts available in the city to regulate land and implement the Comprehensive Plan. It also contains basic information pertaining to the districts, including statements of purpose, uses allowed, and dimensional standards.

#### 43.02.12 Zoning Districts Established

- A) For the purpose of this chapter, the city is hereby divided into ~~18-20~~ categories of zoning districts:
  - 1) ~~Thirteen-Sixteen~~ base zoning districts are designated as follows:
    - a) R-R Rural Residential District
    - b) R-S Residential Suburban District
    - c) R-1 One-family-Low Density Residence District
    - d) R-1.5 One-to-Four-Family-Medium-Low to Medium Density Residence District
    - e) R-2 One-to-Four-Family-Medium Density Residence District
    - f) R-3 Multiple-Family-High Density Residence District
    - g) R-MHP ~~-----~~ Residential Mobile Home Park
    - g) MU-DC Mixed Use Downtown Core District
    - h) MU-DF Mixed Use Downtown Fringe District
    - i) MU-N Mixed Use Neighborhood Center District

- h) ~~l~~ B-1 Neighborhood Business District
- i) ~~k~~ B-2 ~~Central-Community~~ Business District
- j) ~~B-2.5~~ ~~Mixed-use Business District~~
- k) ~~l~~ B-3 General Business District
- l) ~~m~~ MI-1 Light ~~Manufacturing-Industrial~~ District
- n) ~~MI-2~~ ~~General Manufacturing Heavy Industrial~~ District
- o) ~~I-A~~ ~~Airport Industrial Park District~~
- m) ~~p~~ ~~AG/NR Agricultural/Natural Resources District~~

2) ~~Five-Four overlay~~ districts are designated as follows:

- 3) ~~AG~~ ~~Agricultural District~~
- a) ~~F-1~~ ~~High Flood Hazard Overlay District~~
- b) ~~F-2~~ ~~Moderate Flood Hazard Overlay District~~
- c) ~~F-3~~ ~~Low Flood Hazard Overlay District~~
- 2) ~~C-1~~ ~~Conservancy District~~
  - a) ~~Campus Overlay~~
  - b) ~~Bluffland Protection~~
  - c) ~~Floodplain Management~~
  - d) ~~Shoreland Management~~

#### 43.02.13 Zoning Map Adopted and Established

A) District Zoning Map Adopted and Established.

- 1) The several districts and boundaries thereof enumerated in the preceding section are hereby adopted and established as shown on the zoning map of the city, which map, together with all notations, references, data, district boundaries and other information shown thereon, shall be and are hereby made a part of this chapter. Such zoning map, properly attested, shall be and remain on file in the office of the city engineer.
- 2) A copy of the zoning map shall be displayed in the community development office.

#### 43.02.14 District Boundaries

A) Lot Lines and Street Lines. Except where referenced on the zoning map to a street or alley line or other designated line by dimensions shown on such map, the district boundary lines follow lot lines or the center lines of streets or alleys as they existed at the time of the original adoption of the regulations of this chapter, but where a district line obviously does not coincide with the lot lines or such center lines or where it is not designated by dimensions, it shall be deemed to be 120 feet back from the nearest street line parallel to which it is drawn.

- 1) ~~The boundary lines of the C-1 conservancy district shall be defined as those areas in the City between the contour intervals of 800 feet and 1180 feet east of Highway 14 and between the contour intervals of 860 and 1180 west of Highway 14, on a U.S.G.S. Topographic Map, 1972,~~

~~including all publicly owned land south of U.S. Highway 14-61, and north of the corporate city limits.~~

- B) Determination of Exact Location. All questions concerning the exact location of district boundary lines shall be determined by the ~~board~~Zoning Administrator. An appeal of the Zoning Administrator's interpretation of district boundary lines can be made to the Board of Adjustment according to rules and regulations which may be adopted by it.
- C) Extension Where Lot Divided. Where a district boundary line established in this chapter or as shown on the zoning map divides a lot which was in single ownership at the time of original enactment of the regulations of this chapter, the use authorized thereon and the other district requirements applying to the least restricted portions of such lot under this chapter shall be considered as extending to the entire lot; provided, that the more restricted portion of such lot is entirely with 25 feet of such dividing district boundary line. The use so extended shall be deemed to be conforming.
- D) Vacated Streets and Alleys. Whenever any street, alley or other public way if vacated by official action as provided by law, the zoning district adjoining the side of such public way shall be extended automatically, depending on the side to which such lands revert, to include the right-of-way thus vacated, which shall thenceforth be subject to all regulations of the extended district.
- E) Territory Not Specifically Included; Annexations. In each case where property has not been specifically included in a district or where property is annexed or consolidated with the city subsequent to May 24, 1976, the procedure for establishing a zoning classification shall be as set forth in Section 43.31.
- 1) Such property shall not bear a zoning classification, as set forth in Section 43.05, until it is given a classification by ordinance by the city council. No building permit or permit to do work of any kind on the property shall be given to any person until such ordinance becomes effective.

#### 43.02.15 Essential Services

- A) ESSENTIAL SERVICES. Essential services shall be permitted as authorized and regulated by law and other ordinances of the city, it being the intention hereof to exempt such essential services from the application of this chapter.

#### 43.02.16 Transitional Uses

- A) Additional permitted uses. Uses other than those specifically mentioned in this ~~chapter-UDC~~ as permitted uses in each of the districts may also be allowed therein; provided, that, in the judgment of the ~~board~~, as evidenced by resolution of record, such other uses are of similar character to those mentioned and will have no adverse influence or no more adverse influence on adjacent properties or the neighborhood or the community than the permitted uses specifically mentioned for this district.
- B) Additional prohibited uses. Uses other than those specifically prohibited in this ~~chapter-UDC~~ in any district shall also be prohibited therefrom; provided, that in the judgment of the board as evidenced by resolution of record, such other uses are similar in character to those specifically prohibited in that they would have similar or more serious adverse influence on adjacent properties or the neighborhood or the community than the uses specifically mentioned as prohibited in the district.

#### 43.02.17 Exceptions and Encroachments

- A) TRAFFIC VISIBILITY ACROSS CORNER LOTS. In any R-district on any corner lot, no fence, structure or planting more than two feet in height above the grade measured at the line between the property and the right-of-way shall be erected or maintained within the triangular area of a corner

parcel enclosing an isosceles triangle scribed by two eight (8)-foot legs extending each way from the intersection of right-of-way lines. An exception is that fences shall be allowed up to four feet in height so long as they do not obstruct more than ten percent of the "through vision" and have no posts with diameters greater than three and one-half inches. Any fence between two and four feet in height to be placed within the triangular area scribed by two eight (8)-foot legs extending each way from the intersection of right-of-way lines shall need to be approved by the Zoning Administrator.

B) Yard Modifications and Projections.

- 1) Front Yards, Average Depth. In any R district, where the average depth of at least 2 existing front yards on lots within 100 feet of the lot in question and within the same block front is less or greater than the least front yard depth prescribed elsewhere in this chapter, the required depth of the front yard on such lot shall be modified. In such cases, this shall not be less than the average depth of such existing front yards on the 2 lots immediately adjoining or, in the case of a corner lot, the depth of the front yard on the lot immediately adjoining; provided, however, that the depth of a front yard on any lot shall be at least 10 feet and need not exceed 50 feet; and provided further, that in no event shall the depth of a front yard of a corner lot be less than 25 feet.
- 2) Garages on Steep Slopes. In any R district where the natural grade of a lot within the required front yard has an average slope, normal to the front lot line at every point along such line, of such a degree or percent of slope that it is not practicable to provide a driveway with a grade of 12 percent or less to a private garage conforming to the requirements of this chapter, such garage may be located within such front yard, but not in any case closer than 12 feet to the street line.
- 3) Rear Yards Not Required For Certain Double Frontage Lots. Buildings on lots having frontage on 2 nonintersecting streets need not have a rear yard if an equivalent open space is provided on the lot in lieu of such required rear yard. Applicable front yards must be provided, however, on both streets.
- 4) Computation of Rear and Side Yards. In computing the depth of a rear yard or the width of a side yard, where the rear or side yard abuts on an alley, one-half of the width of the alley may be included as a portion of the required rear or side yard, as the case may be. However, in no event shall any building or structure be erected closer than 5 feet from any lot line.
- 5) Side Yard Modifications. Each side yard, where required, shall be increased in width by 2 inches for each foot by which the length of the side wall of the building, adjacent to the side yard, exceeds 40 feet.
  - a) A side yard along the side street lot line of a corner lot, which lot abuts in the rear, either directly or across an alley, the side lot line of another lot in an R district, shall have a width of not less than one-half the required depth of the front yard on such other lot fronting the side street.
- 6) Projection of Architectural Features. Certain architectural features may project into required yards or courts as follows:
  - a) Front and side yards. Into any required front yard, or required side yard adjoining a side street lot line:
    - i. Cornices, canopies, eaves or other architectural features may project a distance not exceeding 2 feet, 6 inches.
    - ii. Fire escapes may project a distance not exceeding 4 feet, 6 inches.

- iii. An uncovered stair and necessary landings may project a distance not to exceed 6 feet; provided, that such stair and landing shall not extend above the entrance floor of the building, except for a railing not exceeding 3 feet in height.
  - iv. Bay windows, balconies and chimneys may project a distance not exceeding 3 feet; provided, that such features do not occupy, in the aggregate, more than 1/3 of the length of the building wall on which they are located.
- 7) Fences, Walls and Hedges. Fences, walls and hedges may be located in required yards as follows:
- a) If not exceeding at any point 4 feet in height above the elevation of the surface of the ground at such point, such may be located in any yard.
  - b) If not exceeding at any point 6 feet in height above the elevation of the surface of the ground at such point, they may be located in any required rear yard or side yard; provided, that on a corner lot, abutting in the rear the side lot line of another lot in an R district, no such fence, wall or hedge within 25 feet of the common lot line shall be closer to the side street lot line than the least depth of the front yard required on such other lot fronting the side street.

**C) YARD REQUIREMENTS ON DISTRICT BOUNDARY LINE IN THE LESS RESTRICTED DISTRICT.**

Along any zoning boundary line, on a lot adjoining such boundary line in the less restricted district, any abutting side yard, rear yard or court, unless subject to greater restrictions or requirements stipulated by other provisions of this chapter shall have a minimum width and depth equal to the average of the required minimum width or depth for such side yards, rear yards or courts in the 2 districts on either side of such zoning boundary line. In cases where the height of a proposed structure on such lot in the less restricted district is greater than the maximum height permitted in the adjoining more restricted district, the minimum width or depth of the side yard, rear yard or court for such structure shall be determined by increasing the minimum width or depth for the highest structure permitted in such more restricted district by one foot for each two feet by which the proposed structure exceeds the maximum height permitted in such more restricted district.

**D) HEIGHT MODIFICATIONS. The height limitations stipulated elsewhere in this chapter shall not apply to the following:**

- 1) Farm Buildings, Architectural Features, etc. Barns, silos or other farm buildings or structures on farms; church spires, belfries, cupolas and domes; monuments, water towers, fire and hose towers, observation towers, transmission towers, windmills, chimneys, smokestacks, flag poles, radio towers, masts and aerials or parapet walls extending not more than 4 feet above the limiting height of the building.
- 2) Places of Public Assembly and Institutional Buildings. Places of public assembly in churches, schools, other permitted public and semipublic buildings, and institutional buildings; provided that for each 3 feet by which the height of such building exceeds the maximum height otherwise permitted in the district, its side and rear yards shall be increased in width or depth by an additional foot over the side and rear yards required by the highest building otherwise permitted in the district, and provided further, that the first floor of any such building must be used for the purposes hereinbefore stated.
- 3) Elevator Penthouses, Water Tanks, etc. Bulkheads, elevator penthouses, water tanks, monitors and scenery lofts, provided, that no linear dimension of any such structure exceeds 50 percent of the corresponding street lot line frontage; towers and monuments, fire towers, hose towers,

cooling towers, grain elevators, gas holders or other structures where the manufacturing process requires a greater height.

All such structures above the height otherwise permitted in the district shall not occupy more than 25 percent of the area of the lot and, unless modified by the architectural review board, shall be distant not less than 50 feet in all parts from every lot line not a street lot line.

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## Division 2 Base/Primary Districts

### 43.02.21 Purpose Statements

- A) The following are purpose statements for each of the city's base/primary zoning districts
- 1) R-R – The purpose of the R-R Rural Residential District is to accommodate low-density, single-family detached dwellings on large lots, arranged in a manner that preserves open space and maintains rural character, and limited agricultural uses.
  - 2) R-S – The purpose of the R-S Residential Suburban District is to provide for low-density, single-family detached dwellings located in areas where conservation of steep slopes and other sensitive natural resources limit development densities.
  - 3) R-1– The purpose of the R-1 Low Density Residence District is to encourage the establishment and preservation of traditional neighborhoods with predominantly single-family detached dwellings along with intermittent two to four family dwellings and attached townhouses or rowhouses.
  - 4) R-1.5– The purpose of the R-1.5 Low to Medium Density Residence District is to accommodate a mixture of single-family housing types, including detached dwellings, two- to –four-family dwellings, and attached townhouses or rowhouses.
  - 5) R-2– The purpose of the R-2 Medium Density Residence District is to support a mixture of detached and attached single-family dwellings, as well as low-rise multi-family buildings, located in neighborhoods characterized by a walkable grid or connected street pattern, a range of housing types and architectural styles, interspersed with neighborhood parks, schools, churches, and home businesses, neighborhood commercial businesses within walking distance, and housefronts located relatively close to the street.
  - 6) R-3– The purpose of the R-3 Multi-Family Residence District is to primarily accommodate higher density multi-family dwellings, along with medium and low density housing types, to meet the diverse housing needs of Winona. This district is intended to be located adjacent to downtown and other business districts to provide residents with convenient access to goods and services and also provide a transition between business districts and adjacent lower density residential neighborhoods.
  - 7) MU-DC – The purpose of the MU-DC Mixed Use Downtown Core District is to provide an area for a mixture of commercial, public, institutional, and residential uses in Winona's downtown core. This district is characterized by multi-story buildings, higher development densities, buildings placed close to the sidewalk, and pedestrian-oriented site and building design.
  - 8) MU-DF – The purpose of the MU-DF Mixed Use Downtown Fringe District is to provide an area for a mixture of uses that supports the downtown core area, including commercial, public, institutional, and residential, but accommodates light industrial uses as well. This district also serves as a transition to adjacent residential neighborhoods with lower development densities and building heights than the downtown core.

- 9) MU-N – The purpose of the MU-N Mixed Use Neighborhood Center District is to accommodate a mixture of small- to medium-scale commercial uses, which are primarily oriented to serving adjacent neighborhoods, and a mixture of low and medium density residential uses developed with pedestrian-oriented design.
- 10) B-1– The purpose of the B-1 Neighborhood Business District is to accommodate small-scale commercial uses that are primarily intended to serve the adjacent neighborhoods.
- 11) B-2– The purpose of the B-2 Community Business District is to provide shopping areas along the arterial roadway system with moderately scaled commercial uses that are primarily intended to serve the local community.
- 12) B-3– The purpose of the B-3 General Business District is to accommodate large-scale commercial uses that benefit from access and visibility to major highways and are primarily intended to serve the regional market area.
- 13) I-1– The purpose of the I-1 Light Industrial District is to provide areas for light industrial uses, including the assembly, fabrication, and processing of goods and materials, and related operations, provided that industrial activities are conducted entirely within buildings and where the byproducts of industrial activities, such as noise, odors, smoke, and storage are confined entirely within the buildings and ordinarily do not have nuisance impacts on surrounding properties.
- 14) I-2 – The purpose of the I-2 Heavy Industrial District is to provide an area for heavy industrial uses, including the manufacturing, assembly, fabrication, processing, warehousing, distribution, and related operations that generally require larger land areas significant exterior operation or storage of equipment and materials, and/or where the byproducts of industrial activities, such as noise, odors, smoke and storage may have nuisance impacts on surrounding properties.
- 15) I-A- The purpose of the I-A Airport Industrial Park District is to provide property for non-noise sensitive industrial, commercial, and public uses that are compatible with the safe operation of the Winona Municipal Airport – Conrad Field.
- 4)16) AG/NR – The purpose of the AG/NR Agricultural/Natural Resources District is to protect and maintain the use of land for agricultural purposes, preserve and promote natural resource environments, discourage untimely and unplanned urban sprawl, and prevent the inefficient provision of municipal services, which can result from urban development.

#### 43.02.22 Use Tables

##### A) General

- 1) Tables X and X lists land use and indicates whether they are permitted, permitted with standards, conditional, or prohibited. The table also includes references to whether additional standards are applicable to that use. The following shall be referenced when using the
- a) Permitted uses – a “P” in a cell of the use table indicates that the land use is allowed by right in the base/primary zoning district.
  - b) Permitted with standards use – a “PS” in a cell of the use table indicates that the land use is allowed when standards identified in Division 1 of Section 43.03 are met. Uses permitted with standards are subject to all other applicable requirements of the UDC.
  - c) Conditional – a “C” in a cell of the use table indicates that the land use is allowed in the base/primary zoning district only upon approval a conditional use permit as described in

Section and in compliance with any use specific standards identified in Division 1 of Section 43.03. Uses subject to a conditional use permit are subject to all other applicable requirements in the UDC.

a)d) Prohibited – a blank cell in the use table indicates that the land use is prohibited in that base/primary zoning district.

2) Unlisted uses. When a proposed land use is not explicitly listed in the use table, the zoning administrator shall determine whether or not it is included in the definition or a listed use or is so consistent with the size, scale, operating characteristics, and external impacts of a listed use that it should be treated as the same use. Any such interpretation shall be made available to the public and shall be finding on future decisions of the city until the zoning administrator makes a different interpretation.

3) Overlay Districts Prohibited. When a property is located within the boundaries of one or more overlay districts, the most restrictive use provision among the overlay and base/primary zoning districts shall apply.

B) Principal Uses Table

Table 43.1: Principal Uses Table

Use Type	P = Permitted						PS = Permitted with Standards			C = Conditional			Blank Cell = Prohibited			AG	USE SPECIFIC STANDARDS	
	R-R	R-S	R-1	R-1.5	R-2	R-3	MU-DC	MU-DF	MU-N	B-1	B-2	B-3	I-1	I-2	I-A			
<b>Residential</b>																		
<b>Household Living</b>																		
Dwelling, single-family	P	P	P	P	P	P			P								P	
Dwelling, two- to four-family			PS	P	P	P			P									Yes
Dwelling, conversion to two-, three-, and four-family			C	PS	PS	PS			PS									Yes
Dwelling, attached townhouse or rowhouse			C	PS	PS	PS		PS	PS	PS	PS	PS						Yes
Dwelling, apartment				C	C	P		P	P	PS	PS	PS						Yes
Dwelling, apartment mixed use							PS	PS	PS	P	P	P						Yes
Manufactured home park	C	C	C	C	C	C	C	C	C								C	Yes
<b>Group Living</b>																		
Assisted living facility					C	P	C	C		P	P	P						
Fraternity or sorority					C	C		C	C									Yes
Long-term or transitional care facility					C	P	C	C		P	P	P						
Residential care, licensed in-home (6 or fewer persons)	P	P	P	P	P	P	P	P	P	P	P	P					P	
Residential care, licensed in-home (7 or more persons)				P	P	P	P	P	P	P	P	P						
Roominghouse (3 or greater units)							C	C		C	C	C						

Table 43-1: Principal Uses Table

Use Type	P = Permitted						PS = Permitted with Standards			C = Conditional			Blank Cell = Prohibited		USE SPECIFIC STANDARDS		
	RESIDENTIAL						MIXED USE			BUSINESS			INDUSTRIAL	AGRICULTURAL			
	R-R	R-S	R-1	R-1.5	R-2	R-3	MU-DC	MU-DF	MU-N	B-1	B-2	B-3	I-1	I-2	I-A	AG	
<b>Lodging</b>																	
Bed and breakfast (B&B), owner-occupied tourist home, 2 rooms maximum	C	C	C	C	C	C	C	C	C	C	C	C				C	Yes
B&B, 3 rooms maximum			C	C	C	C	C	C	C	C	C	C					Yes
B&B, 5 rooms maximum					C	C	C	C	C	C	C	C					Yes
B&B, any number of rooms						C	C	C	C	C	C	C					Yes
Hotel							P	P			P	P					
Motel or motor hotel								PS			PS	PS					Yes
Residential retreat center, non-owner occupied tourist home	C	C	C	C	C	C	C	C	C	C	C	C				C	Yes
<b>Public and Institutional</b>																	
Cemetery	P	P														P	
Club or lodge					C	C	C	C	C	C	C	C					
Emergency service facility	P	P	P	P	P	P	P	P	P	P	P	P				P	
Hospital						C				C	C	C					Yes
Municipal, county, state, or federal administrative building	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	
Religious facility	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		PS	Yes
School, college or university	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS				PS	Yes
School, elementary or secondary	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS				PS	Yes
School, nursery or preschool	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS				PS	Yes
School, trade or business	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS				PS	Yes
<b>Commercial</b>																	
<b>Food, Beverage, and Indoor Entertainment</b>																	
Adult use establishment												PS	PS	PS			Yes
Bar, cocktail lounge, and night club							P	P	C	C	P	P	PS	PS			Yes
Brewpub							P	P	C	C	P	P	PS	PS			Yes
Commercial recreation or entertainment facility, indoor							PS	PS			PS	PS	PS				Yes
Conference or convention center							C	C			C	C	C	C			Yes
Public recreation facility, indoor					PS	PS	PS	PS	PS	PS	PS	PS	PS	PS			Yes

Table 43-1: Principal Uses Table

Use Type	P = Permitted						PS = Permitted with Standards			C = Conditional			Blank Cell = Prohibited			USE SPECIFIC STANDARDS	
	RESIDENTIAL						MIXED USE			BUSINESS			INDUSTRIAL				AGRICULTURAL
	R-R	R-S	R-1	R-1.5	R-2	R-3	MU-DC	MU-DF	MU-N	B-1	B-2	B-3	I-1	I-2	I-A	AG	
Restaurant							P	P	P	P	P	P	PS	PS			Yes
Restaurant, drive-through or drive-in								PS		C	C	PS	PS	PS			Yes
Theater							PS	PS	C	C	PS	PS	PS	PS			Yes
<b>Retail Sales</b>																	
Gas station								C	C	PS	PS	PS	PS	PS			Yes
Automotive sales and leasing								C			PS	PS	PS	PS			Yes
Billboard or outdoor advertising, off-premise sign							C	C		PS	PS	PS	PS	PS			Yes
Grocery, food, or beverage store							P	P	P	P	P	P	PS	PS			Yes
Heavy consumer goods store							C	P		C	P	P	PS	PS			Yes
Pharmacy or convenience store							P	P	P	P	P	P	PS	PS			Yes
Retail store, not listed							P	P	P	P	P	P	PS	PS			Yes
<b>Personal Services</b>																	
Animal hospital or veterinary clinic							C	C		PS	PS	PS	PS	PS			Yes
Animal kennel																PS	Yes
Automotive repair, minor							C	PS	C	PS	PS	PS	PS	PS			Yes
Automotive repair, major								PS				PS	PS	PS			Yes
Bank, including drive-up facility							C	PS	C		PS	P	PS	PS			Yes
Clinic						P	P	P	P	P	P	P	PS	PS			Yes
Day care facility							P	P	P	P	P	P	PS	PS			Yes
Funeral home or mortuary						C		C	C	C	C	P	PS	PS			Yes
Personal service and repair business							P	P	P	P	P	P	PS	PS			Yes
Storage facility										P	P	P	PS	PS			Yes
<b>Business and Technical Services</b>																	
Business, professional, or administrative office						C	P	P	P	P	P	P	PS	PS			Yes
Publishing							P	P		P	P	P	PS	PS			Yes
Research or scientific laboratory							C	C		P	P	P	PS	PS			Yes
Studio, commercial art or performance						C	C	C		C	P	P	PS	PS			Yes
Studio, visual or sound production							C	C		C	P	P	PS	PS			Yes
<b>Manufacturing</b>																	
Brewery, large														PS			Yes

Table 43-1: Principal Uses Table

Use Type	P = Permitted						PS = Permitted with Standards			C = Conditional			Blank Cell = Prohibited			USE SPECIFIC STANDARDS		
	RESIDENTIAL						MIXED USE			BUSINESS			INDUSTRIAL				AGRICULTURAL	
	R-R	R-S	R-1	R-1.5	R-2	R-3	MU-DC	MU-DF	MU-N	B-1	B-2	B-3	I-1	I-2	I-A	AG		
Brewery, small							C	C					PS	PS	PS			Yes
Construction contractor yard								C					PS	PS	PS			Yes
Crematory															PS			Yes
Farm winery																C		
Manufacturing, Light							C	C					PS	PS	PS			Yes
Manufacturing, Heavy															C			Yes
Meat packing, stockyard or slaughterhouse															C			
Microdistillery							C	C					PS	PS	PS	C		Yes
Printing							C	C			P	P	P	P				Yes
Scrap or salvage yard															PS			Yes
Silica sand processing facility															C			Yes
Warehouse or wholesale trade								C					P	P	P			
<b>Recreation and Open Space</b>																		
Active park or playground	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P		
Campground																PS		Yes
Golf course	C	C	C	C	C	C										C		
Marina													P	P				
Passive park, open space, or natural area	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P		
Preserve, sanctuary, or historic area																P		
Commercial recreation, outdoor							C	C		PS	PS	PS	PS	PS				Yes
Public recreation, outdoor					PS	PS	C	C	PS	PS	PS	PS	PS	PS				Yes
<b>Natural Resources and Agricultural</b>																		
Agriculture - raising of crops	P															P		
Agriculture - raising of livestock	PS															PS		Yes
Animal stable																PS		Yes
Commercial greenhouse, nursery, tree farm, or orchard	PS										C	C	PS	PS		P		Yes
Community garden	P	P	P	P	P	P	P	P	P							P		
Extraction pit																C		Yes

Table 43-1: Principal Uses Table

Use Type	P = Permitted			PS = Permitted with Standards			C = Conditional			Blank Cell = Prohibited			AG	USE SPECIFIC STANDARDS			
	R-R	R-S	R-1	R-1.5	R-2	R-3	MU-DC	MU-DF	MU-N	B-1	B-2	B-3			I-1	I-2	I-A
Land alteration when not incidental to construction of a permitted use	C	C	C		C	C				C						C	
Timber harvesting																P	
Utilities & Transportation																	
Airport														C		C	
Electric or heat generation plant														C			
Essential services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Parking, structural or non-structural							C	C	C	PS	PS	PS	PS	PS			Yes
Public/utility maintenance facility					P	P				P	P	P	P	P			
Railroad yard or freight station														PS			Yes
Regional utility lines and towers (pipelines, power transmission lines, commercial radio, television and communication towers)	C	C	C	C	C	C	C	C	C	C	C	C	C	C		C	
Solar or wind farm																C	
Transfer station														PS			Yes
Transportation facility used to ship silica sand														C			Yes
Water or sewer treatment facility														C			

C) Accessory Uses Table

- The accessory uses in Table 43-2 are allowed as identified as long as they are located on the same site as the principal use and are clearly incidental and subordinate to the principal use and structure.

Table 43-2: Accessory Uses Table

Use Type	P = Permitted			PS = Permitted with Standards			Blank Cell = Prohibited			AG	USE SPECIFIC STANDARDS						
	R-R	R-S	R-1	R-1.5	R-2	R-3	MU-DT	MU-DF	MU-N			B-1	B-2	B-3	I-1	I-2	I-A
Accessory building	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		PS	Yes
Accessory dwelling unit	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS					Yes
Agriculture temporary or seasonal roadside stand	P									P	P	P	P	P		P	

**Table 43-2: Accessory Uses Table**

Use Type	P = Permitted						PS = Permitted with Standards			Blank Cell = Prohibited						AG	USE SPECIFIC STANDARDS	
	RESIDENTIAL						MIXED USE			BUSINESS			INDUSTRIAL					
	R-R	R-S	R-1	R-1.5	R-2	R-3	MU-DT	MU-F	MU-N	B-1	B-2	B-3	I-1	I-2	I-A			
Any building or structure relating to permitted agricultural activities	P																P	
Billboard or outdoor advertising										PS	PS	PS	PS	PS				Yes
Construction site home	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS			PS	Yes
Detached heating system	PS																PS	Yes
Essential services	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P	
Home occupation	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS				Yes
In-home family or group daycare	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P	
Land alteration when incidental to construction of a permitted use	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P	
Noncommercial garden and household pets not including fowl or farm animals	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Noncommercial radio and television antenna	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P	
Outdoor dining area							P	P	P	P	P	P	P	P				
Outdoor sales/display							P	P	P	P	P	P	P	P				
Parking, structural or nonstructural facilities exclusively for the use of the permitted use				P	P	P	P	P	P	P	P	P	P	P			P	Yes
Rooming unit, the keeping of not more than 2 roomers or boarders by a resident family	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P	
Sign	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Small-scale wind energy turbine	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Solar panel	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Swimming pool, private	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS			PS	Yes
Vending machine	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS			PS	Yes
Wireless antenna attached to existing structure	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P	

**43.02.23 Lot Dimension Standards**

A) Lot Dimension Standards. [Table 43-3](#) establishes the minimum [sitet development standards for all base/primary zoning districts](#).

[Table 43-3: Lot Dimension Standards](#)

Zoning District	Use Types	Lot Area Minimum per Family (sq. ft.)	Lot Frontage Minimum (ft.)
Agricultural (AG)	Dwellings	10 acres	300
	Other Permitted/Conditional Use	None	None
Rural Residential (R-R)	SF Dwellings w/ public sewer & water	18,000	100
	SF Dwellings w/o public sewer & water	40,000	200
	Other Permitted/Conditional Use	40,000	200
Residential Suburban (R-S)	SF Dwellings w/ public sewer & water	12,000	90
	SF Dwellings w/o public sewer & water	20,000	100
	Other Permitted/Conditional Use	40,000	150
One-Family Residential (R-1)	One-Family Dwellings	8,000	65
	Two-Family Dwellings	4,500	70
	Three-Family Dwelling	3,000	70
	Four-Family Dwelling	2,500	80
	Attached townhouse or rowhouse	2,500	30
	Other Permitted/Conditional Use	16,000	100
One to Four Family Residence, Medium Density Residential (R-1.5)	One-Family Dwellings	7,000	65
	Two-Family Dwellings	4,000	65
	Three-Family Dwelling	3,000	70
	Four-Family Dwelling	2,500	80
	Attached townhouse or rowhouse	2,500	30
	Apartment low rise	2,500	75
	Other Permitted/Conditional Use	16,000	100
One to Four Family Residence (R-2)	One-Family Dwellings	6,000	50
	Two-Family Dwellings	4,000	65
	Three-Family Dwellings	3,000	70
	Four-Family Dwellings	2,500	80
	Attached townhouse or rowhouse	2,500	30
	Apartment low rise	2,500	75
	Planned Unit Development	5 acres	75
	Other Permitted/Conditional Use	16,000	100
Multi-Family Residence (R-3)	One-Family Dwellings	6,000	50
	Two-Family Dwellings	3,500	60
	Three-Family Dwellings	3,000	70
	Four-Family Dwellings	2,500	80
	Attached townhouse or rowhouse	2,500	30
	Apartment low rise	2,500	75
	Planned Unit Development	3 acres	75
	Other Permitted/Conditional Uses	10,000	75
	All Mixed-Use Districts		None
All Business Districts	Nonresidential structures	None	None
	Residential Uses	Same as R-3 Multi-Family Residence	
All Industrial Districts		None	None

**43.02.24 Site Dimension Standards**

A) Site Dimension Standards. [Table 43-4](#) establishes the minimum site development standards for all base/primary zoning districts.

**Table 43-4. Site Dimension Standards**

Zoning District	Use Types	Front Yard Setback (ft.)	Side Yard Setback (ft.)	Rear Yard Setback (ft.)	Height Maximum Principal Structure/ Accessory Structure
Agricultural (AG)	Dwellings	35	20	50	35 ft./ 15 ft.
	Other Permitted/Conditional Use	35	20	50	
Rural Residential (R-R)	SF Dwellings w/ public sewer & water	35	12	50	35 ft./ 15 ft.
	SF Dwellings w/o public sewer & water	35	18	50	
	Other Permitted/ Conditional Use	35	18	50	
Residential Suburban (R-S)	SF Dwellings w/ public sewer & water	35	10	50	35 ft./ 15 ft.
	SF Dwellings w/o public sewer & water	35	12	50	
	Other Permitted/ Conditional Use	35	15	75	
One-Family Residence (R-1)	One-Family Dwellings, 1 & 1- 1/2 stories	25	8	40	35 ft./ 15 ft.
	One-Family Dwellings, 2 & 2-1/2 stories	25	10	40	
	Two-Family Dwellings, 1 & 1- 1/2 stories	25	8	40	
	Two-Family Dwellings, 2 & 2-1/2 stories	25	12	40	
	Three- Family Dwellings, 1 & 1- 1/2 stories	25	10	40	
	Three- Family Dwellings, 2 & 2 ½ stories	25	12	40	
	Four- Family Dwellings, 1 & 1- 1/2 stories	25	10	40	
	Four- Family Dwellings, 2 & 2 ½ stories	25	12	40	
	Attached townhouse or rowhouse, 1 & 1- 1/2 stories	25	0 between attached units, 10 from all other side lot lines	40	
	Attached townhouse or rowhouse, 2 & 2- 1/2 stories	25	0 between attached units, 12 from all other side lot lines	40	
	Other Permitted/ Conditional Use, 1 & 1- 1/2 stories	25	12	45	
	Other Permitted/ Conditional Use, 2-1/2 stories	25	14	45	

Table 43-4: Site Dimension Standards ~~Site Dimension Standards~~

Zoning District	Use Types	Front Yard Setback (ft.)	Side Yard Setback (ft.)	Rear Yard Setback (ft.)	Height Maximum Principal Structure/ Accessory Structure	
One to Four Family Residence, Medium Density Residential (R-1.5)	1-Family	25	8	40	35 ft/15 ft.	
	2-4 Family	25	10	40		
	Attached townhouse or rowhouse	25	0 between attached units, 10 from all other side lot lines	40		
	Apartment low rise	25	12	40		
	Other Permitted/ Conditional Use, 1 & 1-1/2 stories	25	12	45		
	Other Permitted/ Conditional Use, 2-1/2 stories	25	14	45		
One to Four Family Residence (R-2)	One-Family Dwellings, 1 & 1- 1/2 stories	25	6	30	35 ft/ 15 ft.	
	One-Family Dwellings, 2 & 2-1/2 stories	25	8	30		
	Two-Family Dwellings, 1 & 1- 1/2 stories	25	8	35		
	Two-Family Dwellings, 2 & 2-1/2 stories	25	10	35		
	Three-Family Dwellings, 1 & 1- 1/2 stories	25	10	40		
	Three-Family Dwellings, 2 & 2-1/2 stories	25	12	40		
	Four-Family Dwellings, 1 & 1- 1/2 stories	25	10	45		
	Four-Family Dwellings, 2 & 2-1/2 stories	25	12	45		
	Attached townhouse or rowhouse, 1 & 1- 1/2 stories	25	0 between attached units, 10 from all other side lot lines	45		
	Attached townhouse or rowhouse, 2 & 2- 1/2 stories	25	0 between attached units, 12 from all other side lot lines	45		
	Apartment low rise, 2 & 2-1/2 stories	25	12	45		
	Apartment low rise, more than 2 stories	25	14	50		
	Planned Unit Development	As per plans and specifications				
	Other Permitted/Conditional Uses, 1 & 1- 1/2 stories	25	12	45		
Other Permitted/Conditional Uses, 2-1/2 stories	25	14	45			
Multi-Family Residence (R-	One-Family Dwellings, 1 & 1- 1/2 stories	25	6	30	40 ft./ 25 ft.	

Table 43.4: Site Dimension Standards ~~Site Dimension Standards~~

Zoning District	Use Types	Front Yard Setback (ft.)	Side Yard Setback (ft.)	Rear Yard Setback (ft.)	Height Maximum Principal Structure/ Accessory Structure	
3)	One-Family Dwellings, 2 & 2-1/2 stories	25	8	30		
	Two Family Dwellings, 1 & 1- 1/2 stories	25	6	30		
	Two-Family Dwellings, 2 & 2-1/2 stories	25	8	30		
	Three-Family Dwellings, 1 & 1- 1/2 stories	25	10	40		
	Three-Family Dwellings, 2 & 2- 1/2 stories	25	12	45		
	Four-Family Dwellings, 1 & 1- 1/2 stories	25	10	40		
	Four-Family Dwellings, 2 & 2- 1/2 stories,	25	12	45		
	Attached townhouse or rowhouse, 1 & 1- 1/2 stories	25	0 between attached units, 10 from all other side lot lines	40		
	Attached townhouse or rowhouse, 2 & 2- 1/2 stories	25	0 between attached units, 12 from all other side lot lines	45		
	Attached townhouse or rowhouse, more than 2 stories	25	0 between attached units, 14 from all other side lot lines	50		
	Apartment low rise, 2 & 2-1/2 stories	25	12	45		
	Apartment low rise, more than 2 stories	25	14	50		
	Planned Unit Development	As per plans and specifications				
	Other Permitted/Conditional Uses, 1 & 1- 1/2 stories	25	12	45		
Other Permitted/Conditional Uses, 2-1/2 stories	25	14	45			
Other Permitted/Conditional Uses, more than 2 stories	25	14	50			

**Table 43-4: Site Dimension Standards**

Zoning District	Use Types	Front Yard Setback (ft.)	Side Yard Setback (ft.)	Rear Yard Setback (ft.)	Height Maximum Principal Structure/ Accessory Structure
Mixed Use – Downtown Core (MU-DFC)	Commercial Uses	None, except when either side lot line coincides with a residential district line, <u>then not less than 25 feet then the setback shall be the average of immediately adjacent lots.</u>	None, except when a side lot line coincides with a residential district line, then not less than required for one-family dwellings in the adjoining residential district.	None, except when the rear lot line coincides with a residential district line, then not less than required for one family dwellings in the adjoining residential district.	75 ft./40 ft., except if within 150 feet of a residential district, then 40 ft. /25 ft.
	Residential Uses	None	None	None	
Mixed Use – Downtown Fringe (MU-DF)	Commercial Uses	None, except when either side lot line coincides with a residential district line, then not less than 25 feet.	None, except when a side lot line coincides with a residential district line, then not less than required for one-family dwellings in the adjoining residential district.	None, except when the rear lot line coincides with a residential district line, then not less than required for one family dwellings in the adjoining residential district.	40 ft./25 ft.
	Residential Uses	None	None	None	
Mixed Use – Neighborhood Center (MU-N)	Commercial Uses	None, except when property abuts a residential structure, then the setback shall be the average of immediately adjacent lots	None, except when a side lot line coincides with a residential district line, then not less than required for one-family dwellings in the adjoining residential district.	10 feet, except when a rear lot line coincides with a residential district line, then not less than required for one-family dwellings in the adjoining residential district.	30 ft./ 15 ft.
	Residential Uses	Same as required for the least restrictive adjoining residential district			
Neighborhood Business (B-1)	Commercial Uses <u>and Apartment Mixed Use Dwellings</u>	25	None, except when a side lot line coincides with a residential district line, then not less than required for one-family dwellings in the adjoining residential district.	10 feet, except when a rear lot line coincides with a residential district line, then not less than required for one-family dwellings in the adjoining residential district.	30 ft./ 15 ft.
	<u>Other Residential Uses</u>	Same as required for the least restrictive adjoining residential district			

Table 43-4: Site Dimension Standards ~~Site Dimension Standards~~

Zoning District	Use Types	Front Yard Setback (ft.)	Side Yard Setback (ft.)	Rear Yard Setback (ft.)	Height Maximum Principal Structure/ Accessory Structure
Central Business (B-2)	Commercial Uses	None, except when either side lot line coincides with a residential district line, then not less than 25 feet.	None, except when a side lot line coincides with a residential district line, then not less than required for one-family dwellings in the adjoining residential district.	None, except when the rear lot line coincides with a residential district line, then not less than required for one family dwellings in the adjoining residential district.	40 ft./25 ft.
	Residential Uses	Same as in the R-3 district.			
General Business (B-3)		None, except when either side lot line coincides with a residential district line, then not less than 25 feet.	None, except when either side lot line coincides with a residential district line, then not less than required for one family dwellings in the adjoining residential district.	None, except when either side lot line coincides with a residential district line, then not less than required for one family dwellings in the adjoining residential district.	40 ft./ 40 ft.
	Residential Uses	Same as in the R-3 district.			
Light Industrial (I-1)	Nonresidential Structures	25	None – except when adjoining R district – then not less than 25 ft. each.	1-story 30 ft. 2-story 40 ft. 3-story 50 ft. Five feet more each additional story.	Within 200 feet of any R district, no structure shall exceed 3 stories or 50 feet in height. No structure otherwise shall exceed in height the distance measured to the center line of any street./same
	Dwellings or Residential Parts of Nonresidential Buildings	Not permitted in M-1 district. Existing dwellings and dwellings permitted under paragraph (a)(1)(k) follow R-3 district.			

~~Table 43.4: Site Dimension Standards~~ **Site Dimension Standards**

Zoning District	Use Types	Front Yard Setback (ft.)	Side Yard Setback (ft.)	Rear Yard Setback (ft.)	Height Maximum Principal Structure/ Accessory Structure
Heavy Industrial (I-2)	Nonresidential Structures	25	None – except when adjoining R district – then not less than 50 ft. each side yard.	1-story 40 ft. 2-story 50 ft. 3-story 60 ft. Five feet more each additional story.	Within 200 feet of any R district, no structure shall exceed 3 stories or 50 feet in height. No structure otherwise shall exceed in height the distance measured to the center line of any street./same
	Dwellings or Residential Parts of Nonresidential Buildings	Not permitted in M-2 district. Existing dwellings follow R-3 district standards.			
Airport Industrial Park (I-A)		25	25	25	75

**Division 3 Overlay Districts**

**43.02.31 Campus Overlays**

A) PURPOSE AND FINDING OF FACT.

- 1) Statement of Purpose. It is the purpose of this [article-section](#) to define campus boundaries through campus overlays, and apply overlays to various [institutional/college or university](#) uses within the City of Winona.
- 2) Finding of Fact. All property included within a campus overlay shall be classified as an [institutional/college or university](#) use not subject to Section [43.03.13\(C\)43-58](#). Such property shall be termed “on-campus.”

B) GENERAL PROVISIONS

- 1) Establishment of Official Campus Overlay Maps. The official campus overlay maps for [institutional/college or university](#) uses within the City of Winona shall be on file in the office of the City Planner.

<u>Map</u>	<u>Effective Date</u>
a) WSU Campus Overlay (Main)	9/2011
b) WSU Campus Overlay (West)	9/2011

- 2) [Institutional/College or University](#) Ownership of Campus Overlay Property. All property within a Campus Overlay shall be owned by the respective [institution/college, university](#), or an [college/university institutional](#)-affiliate.

- 3) Amendments. Provisions for the amendments to the text of each campus overlay are listed in Section [43.3143.06.16](#). Provisions for the amendments to the map (boundaries/effective date) of each campus overlay are listed in corresponding [sub-sections](#) below.

C) WSU CAMPUS OVERLAY (MAIN)

- 1) Permitted Uses.
- a) ~~Institutional~~[College or University](#) Uses ~~as Listed in Section 43.56. This~~ includes facilities such as dormitories, theme houses (as permitted below), libraries, classrooms, offices, dining facilities, other public gathering facilities, stores open to the public, athletic and auditorium facilities, and other college [or university](#)-related facilities.
  - b) Theme Houses. Theme houses may be established within existing structures. However, additions to such structures or newly constructed (expanded) theme houses shall comply with one-family frontage and yard requirements ~~of Section 43.57 (c)~~ and ~~comply with~~ height requirements of Section [43.02.2443.57 \(d\)](#). Also, any theme house that shares a lot line with non-[college or](#) university owned property shall be subject to a conditional use permit.
- 2) Conditional Uses. The following conditional uses shall be permitted only if specifically authorized by the Planning Commission in accordance with this [article section](#) and Section 41.01 of this code:
- a) Theme Houses That Share a Lot Line With Non-[College or U](#)niversity Owned Property. Provided that:
    - i. Lot is 10,000 square feet or less.
    - ~~ii.~~ [Additions and new \(expanded\) structures comply with R-2 one-family requirements listed in Section 43.02.2443.57 \(e\) and height requirements of Section 43.02.2443.57 \(d\).](#)
    - ~~iii-ii.~~ [Architectural review in accordance with Section 43.28 is required for additions or new structures which differ from architectural character of adjacent properties.](#)
    - ~~iv-iii.~~ Building occupancy is 12 or less.
    - ~~v-iv.~~ Outdoor lighting shall be shielded from adjacent non-[college or](#) university owned properties.
    - ~~vi-v.~~ Outdoor signage shall conform to Section [43.05.14\(E\)\(2\)\(d\)43.43 \(k\)\(5\)\(ii\)\(D\)](#), provided that ground signs on properties adjacent to non-[college or](#) university owned properties shall not be illuminated.
  - 3) Accessory Uses. Accessory uses as permitted in Section [43.02.2343.57](#).
  - 4) Height Regulations. Height Regulations as permitted in Section [43.02.2443.57](#).
  - 5) Lot Area, Frontage, Frontage and Yard Requirements. Such requirements as listed in Section [43.02.2443.56 \(e\)](#) Other Permitted Uses, except additions to or newly constructed (expanded) theme houses which must comply with one-family requirements of Section [43.02.2443.57 \(e\)](#).
  - 6) Amendment of Map. Changes to the WSU Campus Overlay (Main) map shall not be permitted until parameters for such changes are established in this [article section](#).

D) WSU CAMPUS OVERLAY (WEST)

- 1) Permitted Uses. Uses as permitted in Section [43.02.31\(C\)\(1\)43.86](#).

- 2) Conditional Uses. Conditional uses as permitted in Section [43.02.31\(C\)\(2\)43-86](#).
- 3) Accessory Uses. Accessory uses as permitted in Section [43.02.2343-57](#).
- 4) Height Regulations. Height Regulations as permitted in Section [43.02.2443-57](#).
- 5) Lot Area, Frontage, Frontage and Yard Requirements. Such requirements as listed in Section [43.02.2443-56 \(e\)](#) Other Permitted Uses, except additions to or newly constructed (expanded) theme houses which must comply with one-family requirements of Section [43.02.2443-57 \(e\)](#).
- 6) Amendment of Map. Changes to the WSU Campus Overlay (West) map shall not be permitted until parameters for such changes are established in this [article section](#).

#### 43.02.32 Bluffland Protection

##### A) Statement of Intent and Purpose.

- 1) The protection of visual, aesthetic, and ecological qualities of City bluffs and bluff ridgelines is listed as a specific goal within the City of Winona Comprehensive Plan. This ordinance is hereby adopted for purposes of implementing this goal, and to achieve the following public purposes:
  - a) To minimize, to the greatest extent feasible, the visual, functional, and ecological impacts of land disturbing activities of bluffs and bluff ridgelines, while also recognizing the legitimate expectations of property owners, and overall City economic development goals.
  - b) To protect persons, property, and property values from impacts characteristic of development occurring within, and within close proximity to bluffs. Such impacts include rock falls, rolling boulders, subsidence, and those associated with unstable soils, as erosion and sedimentation.
  - c) To protect and conserve significant City natural and visual resources as major rock outcrops, ridges and ridgelines, peaks, and landmarks, in order to retain the City's natural setting.
  - d) To promote the retention and improvement of those ecological and vegetative qualities which serve to stabilize steep slopes and ridgelines, characteristic of bluff faces.
  - e) To minimize public costs which may be associated with the development of bluff faces and ridgelines.
  - f) To identify and protect archaeological and cultural resources, including American-Indian burial grounds in accordance with local historic preservation goals and policies, the City Comprehensive Plan, and applicable law.

##### B) Definitions.

- 1) Average Slope. A calculation resulting from the division of the vertical difference of two elevation points (in feet) by the horizontal distance between these points (in feet), multiplied by 100.
- 2) Bluff (non shoreland). A topographic feature such as a hill, cliff, or embankment having the following characteristics:
  - a) The feature is not located within a Shoreland Management District, as defined pursuant to Winona City Code Chapter 69.

- b) The feature, between its lowest (toe of bluff) and highest (top of bluff) elevations, exceeds an elevation difference of 25 feet.
  - c) The average slope of the features land surface, as measured from any Top of Bluff point, to the nearest Toe of Bluff, or drainageway center line point, exceeds 25 percent.
- 3) Bluff Impact Overlay District. All land located within a Bluff.
  - 4) Building Height. The vertical distance between the highest adjoining ground level at the building or 9 feet above the surface of the lowest floor, whichever is lower, and the highest point of the building.
  - 5) Burial Ground. A discrete location that is known to contain, or has high potential to contain human remains based on physical evidence, historical records, or reliable information accounts.
  - 6) Drainageway. Any natural or constructed channel which provides a course for water flowing either continuously or intermittently.
  - 7) High Potential Burial Ground and Archaeological Site Area. An area possessing probable qualities of the existence of unrecorded or unplatted burial grounds and archaeological sites. As defined by the State Archaeologist Predictive location model, for Winona County, this definition shall apply to all lands located within 1000 feet from any Top of Bluff as defined per this ordinance; 500 feet of any public water stream or river, as defined pursuant to City Code Section 69.04; terraces above flood plains, lower terraces back to the Toes of Bluffs with plain views of rivers and streams; and isolated hilltops with clear views of the surrounding country.
  - 8) Hydrogeology Study. A study, prepared by a qualified professional, for the purpose of delineating Karst topography, depths to groundwater and bedrock, springs, and similar natural features, and which is designed to offer strategies to be followed in either eliminating and/or mitigating potential impacts to such features.
  - 9) Intensive Silvicultural Harvesting. The complete removal of trees or shrubs in a continuous patch, strip, row, or block, and requiring restocking to improve or regenerate the stand.
  - 10) Karst Topography. The type of geologic terrain underlain by carbonate rocks where significant solution of the rock has occurred due to flowing groundwater.
  - 11) Land Disturbance Activity. A change in the use of land that would result in any form of topographic modification, increase in impervious surface coverage, or vegetative alteration. Land disturbance activity shall include, but not be limited to:
    - a) Any extent of grading, grubbing, filling, and excavating.
    - b) The construction of any structure, building, impervious walk/path, swimming pool, deck, patio, driveway, street, retaining wall, and public/private utility.
    - c) The establishment of formal lawns and gardens, or the cutting, thinning, or removal of existing living vegetation.
      - i. This term shall not include the removal of diseased or dead vegetation, and established home lawn, garden and landscaping maintenance activities.
  - 12) Lowest Floor. The lowermost floor of the lowest enclosed area, including basement and crawl space.
  - 13) Mass Grading. A grading technique in which all lots, building pads, and streets are generally graded over the entire area resulting in the disruption of the majority of the on-site natural

grade, and vegetation, and often resulting in, but not required to result in, a successive man made pad/terrace configuration.

- 14) Mississippi River Viewshed Corridor. All land of the City located between the southerly right-of-way line of State Highway 61 and the southerly shoreline of the Mississippi River main channel.
  - 15) Phase 1 Archaeological Survey. A survey, prepared by a qualified professional archaeologist, as defined by MS 138.31, subd. 14, and which is designed to identify the presence of an archaeological site(s) on property. The survey shall be conducted in accordance with protocols of the State Historic Preservation Office document entitled "SHPO Manual for Archaeological Projects in Minnesota, July, 2005, or as amended.
  - 16) Plat. The drawing, or map, of a subdivision prepared for filing of record pursuant to MS Chapter 505, and approved in accordance with provisions of [City Code Chapter 43 Section 43.06.15](#).
  - 17) Principal Structure. A building in which is conducted the principal use of the lot on which it is situated. In any residential district, any dwelling shall be deemed to be the principal structure of the lot on which same is located.
  - 18) Ridgeline Transition Overlay District. All land located within 200 feet from, adjacent to, and outside of, a Top of Bluff.
  - 19) Selective Silvicultural Harvesting. Uneven – age management, the periodic removal of mature and/or high risk trees uniformly across a forested area, and not requiring stocking to improve or regenerate the stand.
  - 20) Toe of Bluff. The lowest point of a 50 foot segment with an average slope exceeding 18 percent, said elevation shall represent the lowest point of a bluff.
  - 21) Top of Bluff. The highest point of a 100 foot segment with an average slope exceeding 18 percent, said elevation shall represent the highest point of a bluff.
  - 22) Unplatted Lot of Record. A parcel of land, created by means other than a plat, that has been recorded with the office of the County Recorder prior to adoption of this ordinance, or any amendment thereto.
  - 23) Viewshed Analysis. A geographic information system tool which is designed to define if a location, containing specified height parameters, will be visible from one, or more, observation points.
- C) Bluff Protection Overlay Districts
- 1) Jurisdiction.  
The provisions of this section shall apply to the structural and nonstructural use and development of all land located within any Bluff Impact and Ridgeline Transition Overlay District, as defined pursuant to this ordinance. In meeting the purpose and intent of this section, these overlay districts require additional standards to underlying base zoning. Any permitted, accessory or conditional, use of underlying base zoning shall be subject to provisions of this section, as well as those of the applicable base zone. In cases where standards of this ordinance conflict with any other adopted standard of the City, the more restrictive shall apply.
  - 2) Establishment.  
For reference, the limits of Bluff Impact and Ridgeline Transition Overlay Districts shall be shown on the official City of Winona Zoning Map. Said limits may, in accordance with applicable law, be modified to reflect updated data sources, and newly annexed lands into the City. If

required, specific district limits shall be verified on a site by site basis, in accordance with applicable parts of this section.

3) Exemptions.

The scope of this section shall not apply to the following, provided that any exempted activity shall fully comply with all other applicable laws and/or permitting requirements of the City. If located within a High Potential Burial and Archaeological Site Area, all activities shall adhere to provisions of MS 307.08 of Minnesota's Private Cemeteries Act:

- a) Platted lots. Any permitted, conditional, and accessory use of any lot, that has received preliminary or final plat approval, prior to the adoption of this section; provided, that all such uses ~~is~~ are compliant with existing underlying zoning, ~~and~~ plat approval, ~~and that the future use of a lot that is in anyway modified, shall fully conform with this section.~~
- b) Any existing principal residential and nonresidential structure, established on an unplatted lot of record prior to adoption of this section, and including existing accessory structures, provided that such structures are clearly subordinate to the established principal structure on the lot. Alterations, expansions, and additions to existing structures, and new accessory structures, are permitted, provided that:
  - i. Any new construction conforms with use, and performance standards, of underlying zoning.
  - ii. No new construction may occur on any slope exceeding a grade of 18%.
  - iii. Any new accessory structure must be subordinate to an established principal structure, located on the lot.
  - iv. Height modifications of Section ~~43-043.02-17(C)~~ shall not be permitted within Bluff Impact or Ridgeline Transition Overlay Districts.
    - 1. The intent and purpose of this provision extends solely to any lot of record that includes a principal structure that was established prior to adoption of this ordinance. Following adoption, any subsequent change in use of such a lot, resulting from any one of the following actions, shall fully comply with this section:
  - v. Any zoning, or change in zoning, of the lot.
  - vi. Any land split, platted or unplatted, with the result of creating a new lot.
  - vii. The construction of an additional principal structure on the lot.
    - 1. The construction of any new structure, on an unplatted lot of record that does not include an established principal structure, prior to adoption of this ordinance, shall fully comply with all parts of this section.
- c) The planting of native trees, shrubs, and other vegetation.
- d) The mitigation of any immediate danger or safety hazard to persons, or property. Following consultation with qualified persons, the hazard shall be documented by the City, and the underlying property owner shall be responsible for its mitigation. Mitigation may employ any reasonable method, provided that it is consistent with the purpose and intent of this section, and will not negatively compromise adjacent lands.
- e) ~~The removal of noxious weeds as defined pursuant to MN Rules 1505.0730, provided that the method of removal is by hand pulling, hand cutting, and/or the hand application of appropriate herbicides. If the method of removal requires the use of motorized or~~

~~mechanical equipment, and/or the disturbance of vegetation which is not classified as noxious, within a defined Bluff Impact Overlay District, the activity requires a Land Disturbance Activity Permit pursuant to Part F (3) of this ordinance.~~

- f) Selective Silvicultural harvesting, thinning, or removal activity necessary to promote the overall health and sustainability of forest land. All such activity shall be guided by best management practices of the Minnesota Forest Resources Council publication entitled Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners and Resource Managers (1999). If conducted within any Bluff Impact Overlay District, a Land Disturbance Activity Permit shall be required pursuant to ~~Part F (3) of this ordinance Section 43.02.32(C)(6)(a).~~
- g) Tilling, planting, and harvesting of agricultural crops, platted and recorded cemeteries, and land extraction activities established prior to adoption of this section.
- 4) Land Disturbance Activity Permit – Required.  
This section imposes specific requirements, and other performance standards, relating to both the structural and nonstructural use of any Bluff Impact and Ridgeline Transition Overlay District within the City. In order to ensure that these requirements and standards are achieved, no person shall commence any nonexempt land disturbance activity within a Bluff Impact and/or Transition Overlay District without first securing a Land Disturbance Activity Permit. In determining the need for such a permit, any person proposing to initiate any land disturbance activity, on a parcel of land including an overlay district designation, shall define specific Bluff Impact and Ridgeline Transition Overlay District limits for the parcel, pursuant to ~~Part H (1) (E) of this ordinance 43.02.32(C)(8)(iv).~~ In all cases, information shall be defined prior to initiating any required Land Disturbance Activity Permit Application to the parcel. If, following consultation with City staff, it is concluded that the proposed land disturbance activity will clearly be located outside of either overlay district, the activity shall not require a Land Disturbance Activity Permit. If it is concluded that the requested activity will impact any land located within an overlay district, a Land Disturbance Activity Permit application shall be submitted, and processed, in accordance with ~~Part H 43.02.32(C)(8).~~ Any single land disturbance activity which may be subject to more than one Land Disturbance Activity Permit shall be processed under one permit.
- 5) Prohibitions-Bluff Impact Overlay Districts.  
Exclusive of provisions of ~~Part F Section 43.02.32 (C)(6)~~ no nonexempt structural or nonstructural land disturbance activity shall be permitted within any Bluff Impact Overlay District. Said lands may be used to meet lot area requirements of underlying zoning. When associated with platted land, Bluff Impact Overlay Districts may be used to fulfill Natural State Area requirements relating to ~~Table B, Section I (2), of Appendix I, Chapter 42.~~
- 6) Exceptions-Bluff Impact Overlay Districts.  
The following activities may be permitted within Bluff Impact Overlay Districts, if preceded by the approval of a Land Disturbance Activity Permit:
- a) Selective silvicultural crop harvesting, thinning, or removal activities, provided that:
    - i. The Commission finds that the activity is necessary to maintain the overall health and sustainability of forest land, and will not compromise the purpose and intent of this section. In making this finding, the Commission shall consider expert or state agency comments, and recommendations.

Comment [JM1]: I can't find a Table B in Section I(2) of Appendix I, Chapter 42.

- ii. The activity is carried out in accordance with all applicable local or state laws and permitting requirements, including the City of Winona Stormwater Management Ordinance.
  - iii. The activity shall be guided by best management practices of the Minnesota Forest Resources Council's publication entitled Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners and Resource Managers (1999, or subsequent reprints).
  - iv. No silvicultural harvesting, thinning, or removal activity shall be permitted within a distance of 50 feet from each side of any Top of Bluff, unless the Commission finds the activity is necessary to meet standard (a) of this section, and that it will not compromise the intent and purpose of this ordinance. In meeting this standard, the Commission shall determine whether, or not, the activity will result in the loss of screening benefits, both from and towards, any structural use of land located upland of the activity. If it determines that screening benefits will be lost, it may apply conditions requiring the planting of native trees within 50 feet either side of a Top of Bluff.
  - v. No silvicultural harvesting, thinning, or removal activities, including the construction of new logging roads, shall be permitted on slopes exceeding grades of 30 percent.
  - vi. A site vegetative restoration plan is prepared by a qualified person and includes the use of native plant materials.
  - vii. Intensive silvicultural harvesting, thinning or removal activities shall not be permitted, unless necessary to carry out any other permitted use of this section.
- b) Construction of recreation trails, paths, and stairs provided that such facilities:
- i. Are constructed and maintained for public use only.
  - ii. Are no more than three feet in width and, exclusive of stair features, are constructed of pervious materials.
  - iii. Are appropriately planned to minimize, to the greatest extent feasible, adverse effects on existing vegetation and natural/sensitive site environments.
  - iv. Are subject to applicable provisions and requirements of the City Stormwater Management Ordinance.
  - v. Exclusive of necessary stairs, landings, railings, and interpretative signs, do not require the construction of any other structure.
- c) Native vegetation restoration projects, and the control and removal of invasive plant species, and noxious weeds (by mechanical means), provided that:
- i. The Planning Commission (Commission) finds that the activity, and method of carrying it out, is necessary to maintain the overall health and sustainability of forest land, and will not compromise the purpose and intent of this section. In making this finding, the Commission shall consider expert or state agency comments and recommendations.
  - ii. The activity is carried out in conformance with any applicable local or state laws and permitting requirements, including the City of Winona Stormwater Management Ordinance.
  - iii. If occurring within a distance of 50 feet from either side of a Top of Bluff, the Commission shall determine whether, or not, the activity will result in the loss of

screening benefits both from and towards, any structural use of land located upland of the activity. If it determines that screening benefits will be lost, it may apply conditions requiring the planting of native trees within 50 feet either side of a Top of Bluff.

- iv. A site vegetative restoration plan is prepared by a qualified person and includes the use of native plant materials.
- d) The construction of any Essential Service as defined pursuant to Section [43.0143.07.12](#), provided that:
  - i. The Commission finds that the only reasonable and feasible location for an essential service requires placement within/through a defined Bluff Impact Overlay District, and that alternative locations and design elements have been considered.
  - ii. Essential services shall be designed to consider existing vegetative, topographic, and other site features, with the intent of minimizing vegetative and visual impacts to the greatest extent feasible. Land disturbance activity shall be limited in scope to include only those lands which are necessary to construct the essential service.
  - iii. The essential service shall be constructed in accordance with any applicable local or state laws and permitting requirements, including the City of Winona Stormwater Management Ordinance.
  - iv. No structure associated with the construction of an essential service shall exceed a maximum height of 30 feet.
  - v. The activity shall include a site vegetative restoration plan which shall, in part, serve to promote the screening of structures required for the use, and shall include the use of native plant materials.
- e) Publicly owned/managed stormwater retention facilities, provided that:
  - i. The Commission finds that the facility will not compromise the purpose and intent of this section.
  - ii. The facility shall be constructed and maintained in accordance with any applicable local or state laws and permitting requirements, including the City of Winona Stormwater Management Ordinance.
  - iii. Land disturbance activity shall be limited only to that which is necessary to construct the facility
  - iv. Should the facility require the removal of trees, site restoration activities shall include the planting of native trees at both upslope and downslope sides of the structure, with the intent of replacing screening values of/from upland sites which are either used, or intended to be used, for structural purposes.
  - v. If associated with a plat, any overlay district designation that is lost to the facility shall be fully replaced within the plat, provided that replacement may not include land within a Bluff Impact Overlay District.
  - vi. The facility must be owned, and managed, by the City of Winona. The facility must be dedicated to the City within a period of time as specified through a required Development Agreement, or other instrument, that is fully executed prior to its construction.
- f) Public streets, provided that:

- i. The Commission finds that the only reasonable and feasible location for a public street requires placement within/through a defined Bluff Impact Overlay District, and that alternative locations have been considered. If associated with a plat, any overlay district designation that is lost to the facility shall be fully replaced within the plat, provided that replacement may not include land within a Bluff Impact Overlay District.
  - ii. The activity is carried out in accordance with all applicable local or state laws, and permitting requirements, including the City of Winona Stormwater Ordinance.
  - iii. The activity shall be designed to consider existing vegetative, topographic, and other site features, with the intent of minimizing vegetative and visual impacts, to the greatest extent feasible.
  - iv. Land disturbance activity, shall be limited in scope to include only those lands which are necessary to construct the street.
  - v. A site vegetative restoration plan, including the use of native plant materials.
- 7) Performance Standards-Ridgeline Transition Overlay District.  
The following performance standards shall apply to any non-exempt structural or nonstructural land disturbance activity, located within a Ridgeline Transition Overlay District. All performance standards shall be fully certified prior to the approval of a required Land Disturbance Activity Permit.
  - a) The maximum height of any structure shall not exceed 21 feet. In cases where a structure is bisected by the outer limit of a district, this requirement shall apply to the whole structure.
  - b) All structures shall be set back a minimum of 50 feet from any Bluff Impact Overlay District. The planting of native tree and groundcover species within these setbacks, shall be encouraged.
  - c) Any exterior lighting, located at the down slope side of any structure, shall not exceed a height of 8 feet above the ground, and shall be directed toward the ground.
  - d) The exterior color of new and renovated structures, including roofs, shall be of earth tones. Exteriors shall be of non-reflective materials.
  - e) Mass grading, and the creation of artificial building pads, shall be avoided. The intent of this provision being to promote structural design that fits existing site conditions to the greatest extent feasible.
  - f) The impervious surface coverage of any lot, including an overlay district, shall not exceed 25%.
  - g) All feasible efforts shall be employed to retain native trees. Tree removal activity, from any Ridgeline Transition Overlay District, shall be limited only to that which is necessary to facilitate permitted structural, or nonstructural, use of a parcel.
  - h) The maximum grade of any driveway, serving any lot including an overlay district, shall not exceed 12%.
  - i) Prior to granting a permit to a land disturbance activity, any part of which will result in the construction of a structure(s) within an overlay district, a Viewshed Analysis shall be prepared for the development. The Viewshed Analysis shall be prepared by the City of Winona, and in accordance with the following parameters:

- i. The Analysis shall be based upon a structural height of 21 feet, and at a receiving site located within limits of a defined Ridgeline Transition Overlay District.
    - ii. For land disturbance activity applications relating to any plat, any Viewshed Analysis receiving site location(s) shall be selected by the City following the submittal of a preliminary plat for the development.
    - iii. For all other nonexempt development, the location of the Viewshed Analysis receiving site shall be at the centerline of any proposed structure.
  - j) Should the Viewshed Analysis conclude that proposed structures may have the capability of being visible from the Mississippi River Viewshed Corridor, the City shall conduct additional analysis to define the role of existing vegetation, and other site features, in mitigating viewshed impacts. This analysis shall be based upon summer, leaf-on, conditions. Following consideration of the analysis, the Commission may impose any condition and/or requirement that is designed to promote visual screening between future structural development, and the Mississippi River Viewshed Corridor.
- 8) Administration-Land Disturbance Activity Permit.  
Any activity requiring a Land Disturbance Activity Permit, pursuant to [Part D of this section Section 43.02.32 \(C\)\(4\)](#), shall be processed in accordance with the following provisions. No such activity may commence until the permit is fully approved. If associated with land that is to be platted, the Preliminary Plat Application shall represent the Land Disturbance Activity Permit Application for the development. Any such application shall include all information required by this section and [City Code Section 42.04: the UDC Application Manual](#).
  - a) Application. The applicant of the proposed land disturbance activity shall complete and submit a Land Disturbance Activity Permit application to be provided by the City of Winona. All applications shall be accompanied by applicable fees, and shall include the following minimum information:
    - i. Name, address, and phone number of property owner.
    - ii. Name, address, and phone number of person requesting the land disturbance activity.
    - iii. Legal description of parcel.
    - iv. A current topographic map, including two foot contour intervals, drawn to a scale of 100 feet to the inch, or less, and showing the limits of any Bluff Impact and Ridgeline Transition Overlay District, the location of existing structures, driveways, and abutting streets, and the location/limits of any proposed structure, or other land disturbance. Calculations, related to overlay district certifications, may incorporate the use of any reasonable method of computer modeling. Given the absence of such modeling, calculations may be calculated at 50 foot increments drawn perpendicularly to site topography. The intent of such calculations shall serve to create continuous lines, reflecting Bluff Impact and Ridgeline Transition Overlay Districts through the property. If calculations are requested, by the applicant, to be determined by the City, any such calculations shall be final unless otherwise appealed in accordance with [Part I of this section Section 43.02.32 \(C\)\(5\)](#).
    - v. A clear and complete description of the land disturbance activity proposed, along with supporting professional opinions, site/building plans, site revegetation plans, and other documentation which fully demonstrates the project and how it will conform to all applicable standards of this section. If required pursuant to City Code Chapter 68, the

- application shall include erosion and sediment control, or stormwater management plans.
- vi. Should any required application relate to land which is located within a High Potential Burial Ground and Archaeological Site, the application shall include a fully completed, and reviewed, Phase 1 Archaeological Survey.
1. The survey shall be prepared by a qualified professional, as defined by MS 138.31, subd. 10, or who is listed on the Minnesota State Historic Preservation Office Archaeological Contractors list, and in accordance with protocols of the State Historic Preservation Office document entitled "SHPO Manual for Archaeological Projects in Minnesota", July, 2005, or as amended.
  2. For an application seeking plat approval, the scope of the study shall include all land located within limits of the plat. In all other applications, the scope of the study shall include all land located within 150 feet from the limits of any proposed land disturbance activity, or at the applicant's property line, whichever is less.
  3. Following the applicant's selection of a qualified professional, he/she shall notify the City of Winona of the selection. The City shall then provide written notice to Tribal Councils for the Prairie Island Indian, Shakopee Mdewakanton Sioux, and Lower Sioux Indian Communities, as well as the Sisseton Wahpeton Oyate and Minnesota Indian Affairs Council, of the pending survey, the name of the selected professional, and the location and proposed scope of the development.
  4. If, following initial survey analysis, it is determined that additional study is needed to fully define burial ground, or other archaeological attributes of a site, all such additional study shall be completed prior to submittal of the application. Should study discover unplatted, or unrecorded burial grounds, all such features shall be fully authenticated by the State Archeologist, in accordance with provisions of MS 307.08, prior to submittal of the application.
  5. Upon completion of the Phase 1 Survey, the applicant shall submit six copies of the document to the City of Winona, at which time the City shall forward copies to Tribal Councils for the Prairie Island Indian, Shakopee Mdewakanton Sioux, and Lower Sioux Indian Communities, as well as the Sisseton Wahpeton Oyate, and the Minnesota Indian Affairs Council. Following the date of this submittal, notified tribal offices shall have 30 calendar days to comment. Comments shall be provided to the City, and the 30 day comment period must be fully exhausted prior to submittal of the application.
  6. The final archaeological report, comments and recommendations of Tribal Councils, and the State Archaeologist shall be considered prior to approving any Land Disturbance Activity Permit Application. Any such approval may incorporate State Archaeologist recommendations, or other conditions, designed to protect/preserve identified archaeological resources of the site.
- vii. A Hydrogeology Study, prepared by a qualified professional. For an application seeking plat approval, the scope of the study shall include all land located within limits of the plat. In all other applications, the scope of the study shall include all lands located within 150 feet from the limits of any proposed land disturbance activity, or the applicant's property line, whichever is less. In part, the study shall describe recommended

mitigation strategies, related to the protection of delineated sensitive features of the site, and how the applicant will meet these in carrying out the activity.

b) Application Review.

- i. Any Land Disturbance Activity Permit application that does not relate to the platting of property shall be processed in accordance with provisions of MS 15.99, and the following:
  1. Following receipt of a complete application, the Planning Commission shall hold a public hearing preceded by notice to all parcel owners of record contiguous to the subject parcel of the application, and to the official newspaper of the City, within ten days of the hearing.
  2. Following its hearing, the Commission shall consider the full application, and determine its consistency with any requirement or performance standard of this section. Should it find that the application, is consistent with, and will not compromise the purpose and intent of this section, or any other requirement of the City, the application may be approved. Any Commission decision shall be supported by findings, and shall become final, if not appealed to Council within 10 calendar days from the date of the decision. Approval decisions may be subject to any condition, special agreement, covenant, performance bond, or other instrument, as may be recommended by the City Attorney and/or required by the Commission, to ensure that the activity is carried out in conformance with plans, specifications, and approvals relating to the application.
  3. Any person who is aggrieved by a decision of the Commission may appeal it to City Council within 10 calendar days following the date of the Commission's decision. The Council shall hold a hearing and following the hearing, the City Council may approve, conditionally approve, or deny the application. Approval decisions may be subject to any condition, special agreement, performance bond, or other instrument, as may be recommended by the City Attorney, to ensure that the activity is carried out in conformance with Council's approval of the activity.
  4. Following full approval of the application, any conditions, which may be imposed on the approval, shall be certified by City staff prior to the issuance of any building, or other required permit to the activity. No structural certificate of occupancy shall be issued until it has been determined that all approved plans and conditions have been met. Council approval of an application may be subject to any condition, special agreement, covenant, performance bond, or other instrument needed to ensure that the activity is carried out in full conformance with approved plans and specifications relating to the activity.
- ii. Any Land Disturbance Activity Permit Application associated with the platting of land shall be processed in accordance with preliminary cluster development plat procedures of [City Code Section 43.46 \(c\) \(1-4\) Section 43.06.15\(t\)](#). The preliminary plat application shall represent the Land Disturbance Activity Permit application, and shall include all information required per [City Code Section 42.04\(1\)\(C\) Application Manual](#), and of [Part H \(?\) of the ordinance Section 43.02.32\(C\)\(8\)\(a\)](#). Following its preliminary plat hearing, the Commission shall consider the full application. Should it find that the application, as presented, is consistent with applicable provisions of [City Code Chapter 42](#), and [this section](#), the Commission may recommend approval of the application to the City

Council. Commission approval may include any reasonable condition to ensure that all provisions of **Chapter 42, and this section**, are met.

- iii. Following the hearing on the preliminary plat, the City Council may, with applicable findings, approve, conditionally approve, or deny it. In granting approval, Council shall require that any final plat approval, be subject to a Development Agreement and other appropriate agreements and documents, and the applicant's preparation of restrictive covenants for the plat. In part, all such documents shall serve to reflect any preliminary plat approval condition, and to obligate the applicant, or any future land owner of the plat, to meeting applicable requirements and performance standards of this section. If required, any such agreement or document shall be properly recorded with the Winona County Recorder by the City. All requirements pertaining to plat approval shall be fully certified by City staff prior to the issuance of any building, or other required permit, to any lot of the plat, and no structural certificate of occupancy shall be issued until it has been determined that both the structural and nonstructural use of any lot fully complies with all terms and conditions of plat approval.
  - iv. For purposes of this part, City Council approval of the final plat shall represent approval of any required Land Disturbance Activity Permit to the development. Following final plat approval, should all subsequent development fully conform with the approved Development Agreement and any other restriction, or condition of plat approval, no additional Land Disturbance Activity Permit shall be required of the plat, or any part thereof.
- 9) **Overlay District Limit – Dispute Resolution.** Any person disputing an administrative decision relative to the limit of any Bluff Impact or Ridgeline Transition Overlay District, may appeal such decision to the Planning Commission. Such an appeal shall not be subject to a hearing. Following its consideration of the full record, the Commission may either uphold, or modify, the administrative decision. Any action of the Commission shall include findings, and shall become final, if not appealed to City Council within 10 calendar days, following the date of Commission action. Any final action by the City Council shall be supported by findings.
  - 10) **Performance Standards – Variances.** Any person who feels that the strict enforcement of any part of this ordinance, would cause practical difficulties, because of circumstances unique to his/her property, may request a variance from the Board of Adjustment. The consideration of a variance request shall be based upon those defined practical difficulties criteria contained in Minnesota Statutes, Section 462.357, subd. 6 (2), and any final action of the request shall be supported by findings.
  - 11) **Nonconformities.** The principal land use of any lot, or parcel, of land existing at the time of adoption of this section, which does not comply with use regulations of underlying zoning of the lot, or parcel, of land, shall be classified as a nonconforming use. All such uses shall be governed by provisions of **City Code Section 43.32.43.01.25**.

#### 43.02.33 Floodplain Management

##### A) STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE.

- 1) **Statutory Authorization.** The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Minnesota Statutes 412.191, 462.351-462.365, and 471.62 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses.
- 2) **Findings of Fact.**

- a) The flood hazard areas of the City of Winona, Minnesota, are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures or flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- b) This ordinance is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.
- 3) **Statement of Purpose.** It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section ~~43.06(b)(4)~~ **43.02.33(A)(2)** by provisions contained herein.
- 4) **National Flood Insurance Program Compliance.** This ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.
- 5) This ordinance is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits, and enhance community and economic development.

**B) GENERAL PROVISIONS.**

- 1) **Establishment of Official Flood Plain Zoning Map.** The Official Zoning Map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this ordinance. The attached material shall include the Flood Insurance Study for the City of Winona prepared by the Federal Emergency Management Agency dated August 19, 1997, the Flood Insurance Study for the County of Winona dated July 18, 1983, and the Flood Insurance Rate Map and Flood Boundary and Floodway Map panels enumerated below. The official Zoning Map shall be on file in the office of the City Engineer.

Table 43-5: 1997 Enumerated Flood Insurance Study

<u>Firm Panel Number</u>	<u>Effective Date</u>
<u>275250 - 0001 B</u>	<u>August 19, 1997</u>
<u>275250 - 0002 D</u>	<u>August 19, 1997</u>
<u>275250 - 0003 C</u>	<u>August 19, 1997</u>
<u>275250 - 0004 D</u>	<u>August 19, 1997</u>
<u>275250 - 0005 D</u>	<u>August 19, 1997</u>
<u>275250 - 0006 D</u>	<u>August 19, 1997</u>
<u>2705250077C</u>	<u>January 18, 1984</u>
<u>2705250079C</u>	<u>January 18, 1984</u>
<u>2705250091C</u>	<u>January 18, 1984</u>
<u>2705250092C</u>	<u>January 18, 1984</u>
<u>2705250094C</u>	<u>January 18, 1984</u>
<u>2705250100C</u>	<u>January 18, 1984</u>

- a) **FIRM PANEL NUMBER — EFFECTIVE DATE**
  - i. ~~275250 - 0001 B~~ — ~~August 19, 1997~~
  - ii. ~~275250 - 0002 D~~ — ~~August 19, 1997~~
  - iii. ~~275250 - 0003 C~~ — ~~August 19, 1997~~
  - iv. ~~275250 - 0004 D~~ — ~~August 19, 1997~~

- v. ~~275250-0005-D~~ ~~August 19, 1997~~
- vi. ~~275250-0006-D~~ ~~August 19, 1997~~
- vii. ~~2705250077C~~ ~~January 18, 1984~~
- viii. ~~2705250079C~~ ~~January 18, 1984~~
- ix. ~~2705250091C~~ ~~January 18, 1984~~
- x. ~~2705250092C~~ ~~January 18, 1984~~
- xi. ~~2705250094C~~ ~~January 18, 1984~~
- xii. ~~2705250100C~~ ~~January 18, 1984~~

FBFM PANEL NUMBER EFFECTIVE DATE

Table 43-6: 1984 Enumerated Flood Insurance Study

FBFM Panel Number	Effective Date
2705250077	January 18, 1984
2705250079	January 18, 1984
2705250091	January 18, 1984
2705250092	January 18, 1984
2705250094	January 18, 1984

- xiii. 2705250077 January 18, 1984
- xiv. 2705250079 January 18, 1984
- xv. 2705250091 January 18, 1984
- xvi. 2705250092 January 18, 1984
- xvii. 2705250094 January 18, 1984

- 2) Lands to Which Ordinance Applies. This ordinance shall apply to all lands within the jurisdiction of the City of Winona which are shown on the Zoning Map as being located within the boundaries of the Floodway, Flood Fringe, or General Floodplain Districts.
  - a) The Floodway, Flood Fringe and General Floodplain Districts are overlay districts that are superimposed on all existing zoning districts. The standards imposed in the overlay districts shall be in addition to any other requirements set forth in this ordinance. In case of a conflict, the more restrictive standards shall apply.
- 3) Interpretation.
  - a) In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.
  - b) The boundaries of the zoning districts shall be determined by scaling distances on the Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the official Zoning Map, the Board of Adjustment shall make the necessary interpretation in conformance with the provisions of Section

43.75.64.43.02.33(1)(2)

All decisions will be based on elevations on the regional (1% chance) flood profile, the ground elevations that existed on the site on the date of the first National Flood Insurance Program map showing the area within the regulatory floodplain, if earlier, and other available technical data.

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- c) Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their case to the Board of Adjustment and to submit technical evidence.
- 4) Amendments.
    - a) Floodplain Designation – Restrictions on Removal. The floodplain designation on the Official Zoning Map shall not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of the Department of Natural Resources (DNR) if the Commissioner determines that, through other measures, lands are adequately protected for the intended use.
    - b) Amendments Require DNR Approval. All amendments to this ordinance must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. The Commissioner of the DNR must be given 10-days written notice of all hearings to consider an amendment to this ordinance. The notice shall include a draft of the ordinance amendment or technical study under consideration. The Commissioner must approve the amendment prior to community approval.
    - c) Map Revisions Require Ordinance Amendments. The floodplain district regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in Section **43.57 (a) 43.02.33(B)(1)** of this ordinance.
  - 5) Abrogation and Greater Restrictions. It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
  - 6) Warning and Disclaimer of Liability. This ordinance does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Winona or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.
  - 7) Severability. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.
  - 8) Definitions. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.
    - a) Accessory Use or Structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
    - b) Base Flood Elevation – The elevation of the “regional flood.” The term “base flood elevation” is used in the flood insurance survey.
    - c) 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.

- d) Conditional Use - means a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that: (1) certain conditions as detailed in the zoning ordinance exist and (2) the structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.
- e) Development – any manmade change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
- f) Equal Degree of Encroachment - a method of determining the location of floodway boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.
- g) Farm Fence – A fence as defined by Minn. Statutes Section 344.02, Subd. 1(a)-(d). An open type fence of posts and wire is not considered to be a structure under this ordinance. Fences that have the potential to obstruct flood flows, such as chain link fences and rigid walls, are regulated as structures under this ordinance.
- h) Flood - a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.
- i) Flood Frequency - the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.
- j) Flood Fringe - that portion of the flood plain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study for the City of Winona.
- k) Floodplain - the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.
- l) Floodproofing - a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.
- m) Floodway - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.
- n) Lowest Floor – the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor.
- o) Manufactured Home – a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include the term "recreational vehicle."
- p) Obstruction - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or

regulatory flood plain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

- q) Principal Use or Structure - means all uses or structures that are not accessory uses or structures.
- r) Reach - a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.
- s) Recreational Vehicle – a vehicle that is built on a single chassis, is four hundred (400) square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this ordinance, the term recreational vehicle shall be synonymous with the term “travel trailer/travel vehicle.”
- t) Regional Flood - a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 1% chance or 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in the Flood Insurance Study.
- u) Regulatory Flood Protection Elevation - The Regulatory Flood Protection Elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.
- v) Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, recreational vehicles not meeting the exemption criteria specified in Section [43-74e\)\(1\)-43.02.33\(1\)\(3\)\(a\)](#) of the ordinance and other similar items.
- w) 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.
- x) 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:
  - i. 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.
  - ii. Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.” For the purpose of this ordinance, “historic structure” shall be as defined in 44 Code of Federal Regulations, Part 59.1.

- 9) Annexations - The Flood Insurance Rate Map panels adopted by reference into Section 43.67 43.02.33(B)(1) above may include floodplain areas that lie outside of the corporate boundaries of the City of Winona at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the City of Winona after the date of adoption of this ordinance, the newly annexed floodplain lands shall be subject to the provisions of this ordinance immediately upon the date of annexation.

C) ESTABLISHMENT OF ZONING DISTRICTS.

1) Districts.

- a) (F-1) Floodway District. The Floodway District shall include those areas designated as floodway on the flood boundary and floodway maps and flood insurance rate maps adopted in Section 43.02.33(B)(1) 43.67(a).
- b) (F-2) Flood Fringe District. The Flood Fringe District shall include those areas designated as floodway fringe on the flood boundary and floodway map adopted in Section 43.67(a) 43.02.33(B)(1) and those areas designated on the flood insurance rate maps adopted in Section 43.67 43.02.33(B) as being within Zones AE, AO, or AH but located outside of the floodway.
- c) (F-3) General Floodplain District. The General Floodplain District shall include those areas designated as Zone A on the flood insurance rate maps adopted in Section 43.67 43.02.33(B) and those areas designated as Zones A1-30, AO, or AH without a floodway on the flood boundary and floodway maps adopted in Section 43.67(a) 43.02.33(B)(1).

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- 2) Compliance. Within the floodplain districts established in this ordinance, the use of any land; the use, size, type and location of structures on lots, the installation and maintenance of transportation, utility, water supply and waste treatment facilities; and the subdivision of land shall be in full compliance with the terms of this ordinance, and other applicable regulations. All uses not listed as permitted uses or conditional uses in Sections 43.69 43.02.33 (D) and 43.70(E), respectively, shall be prohibited. In addition, a caution is provided here that:

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- a) New manufactured homes, replacement manufactured homes and certain recreational vehicles are subject to the general provisions of this ordinance and specifically Section 43.74 43.02.33(I).
- b) Modifications, 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 43.76 43.02.33(K) and
- c) As-built elevations for elevated or flood-proofed structures must be certified by ground surveys and flood-proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this ordinance and specifically as stated in Section 43.76 43.02.33(J) of this ordinance.

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D) FLOODWAY DISTRICT.

- 1) Permitted Uses. The following uses, subject to the standards set forth in Section 43.69(a) 43.02.33(D)(2), are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:
  - a) General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
  - b) Industrial-commercial loading areas, parking areas, and airport landing strips.

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- c) Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, hunting and fishing areas, and single or multiple purpose recreational trails.
  - d) Residential lawns, gardens, parking areas, and play areas.
- 2) Standards for Floodway Permitted Uses.
- a) The use shall have a low flood damage potential.
  - b) The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.
- 3) Conditional Uses Subject to the Provisions of Sections ~~43.69(a)-(f)~~ 43.02.33(D)(4)(a-h). The following uses may be allowed as conditional uses following the standards and procedures set forth in Section ~~43.75(e)~~ 43.02.33(J)(3) of this ordinance and further subject to the standards set forth in Section ~~43.69(a)-(f)~~ 43.02.33(D)(4)(a-h) if otherwise allowed in the underlying zoning district or any applicable overlay district.
- a) Structures accessory to the uses listed in (a) above and the uses listed in (b)-(h) below.
  - b) Extraction and storage of sand, gravel, and other materials.
  - c) Marinas, boat rentals, docks, piers, wharves, and water control structures.
  - d) Railroads, streets, bridges, utility transmission lines, and pipelines.
  - e) Storage yards for equipment, machinery, or materials.
  - f) Placement of fill or construction of fences that obstruct flood flows. This does not include farm fences, as defined in Section ~~43.67(b)~~ 43.02.33(B)(8).
  - g) Recreational vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provisions of Section ~~43.74~~ 43.02.33(I) of this ordinance.
  - h) Levees or dikes where the intent is to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.
- 4) Standards for Floodway Conditional Uses.
- a) All Uses. No conditional use shall be allowed that will cause any increase in the stage of the 1% chance or regional flood or cause an increase in flood damages in the reach or reaches affected.
  - b) All floodway conditional uses shall be subject to the procedures and standards contained in Section ~~43.75(e)~~ 43.02.33(J)(3) of this ordinance.
  - c) Fill.
    - i. Fill, dredge spoil and all other similar materials deposited or stored in the flood plain shall be protected to the regulatory flood elevation protection from erosion by vegetative cover, mulching, riprap or other acceptable method.
    - ii. Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long-term site development plan is submitted which includes an erosion/ sedimentation prevention element.

- iii. As an alternative, and consistent with subsection (b) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the City Council has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The Conditional Use Permit must be title registered with the property in the office of the County Recorder.
- d) Accessory Structures.
- i. Accessory structures shall not be designed for human habitation.
  - ii. Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow. So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
  - iii. The lowest floor of accessory structures shall be elevated on fill or structurally dry flood-proofed to the regulatory flood elevation protection in accordance with the FP-1 or FP-2 flood-proofing classifications in the State Building Code.
  - iv. All flood-proofed accessory structures must meet the following additional standards, as appropriate:
    - 1. The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls; and
    - 2. Any mechanical and utility equipment in a structure must be elevated to or above the Regulatory Flood Protection Elevation or properly flood-proofed.
  - v. As an alternative, an accessory structure may be flood-proofed to the FP-3 or FP-4 floodproofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 576 square feet in size, and for a detached garage, it must be used solely for parking of vehicles and limited storage. The structure must meet the following additional standards:
    - 1. To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
    - 2. There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.
- e) Storage of Materials and Equipment.
- i. 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.
  - ii. Storage of other materials or equipment may be allowed below the regulatory flood protection elevation if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the City Council.

- f) Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters shall be subject to the provisions of Minnesota Statute, Chapter 103G. Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.
- g) A levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.
- h) Floodplain developments shall not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.

E) FLOOD FRINGE DISTRICT.

- 1) Permitted Uses. Permitted Uses are those uses of land or structures allowed in the underlying zoning district(s) that comply with the standards in Sections 43.70(b), 43.02.33(E)(2) and 43.70(e)(5).
- 2) Standards for Flood Fringe Permitted Uses.
  - a) All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the Regulatory Flood Protection Elevation. The finished fill elevation for structures shall be no lower than one (1) foot below the Regulatory Flood Protection Elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.
  - b) As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 576 square feet for the outside dimension at ground level may be internally flood-proofed in accordance with Section 43.69(d)(3)(c), 43.02.33(D)(4)(c)(ii).
  - c) In the unnumbered A zone which is bound by Highway 14-61, the East Burns Valley Creek dike, Homer Road, and the corporate city limits, the regulatory flood protection elevation is established at 660.0 feet.
  - d) The cumulative placement of fill where at any one time in excess of one-thousand (1,000) cubic yards of fill is located on the parcel shall be allowable only as a conditional use, unless said fill is specifically intended to elevate a structure in accordance with Section 43.70(b)(4) 43.02.33(E)(2)(a) of this ordinance.
  - e) The storage of any materials or equipment which are located on fill to the Regulatory Flood Protection Elevation.
- 3) Conditional Uses. Any structure that is not elevated on fill or flood-proofed in accordance with Section 43.70(b)(4) 43.02.33(E)(2)(a)(6) or any use of land that does not comply with the standards in Section 43.70(b)(4) 43.02.33(E)(2)(c)(d) shall only be allowable as a conditional use. An application for a conditional use shall be subject to the standards and criteria and evaluation procedures specified in Sections 43.70(d)(6) 43.02.33(E)(4)(5) and 43.75(e) 43.02.33(f)(3) of this ordinance.
- 4) Standards for Flood Fringe Conditional Uses.
  - a) Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the Regulatory Flood Protection Elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area

shall be considered above-grade and not a structure's basement or lowest floor if: 1) the enclosed area is above-grade on at least one side of the structure; 2) it is designed to internally flood and is constructed with flood resistant materials; and 3) it is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:

- i. Design and Certification - The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the Regulatory Flood Protection Elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.
  - ii. Specific Standards for Above-grade, Enclosed Areas - Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:
    1. The minimum area of openings in the walls where internal flooding is to be used as a flood-proofing technique. When openings are placed in a structure's walls to provide for entry of flood waters to equalize pressures, the bottom of all openings shall be no higher than one-foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters;
    2. That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.
- b) Basements, as defined by Section 43.67(b)(43.02.33(5)8) of this ordinance, shall be subject to the following:
- i. Residential basement construction shall not be allowed below the Regulatory Flood Protection Elevation.
  - ii. Non-residential basements may be allowed below the Regulatory Flood Protection Elevation provided the basement is structurally dry flood-proofed in accordance with Section 43.70(d)(43.02.33(5)10) of this ordinance.
- c) All areas of non-residential structures including basements to be placed below the Regulatory Flood Protection Elevation shall be flood-proofed in accordance with the structurally dry floodproofing classifications in the State Building Code. Structurally dry flood-proofing must meet the FP-1 or FP-2 flood-proofing classification in the State Building Code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood-proofed to the FP-3 or FP-4 classification shall not be permitted.
- d) When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/ sedimentation control plan must be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a

flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the governing body. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.

- e) Storage of Materials and Equipment.
    - i. Unless located on fill above the regulatory flood protection elevation, 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.
    - ii. Storage of other materials or equipment may be allowed below the regulatory flood protection elevation if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the governing body.
- 5) Standards for All Flood Fringe Uses.
- a) All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the Regulatory Flood Protection Elevation. If a variance to this requirement is granted, the Board of Adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.
  - b) Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the Regulatory Flood Protection Elevation. However, any facilities to be used by the employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional flood..
  - c) Manufacturing and Industrial Uses - measures shall be taken to minimize interference with normal plant operations especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in Section 43.70(5)43.02.33(F)(2) above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.
  - d) Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method.
  - e) Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system.
  - f) Standards for recreational vehicles are contained in Section 43.74(6)43.02.33(I)(3).
  - g) Standards for manufactured homes are contained in Section 43.74(8)43.02.33(I).

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F) GENERAL FLOODPLAIN DISTRICT

- 1) Permitted Uses. The uses listed in Section 43.69(6)43.02.33(D)(1) of this ordinance, Floodway District Permitted Uses, shall be permitted uses.
- 2) All other uses shall be subject to the floodway/flood fringe evaluation criteria specified in Section 43.74(6)43.02.33(F)(3) below. Section 43.69(4)43.02.33(D) shall apply if the proposed use is determined to be in the Floodway District. Section 43.79(4)43.02.33(E) shall apply if the proposed use is determined to be in the Flood Fringe District.

3) Procedures for Floodway and Flood Fringe Determinations.

- a) Upon receipt of an application for a permit or other approval within the General Floodplain District, the Zoning Administrator must obtain, review and reasonably utilize any regional flood elevation and floodway data available from a federal, state, or other source.
- b) If regional flood elevation and floodway data are not readily available, the applicant must furnish additional information, as needed, to determine the regulatory flood protection elevation and whether the proposed use would fall within the Floodway or Flood Fringe District. Information shall be consistent with accepted hydrological and hydraulic engineering standards and the standards in 43.02.33(D) below.
- c) The determination of floodway and flood fringe shall include the following components, as applicable:
  - i. Estimate the peak discharge of the regional (1% chance) flood.
  - ii. Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
  - iii. Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than one-half (0.5) foot. A lesser stage increase than 0.5 foot shall be required if, as a result of the stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.
- d) The Zoning Administrator shall review the submitted information and assess the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary. The assessment must include the cumulative effects of previous floodway encroachments. The Zoning Administrator may seek technical assistance from a designated engineer or other expert person or agency, including the Department of Natural Resources. Based on this assessment, the Zoning Administrator may approve or deny the application.
- e) Once the Floodway and Flood Fringe District Boundaries have been determined, the Zoning Administrator shall process the permit application consistent with the applicable provisions of Section 43.02.33(D) and 43.02.33(E) of this ordinance.

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G) SUBDIVISIONS.

- 1) Review Criteria. No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall contain a building site at or above the Regulatory Flood Protection Elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this Ordinance and have road access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation. For all subdivisions in the flood plain, 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.

H) PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES.

- 1) Public Utilities. All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain shall be flood-proofed in accordance with the State Building Code or elevated to above the Regulatory Flood Protection Elevation.

- 2) Public Transportation Facilities. Railroad tracks, roads, and bridges to be located within the flood plain shall comply with Sections 43.69 and 43.70, 43.02.33(D) and 43.02.33(E) of this ordinance. Elevation to the Regulatory Flood Protection Elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.
- 3) On-Site Sewage Treatment and Water Supply Systems: Where public utilities are not provided:
  - 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.

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I) MANUFACTURED HOMES, MANUFACTURED HOME PARKS AND PLACEMENT OF RECREATIONAL VEHICLES.

- 1) New Manufactured Home Parks. New manufactured home parks and expansions to existing manufactured home parks shall be subject to the provisions placed on subdivisions by Section 43.72, 43.02.33(G) of this ordinance.
- 2) Replacement Manufactured Homes - Existing Parks. The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record that are located in flood plain districts will be treated as a new structure and may be placed only if elevated in compliance with Section 43.70, 43.02.33(I) of this ordinance. If vehicular road access for pre-existing manufactured home parks is not provided in accordance with Section 43.70, 43.02.33(F)(5)(G), then replacement manufactured homes will not be allowed until the property owner(s) develops a flood warning emergency plan acceptable to the governing body.
  - a) All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.
- 3) Recreational Vehicles. Recreational vehicles must meet the exemption criteria specified in 43.71 below or be treated as new structures subject to the provisions of this ordinance and as specifically spelled out in 43.74, 43.02 below.
  - a) Exemption - Recreational vehicles are exempt from the provisions of this ordinance if they are placed in any of the areas listed in 43.71 below and further they meet the following criteria:
    - i. Have current licenses required for highway use.
    - ii. Are highway ready, meaning on wheels or the internal jacking system are attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks and no permanent structural type additions are attached to the vehicle.

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- iii. The recreational vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.
- b) Areas Exempted For Placement of Recreational Vehicles:
  - i. Individual lots or parcels of record.
  - ii. Existing commercial recreational vehicle parks or campgrounds.
  - iii. Existing condominium type associations.

c) Recreational vehicles exempted in 43.02.33(1) above lose this exemption with any investment to an accessory structure such as a garage or storage building. The vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/flood-proofing requirements and the land restrictions specified in Sections 43.09 and 43.704(3.02.33(1)(D) and (E) of this ordinance.

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

i. On any new or replacement recreational vehicle site in the Flood Fringe District the vehicle and its contents must be placed on fill above the Regulatory Flood Protection Elevation and adequate road access to the site must be provided in accordance with Section 43.70(e)(43.02.33(1)(E)) of this ordinance. No fill placed in the floodway to meet the requirements of this section shall increase flood stages of the 100-year or regional flood.

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ii. Any new or replacement recreational vehicle site located in the Floodway District or as an alternative to 43.02.33(1) above in the Flood Fringe District, may be allowed as a conditional use in accordance with the following provisions and the provisions of Section 43.75(e)(43.02.33(1)(3)) of the ordinance.

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1. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people acceptable to the City Council. The plan shall demonstrate that adequate time and personnel exist to carry out an evacuation, and that the exemption provisions of Section 43.74(e)(43.02.33(1)(3)) of this ordinance will be met; and

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2. All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with Section 43.74(43.02.33(1)(3)) of this ordinance.

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3. Any fill placed in the floodway to meet the requirements of this section must not increase the flood stage of the regional (1% chance) flood.

J) ADMINISTRATION.

Zoning Administrator. A Zoning Administrator or other official designated by the governing body shall administer and enforce this ordinance.

1) Permit Requirements.

a) Permit Required. A permit issued by the Zoning Administrator in conformity with the provisions of this ordinance shall be secured prior to the erection, addition, or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building,

structure, or land; prior to the change or extension of a nonconforming use; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain. Normal maintenance and repair also requires a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in this ordinance.

- b) Application for Permit. Application for a Permit shall be made to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable: plans drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.
- c) State and Federal Permits. Prior to granting a Permit or processing an application for a conditional use permit or variance, the Zoning Administrator shall determine that the applicant has obtained all necessary State and Federal permits.
- d) Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use. No building, land or structure shall be occupied or used in any manner until a certificate of zoning compliance has been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this ordinance.
- e) Construction and Use to be as Provided on Applications, Plans, Permits, Variances and Certificates of Zoning Compliance. Permits, Conditional Use Permits, or Certificates of Zoning Compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this ordinance, and punishable as provided by Section 43.721R.02.3310 of this ordinance.
- f) Certification. 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. Flood-proofing measures shall be certified by a registered professional engineer or registered architect.
- g) Record of First Floor Elevation. The City Engineer shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the flood plain. The City Engineer shall also maintain a record of the elevation to which structures or alterations and additions to structures are flood-proofed.
- h) Notifications for Watercourse Alterations. Before authorizing any alteration or relocation of a river or stream, the Zoning Administrator shall notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to Minnesota Statutes, Section 103G.245, this shall suffice as adequate notice. A copy of the notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).
- i) Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations. As soon as is practicable, but not later than six months after the date such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

2) Board of Adjustment.

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- a) Rules. The Board of Adjustment shall adopt rules for the conduct of business and may exercise all of the powers conferred on such Boards by State law and Section 22.21.
- b) Administrative Review. The Board shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this ordinance.
- c) Variances. An application for a variance to the provisions of this ordinance shall be processed and reviewed in accordance with applicable state statutes and Section 22.21 (c) of the City Code.
  - i. Adherence to State Floodplain Management Standards. A variance must not allow a use that is not allowed in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.
  - ii. Additional Variance Criteria. 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 (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
    - 3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - iii. Public Hearing. Upon filing with the Board of Adjustment of an appeal from a decision of the Zoning Administrator, or an application for a variance, the Board shall hold a public hearing. The consideration of the appeal or application shall be made by the Board of Adjustment in accordance with the provisions of Minnesota Statutes, Section 15.99. Notice of the time, place and purpose of the hearing shall be published in the official newspaper and be mailed to the appellant or applicant and owners of all real property situated wholly or partly within 150 feet of the subject property at least ten (10) days prior to the hearing.. The Board shall submit mailed notice of the application to the Commissioner of Natural Resources within 10 days of the Board's hearing.
  - iv. Decisions. Upon the conclusion of the public hearing, the Board may, so long as such action is in conformity with the provisions of this ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Administrator or other public official. It shall make its decision in writing setting forth the findings of fact and the reasons for its decisions. In granting a variance, the Board shall give due consideration to the provisions of Section 43.75(1)(2)(3)(4)(5)(6) and may prescribe appropriate conditions and safeguards such as those specified in Section 43.75(1)(3)(4)(5)(6)(7)(8), which are in conformity with the purposes of this ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance punishable under Section 43.74(3)(2)(3)(4). A copy of all decisions granting variances

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- or special permits under this floodplain management ordinance shall be forwarded to the Commissioner of Natural Resources within ten (10) days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.
- v. Appeals. Appeals from any decision of the Board may be made in accordance with Section 22.21(g).
  - vi. 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. A 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.
- 3) Conditional Uses. The City Planning Commission (the Commission) shall hear and decide applications for Conditional Uses permissible under this Ordinance in accordance with the provisions of Section 41.01. The Planning Commission shall submit by mail to the Commissioner of Natural Resources a copy of the application for a proposed Conditional Use sufficiently in advance so that the Commissioner will receive at least ten days' notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist. A copy of all decisions granting Conditional Use Permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.
- a) Application.
    - i. An application for a CUP shall be made in writing signed by the owner of the property for which the conditional use permit is sought on a form provided by the City. The application shall be filed with the City and shall address each of the general requirements in this section and the specific criteria listed under a specific conditional use within a zoning district, as applicable. Following receipt of a CUP application, City staff will provide written notification to the applicant within 15 business days if the application for a CUP is determined to be incomplete and telling the applicant what information is missing. An application determined to be incomplete by City staff, following the above written notice procedure shall not be forwarded to the Planning Commission for consideration until it is resubmitted with the missing information. If an application is determined incomplete by City staff because it that does not contain all required information, the 60-day review period applicable under Minnesota Statutes, section 15.99 shall not restart until an application is resubmitted in the same manner as the original incomplete application.
    - ii. Require the applicant to furnish such of the following information and additional information as deemed necessary by the Commission for determining the suitability of the particular site for the proposed use: 1) Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood-proofing measures, and the relationship of the above to the location of the stream channel; 2) Specifications for building construction and materials, flood-proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.

- iii. Transmit one copy of the information described in subsection 43.02.33(1) to the City Engineer for evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters. The City Engineer may consult with any agency or persons in making such determinations.
- iv. Based upon the technical evaluation of the City Engineer, the Commission shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.
- b) Factors Upon Which the Decision of the Commission Shall Be Based. In passing upon conditional use applications, the Commission shall consider all relevant factors specified in other sections of this ordinance, and:
- i. The danger to life and property due to increased flood heights or velocities caused by encroachments.
  - ii. The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.
  - iii. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
  - iv. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - v. The importance of the services provided by the proposed facility to the community.
  - vi. The requirements of the facility for a waterfront location.
  - vii. The availability of alternative locations not subject to flooding for the proposed use.
  - viii. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
  - ix. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
  - x. The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - xi. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
  - xii. Such other factors which are relevant to the purposes of this Ordinance.
- c) Conditions Attached to Conditional Use Permits. Upon consideration of the factors listed above and the purpose of this ordinance, the Commission may attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:
- i. Modification of waste treatment and water supply facilities.
  - ii. Limitations on period of use, occupancy, and operation.
  - iii. Imposition of operational controls, sureties, and deed restrictions.
  - iv. Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.

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- v. Flood-proofing measures, in accordance with the State Building Code and this ordinance. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood-proofing measures are consistent with the Regulatory Flood Protection Elevation and associated flood factors for the particular area.

K) NONCONFORMING USES.

1) A structure or the use of a structure or premises which was lawful before the passage or amendment of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions. Historic structures, as defined in Section 43.67(h)(43.02.33(B)(1)) of this ordinance, are subject to the provisions of Sections 43.69 or 43.70(43.02.33(D) or (E)) below.

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a) No such structure, use, or occupancy shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity. Expansion or enlargement of uses, structures or occupancies within the Floodway District is prohibited.

b) Any alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood-proofing techniques ( i.e., FP-1 through FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in 43.69 below.

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c) The cost of any structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this section are satisfied. The cost of all structural alterations and additions constructed since the adoption of the community's initial flood plain controls must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds 50 percent of the current market value of the structure, then the structure must meet the standards of Section 43.69 or 43.70(43.02.33 (D) or (E)) of this ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe, respectively.

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d) If any nonconforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this ordinance. The assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses which have been discontinued for a period of 12 months.

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e) If any nonconformity is substantially damaged, as defined in Section 43.67(h)(43.02.33(B)(1)) of this ordinance, it shall not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures in Section 43.69 or 43.70(43.02.33 (D) or (E)) will apply depending upon whether the use or structure is in the Floodway or Flood Fringe, respectively.

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f) Any substantial improvement, as defined in Section 43.67(h)(43.02.33(B)(1)) of this ordinance, to a nonconforming structure requires that the existing structure and any additions must meet the requirements of Section 43.69 or 43.70(43.02.33 (D) or (E)) of this ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District.

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L) PENALTIES FOR VIOLATION.

- 1) 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.
- 2) Nothing herein contained shall prevent the City of Winona from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include but are not limited to:
  - a) In responding to a suspected ordinance violation, the Zoning Administrator and local government 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 which existed prior to the violation of this ordinance.

#### **43.02.34 Shoreland Management**

##### **A) STATUTORY AUTHORIZATION AND POLICY**

- 1) **Statutory Authorization**  
This chapter is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103F, Minnesota Regulations, Parts 6120.2500 - 6120.3900, and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462.
- 2) **Policy**  
The uncontrolled use of shorelands of the City of Winona, Minnesota affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by

impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. 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 Winona.

#### B) GENERAL PROVISIONS AND DEFINITIONS

- 1) **Jurisdiction**  
The provisions of this Chapter shall apply to the shorelands of the public water bodies as classified in Section 69.04 of this Chapter. Pursuant to Minnesota Regulations, 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 chapter.
- 2) **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 filling of any shoreland area; the cutting of shoreland vegetation; and the subdivision of land shall be in full compliance with the terms of this chapter and other applicable regulations.
- 3) **Enforcement**  
The City Manager or his/her designee is responsible for the administration and enforcement of this chapter. Any violation of the provisions of this chapter 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 chapter can occur regardless of whether or not a permit is required for a regulated activity.
- 4) **Interpretation**  
In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.
- 5) **Severability**  
If any section, clause, provision, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.
- 6) **Abrogation and Greater Restrictions**  
It is not intended by this chapter to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. All other ordinances inconsistent with this chapter are hereby repealed to the extent of the inconsistency only.
- 7) **Definitions**  
Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this chapter its most reasonable application. For the purpose of this chapter, the words "must" and

"shall" are mandatory and not permissive. All distances, unless otherwise specified, shall be measured horizontally.

- a) Accessory structure or facility. Any building or improvement subordinate to the principal use that, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks.
- b) Bluff. A topographic feature such as a hill, cliff, or embankment having the following characteristics (an area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff):
  - i. Part or all of the feature is located in a shoreland area;
  - ii. The slope rises at least 25 feet above the ordinary high water level of the waterbody;
  - iii. The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level exceeds 5 percent; and
  - iv. The slope must drain toward the waterbody.
- c) Bluff impact zone: A bluff and land located within 20 feet from the top of a bluff.
- d) 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.
- e) Commercial use: The principal use of land or buildings for the sale, lease, rental, or trade of products, goods, and services.
- f) Commissioner: The Commissioner of the Department of Natural Resources
- g) Conditional use: 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 a finding that certain conditions as detailed in the zoning code exist, the use or development conforms to the comprehensive land use plan of the City, and the use is compatible with the existing neighborhood.
- h) 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.
- i) Duplex, triplex, and quad: A dwelling structure on a single lot, having two, three, and four units, respectively, being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities.
- j) 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.
- k) 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.
- l) Forest land conversion: The clear cutting of forested lands to prepare for a new land use other than reestablishment of a subsequent forest stand.
- m) Height of building: 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.

- n) Industrial use: The use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities, or other wholesale items.
- o) Intensive vegetation clearing: The complete removal of trees or shrubs in a contiguous patch, strip, row, or block.
- p) 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.
- q) Lot width. The shortest distance between lot lines measured at the midpoint of the building line.
- r) Nonconformity. 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.
- s) 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.
- t) Public waters: Any waters as defined in Minnesota Statutes Chapter 103G.
- u) Sensitive resource management: 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.
- v) 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.
- w) Sewage treatment system: A septic tank and soil absorption system or other individual or cluster type sewage treatment system as described and regulated by applicable regulations.
- x) 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.
- y) 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.
- z) Shoreland: Land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from the ordinary high water level of a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the commissioner.

- aa) 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.
- bb) Steep slope: 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 this chapter. Where specific information is not available, steep slopes are lands having average slopes over 18 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs.
- cc) 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.
- dd) Subdivision. Land that is divided for the purpose of sale, rent, or lease.
- ee) Surface water-oriented commercial use: The use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business. Marinas, resorts, and restaurants with transient docking facilities are examples of such use.
- ff) Toe of the bluff: The lower point of a 50-foot segment with an average slope exceeding 18 percent.
- gg) Top of the bluff: The higher point of a 100-foot segment with an average slope exceeding 18 percent.
- hh) Variance: The same as that term is defined or described in Minnesota Statutes, Chapter 462.
- ii) Water-oriented accessory structure or facility: A small, above ground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.
- jj) Wetland: A surface water feature classified as a wetland in the United States Fish and Wildlife Service Circular No. 39 (1971 edition)

#### C) ADMINISTRATION

- 1) Notifications to the Department of Natural Resources
  - a) Notice of Public Hearings. Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

If sent by U.S. Mail, it shall be postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat in accordance with Minn. R. 6120.3900.

- b) Notice of Amendments, Variances and Conditional Uses. A copy of approved amendments and subdivisions/plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist. If sent by U.S. Mail, it shall be postmarked within ten days of final action in accordance with Minn. R. 6120.3900.
- 2) Variances
    - a) Conditions. Variances may only be granted in accordance with Minnesota Statutes, Chapter 462.357, as applicable. A variance may not circumvent the general purposes and intent of this chapter. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and the public interest. In considering a variance request, the board of adjustment must also consider the criteria contained in Minn. R. 6120.3900, subp.3.
    - b) Board of Adjustment. The board of adjustment shall hear and decide requests for variances in accordance with the rules that it has adopted for the conduct of business. 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 required in Section 69.03 above shall also include the board of adjustment's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.
    - c) Existing Developments. For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system.
  - 3) Conditional Uses  
Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of conditional uses established by the City. The City Planning Commission (the Commission) shall hear and decide applications for Conditional Uses permissible under this Ordinance in accordance with the provisions of Section 41.01. An application for a Conditional Use Permit (CUP) shall be made in writing signed by the owner of the property for which the conditional use permit is sought on a form provided by the City. The application shall be filed with the City and shall address each of the general requirements within the applicable zoning district and the specific criteria listed below, as applicable. Following receipt of a CUP application, City staff will provide written notification to the applicant within 15 business days of the City's receipt of the application if the application for a CUP is determined to be incomplete and telling the applicant what information is missing. An application determined to be incomplete by City staff, following the above written notice procedure shall not be forwarded to the Planning Commission for consideration until it is resubmitted with the missing information. If an application is determined incomplete by City staff because it that does not contain all required information, the 60-day review period applicable under Minnesota Statutes, section 15.99 shall not restart until an application is

resubmitted in the same manner as the original incomplete application. The following additional evaluation criteria and conditions apply within shoreland areas:

- a) Evaluation criteria. A thorough evaluation of the waterbody and the topographic, vegetation, and soils conditions on the site must be made to ensure:
  - i. the prevention of soil erosion or other possible pollution of public waters, both during and after construction;
  - ii. the visibility of structures and other facilities as viewed from public waters is limited;
  - iii. the site is adequate for water supply and on-site sewage treatment; and
  - iv. 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 watercraft.
- b) Conditions Attached to Conditional Use Permits. The Commission or the City Council, upon consideration of the criteria listed above and the purposes of this chapter and the Zoning Code, shall attach such conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of this chapter. Such conditions may include, but are not limited to, the following:
  - i. increased setbacks from the ordinary high water level;
  - ii. limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and
  - iii. special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

D) SHORELAND CLASSIFICATION SYSTEM AND LAND USE DISTRICTS

1) Shoreland Classification System

The public waters of the City of Winona have been classified below consistent with the criteria found in Minnesota Regulations, Part 6120.3300, and the Protected Waters Inventory Map for Winona County, Minnesota.

- a) ~~Natural Environment~~ (NE)
- b) ~~General Development~~ (GD)
- e) ~~Tributary river segments~~ (Tr)
- d) ~~Special Waters~~ (SW)
- e)a) Lakes

Table 43-7: Lakes Shoreland Classification Table

Class	Lake Name	Inventory Number
General Development	US Lock & Dam #6 Pool	85-0002-00
General Development	US Lock & Dam #5A Pool	85-0013-00
Natural Environment	Boller's Lake	85-0010-00
General Development	Lake Winona	85-0011-00
Natural Environment	Pollander Lake	85-0013-01
Natural Environment	Unnamed Basin	85-0033-00
Natural Environment	Bartlet Lake	85-0033-01
Natural Environment	Rileys Lake	85-0033-02

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f)b) Rivers and Streams

Table 43-8: Rivers & Streams Shoreland Classification Table

Class/Name	Section	From	
		Township	Range

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**Table 43-8: Rivers & Streams Shoreland Classification Table**

Class/Name	From		
	Section	Township	Range
<b>Tributary</b>			
Pleasant Valley Creek (PVC)	36	107	7
Burns Valley Creek, Main Branch	36	107	7
Gilmore Creek	19	107	7
<b>Special Waters</b>			
Pleasant Valley Creek (PVC)	1	106	7
Unnamed to PVC	13	106	7
Burns Valley Creek, West Branch	34	107	7
Burns Valley Creek, Main Branch	2 35	106,107	7
Gilmore Creek	20,29,30,31,32	107	7

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g) All protected watercourses in the City of Winona shown on the Protected Waters Inventory Map for Winona County, a copy of which is hereby adopted by reference, not given a classification in above shall be considered "Tributary".

h) The shoreland area for the waterbodies listed in this section shall be as defined in Section 43.02.34(1) of this Code and as shown on the Official Zoning Map.

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- 2) Permitted Uses  
All permitted uses allowed and regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the Official Zoning Map of the City, are allowed as a permitted use in the shoreland overlay district, subject to the provisions in Section 69.05 of this Chapter. Where requirements of this section are different from those of the underlying zoning district, the more restrictive requirement shall apply.
- 3) Conditional Uses  
All conditional uses and applicable attached conditions allowed and regulated by the applicable zoning district underlying the shoreland overlay district as indicated on the Official Zoning Map of the City shall be treated as conditional uses in the shoreland overlay district, subject to the provisions in Section 69.05 of this Chapter. Where requirements of this section are different from those of the underlying zoning district, the more restrictive requirement shall apply.
- 4) Prohibited Uses  
Any uses which are not permitted or conditional uses as regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the Official Zoning Map of the City are prohibited.
- 5) Certain Shoreland Areas Exempted from Certain Requirements of this Chapter – Urban Shoreland Zone
  - a) Minnesota Rules 6120.2800 provides for the flexible implementation of shoreland regulations under certain circumstances. The City of Winona finds that certain areas of shoreland existing within the community have been developed with an assortment of urban land uses for many years and much of that development does not meet the minimum standards contained within Chapter 6120 of the Minnesota Rules. Further, it has been determined that these shoreland areas are predominantly separated from public waters by man-made dike or levee systems. Based upon these findings, the shoreland areas identified on the Official Zoning Map as being within the area designated as Urban Shoreland Zone are exempted from meeting the following performance standards contained within this Chapter:





- iii. Controlled Access to Public Water. Lots intended as controlled accesses to public waters or as recreation areas for use by owners of nonriparian lots within subdivisions are permissible and must meet or exceed the following standards:
  1. they must meet the width and size requirements for residential lots, and be suitable for the intended uses of controlled access lots;
  2. 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 the percent of the requirements for riparian residential lots for each watercraft beyond six, consistent with the following table:

**Table 43-14: Frontage Requirements for Controlled Access Lots with More Than Six Watercrafts**

Ratio of lake size to shore length (acres/mile)	Required increase in frontage (percent)
Less than 100	25
100 – 200	20
201 – 300	15
301 – 400	10
Greater than 400	5

- 3. they 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
  - 4. covenants or other equally effective legal instruments must be developed that specify which lot owners have authority to use the access lot and what activities are allowed. The activities may include watercraft launching, loading, storage, beaching, mooring, or docking. They must also include other outdoor recreational activities that do not significantly conflict with general public use of the public water or the enjoyment of normal property rights by adjacent property owners. Examples of the nonsignificant conflict activities include swimming, sunbathing, or picnicking. The covenants must 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, and must require centralization of all common facilities and activities in the most suitable locations on the lot to minimize topographic and vegetation alterations. They must also 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) Placement, Design, and Height of Structures.
- a) Placement of Structures on Lots. When more than one setback applies to a site, structures and facilities must be located to meet all setbacks. Where 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 setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone. Structures shall be located as follows.
    - i. Structure and On-site Sewage System Setbacks (in feet) from Ordinary High Water Level\*.
      1. Setbacks\*

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at least three feet above the ordinary high water level, or by conducting a technical evaluation to determine effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Under all three approaches, technical evaluations must be done by a qualified engineer or hydrologist consistent with parts 6120.5000 to 6120.6200 governing the management of flood plain areas. If more than one approach is used, the highest flood protection elevation determined must be used for placing structures and other facilities; and

3. water-oriented accessory structures may have the lowest floor placed lower than the elevation determined in this item if the structure is 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.
- ii. Water-oriented Accessory Structures. Each lot may have one water-oriented accessory structure not meeting the normal structure setback in Section 69.05 B.1. of this Chapter if this water-oriented accessory structure 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. Detached decks must not exceed eight feet above grade at any point;
  2. the setback of the structure or facility from the ordinary high water level must be at least ten feet;
  3. 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;
  4. the roof may be used as a deck with safety rails, but must not be enclosed or used as a storage area;
  5. the structure or facility must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities; and
  6. as an alternative for general development waterbodies, water-oriented accessory structures used solely for watercraft storage, and including storage of related boating and water-oriented sporting 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 configuration of the shoreline.
- iii. Stairways, Lifts, and Landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:
1. stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties and public open-space recreational properties;
  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 and public open-space recreational properties;
  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, provided that the dimensional and performance standards of subsections (1) to (5) above are complied with in addition to the requirements of Minnesota Regulations, Chapter 1340.
- iv. Significant Historic Sites. No structure may be placed on a significant historic site in a manner that affects the value of the site unless adequate information about the site has been removed and documented in a public repository.
  - v. Steep Slopes. The City Manager or his/her designee 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.
- c) Height of Structures. All structures in residential districts, except churches and nonresidential agricultural structures, must not exceed 25 feet in height. Structures located in areas that are required to be flood-proofed may have a height not greater than 25 feet higher than the lowest finished floor elevation allowed under applicable regulations.

3) Shoreland Alterations

All alterations of vegetation and topography shall fully adhere to Chapter 68, and shall be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat. If the shoreland includes a Natural State Area designation, the area shall be managed and maintained in accordance with City-Doe Chapter 42, Section 1 of Appendix 1 Section 43.02.26.

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- a) Vegetation Alterations.
  - i. Exemption. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by Section 69.05 D of this Chapter are exempt from the vegetation alteration standards that follow.
  - ii. Removal or Alteration of Vegetation. Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in Section 69.05 E.2, is allowed subject to the following standards:
    - 1. Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan is developed compliant with Section 68.04 of this Code.

2. In shore and bluff impact zones and on steep slopes, no clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed unless necessary to mitigate a hazard to life/property and any vegetation removal within bluff impact zones must be compliant with an erosion and sediment control plan per Section 68.04 of this Code.
  3. The above provisions in (1) and (2) are not applicable to the removal of trees, limbs, or branches that are dead or diseased.
- b) Topographic Alterations/Grading and Filling and Stormwater Management.
- i. Stormwater Management. All grading, filling, excavation, and stormwater management within the shoreland, must fully adhere to Chapter 68.
  - ii. Grading and Filling Permit. Notwithstanding other requirements of Chapter 68, a grading and filling permit will also be required for:
    1. the movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and
    2. the movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones.
  - iii. Additional Requirements. 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 within the shoreland overlay zone:
    1. Impervious surface coverage of lots must not exceed 25 percent of the lot area;
    2. Fill or excavated material must not be placed in bluff impact zones;
    3. Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner of natural resources under Minnesota Statutes, Chapter 103G;
    4. 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
    5. 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.
  - iv. Connections to Public Waters. Excavations where the intended purpose is connection to a 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 commissioner of natural resources has approved the proposed connection to public waters.
- 4) Placement and Design of Roads, Driveways, and Parking Areas.
- a) Design. Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas 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) **Setbacks.** 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.
  - c) **Watercraft Access.** Public and private 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 subsection are met. For private facilities, the grading and filling provisions of Section 69.05 C.2. of this Chapter must be met.
- 5) **Standards for Commercial, Industrial, Public, and Semipublic Uses.**
- a) **Surface Water-Oriented Uses.** Surface water-oriented commercial uses and industrial, public, or semipublic uses with similar needs to have access to and use of public waters may be located on parcels or lots with frontage on public waters. Those uses with water-oriented needs must meet the following standards:
    - i. in addition to meeting impervious coverage limits, setbacks, and other zoning standards in this Code, the uses must be designed to incorporate topographic and vegetative screening of parking areas and structures;
    - ii. 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
    - iii. signs may be permitted on property in commercial and industrial zoning districts, subject to the following general standards and subject to the provisions of Article 5 of this Code:
      - 1. no advertising signs or supporting facilities for signs may be placed in or upon public waters. Signs conveying information or safety messages may be placed in or on public waters by a public authority or under a permit issued by the county sheriff;
      - 2. signs may be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey needed information. They must not exceed 32 square feet in size. If illuminated by artificial lights, the lights must be shielded or directed to prevent illumination out across public waters; and
      - 3. other outside lighting may be located within the shore impact zone or over public waters if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights.
  - b) **Uses without Water-Oriented Needs.** Uses without water-oriented needs 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 normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

- 6) Forest Management Standards. The harvesting of timber and associated reforestation must be conducted consistent with the provisions of the Minnesota Nonpoint Source Pollution Assessment-Forestry and the provisions of Water Quality in Forest Management "Best Management Practices in Minnesota", the guidelines set forth by the Minnesota Forest Resources Council's publication Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners, Loggers and Resource Managers, and consistent with an approved erosion and sediment control plan per Section 68.04 of this Code.
- 7) Extractive Use Standards.
  - a) Site Development and Restoration Plan. Any extractive use must meet the requirements of Section 43.48 of this Code. An extractive use site development and restoration plan must be developed, approved, and followed over the course of operation of the site. The plan must address dust, noise, possible pollutant discharges, hours and duration of operation, and anticipated vegetation and topographic alterations. It must also identify actions to be taken during operation to mitigate adverse environmental impacts, and consistent with an approved erosion and sediment control plan per Section 68.04 of this Code, and must clearly explain how the site will be rehabilitated after extractive activities end.
  - b) Setbacks for Processing Machinery. Processing machinery must be located consistent with setback standards for structures from ordinary high water levels of public waters and from bluffs.
- 8) Mining of Metallic Minerals and Peat. Mining of metallic minerals and peat, as defined in Minnesota Statutes, sections 93.44 to 93.51, shall be a permitted use provided the provisions of Minnesota Statutes, sections 93.44 to 93.51, are satisfied.
- 9) Agricultural Use Standards.
  - a) Permitted Uses. 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 permanent vegetation and activities are operated under an approved erosion and sediment control plan per Section 68.04 of this Code, and such plan is consistent with the field office technical guides of the local soil and water conservation district or the United States Soil Conservation Service. The zone shall be undisturbed and for parcels with permitted agricultural land uses shall be equal to a line parallel to and 50 feet from the ordinary high water level.
  - b) Animal Feedlots. Animal feedlots must meet the following standards:
    - i. new feedlots must not be located in the shoreland of watercourses or in bluff impact zones and must meet a minimum setback of 300 feet from the ordinary high water level of all public waters basins; and
    - ii. modifications or expansions to existing feedlots that are located within 300 feet of the ordinary high water level or within a bluff impact zone are allowed if they do not further encroach into the existing ordinary high water level setback or encroach on bluff impact zones.
- 10) Water Supply and Sewage Treatment
  - 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 and the Minnesota Pollution Control Agency.

- b) Sewage Treatment. Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows:
  - i. New subdivisions will only be approved for developments if connection to municipal sewer is made.
  - ii. Existing lots of record that do not have municipal sewer within 500 feet of the property line may install a private sewage treatment system. All private sewage treatment systems must meet or exceed the Minnesota Pollution Control Agency's standards for individual sewage treatment systems contained in the document titled, "Individual Sewage Treatment Systems Standards, Chapter 7080", a copy of which is hereby adopted by reference and declared to be a part of this Chapter.
  - iii. Existing lots of record are required to connect to the public system when a private sewage treatment system no longer meets the Minnesota Pollution Control Agency's standards for individual sewage treatment systems, if municipal sewer is available within 500 feet of the property line.
  - iv. On-site sewage treatment systems must be set back from the ordinary high water level in accordance with the setbacks contained in Section 69.05 B.1. of this Chapter.
  - v. All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in subsections (1)-(4). If the determination of a site's suitability cannot be made with publicly available, existing information, it shall then be the responsibility of the applicant to provide sufficient soil borings and percolation tests from on-site field investigations. Evaluation criteria:
    - 1. depth to the highest known or calculated ground water table or bedrock;
    - 2. soil conditions, properties, and permeability;
    - 3. slope;
    - 4. the existence of lowlands, local surface depressions, and rock outcrops;
  - vi. Nonconforming sewage treatment systems shall be regulated and upgraded in accordance with Section 69.06 of this Chapter.

#### F) NONCONFORMITIES

All legally established nonconformities as of the effective date of this Chapter may continue, but they will be managed according to applicable state statutes and other regulations of the City for the subjects of alterations and additions, repair after damage, discontinuance of use, and intensification of use; except that the following standards will also apply in shoreland areas:

- 1) Construction on Nonconforming Lots of Record.
  - a) Exceptions. Lots of record in the office of the county recorder on the date of enactment of local shoreland controls that do not meet the requirements of Section 69.05 A of this Chapter may be allowed as building sites without variances from lot size requirements provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, and sewage treatment and setback requirements of this Chapter are met.
  - b) Setback Requirements. A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the

variance, the board of adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.

- c) Lot Area and Width. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of Section 69.05 A of this Chapter the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of Section 69.05 A of this Chapter as much as possible.
- 2) Additions/Expansions to Nonconforming Structures.
- a) Outside Dimensions. All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of Section 69.05 of this Chapter. Any deviation from these requirements must be authorized by a variance pursuant to Section 69.03 B.
  - b) Deck Additions. 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 and standards 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 does not encroach closer than 30 feet, whichever is more restrictive; and
    - iv. the deck is constructed primarily of wood, and is not roofed or screened.
- 3) Nonconforming Sewage Treatment Systems.
- a) Compliance Required. A sewage treatment system not meeting the requirements of Section 69.05 E.6 of this Chapter must be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of, the property. Private sewage treatment systems no longer in compliance with Minnesota Pollution Control Agency's standards for individual sewage treatment systems are required to connect to the public system when a municipal sewer is available within 500 feet of the property line. 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.
  - b) Identification of Nonconforming Systems. The governing body of the City of Winona has by formal resolution notified the commissioner of its program to identify nonconforming sewage treatment systems. The City of Winona 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 adopted under Minnesota Statutes, section 105.485, 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.

G) SUBDIVISION/PLATTING PROVISIONS

- 1) Land Suitability. Each lot created through subdivision must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the City shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic 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 City.
- 2) Consistency with Other Controls. Subdivisions must conform to all official controls of the City. 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. In areas not served by publicly owned sewer and water systems, a subdivision will not be approved unless domestic water supply is available and a sewage treatment system consistent with Section 69.05 B and 69.05 E.6 can be provided for every lot. Each lot shall meet the minimum lot size and dimensional requirements of Section 69.05 A, including at least a minimum contiguous lawn area, that is free of limiting factors sufficient for the construction of two standard soil treatment systems. Lots that would require use of holding tanks must not be approved.
- 3) Information Requirements. Sufficient information must be submitted by the applicant for the City to make a determination of land suitability. The information shall include at least the following:
  - a) topographic contours at two-foot intervals or less, showing limiting site characteristics;
  - b) the surface water features required in Minnesota Statutes, section 505.02, subdivision 1, to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;
  - c) 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;
  - d) 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;
  - e) location of 100-year flood plain areas and floodway districts from existing adopted maps or data; and
  - f) 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.
- 4) 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.
- 5) Platting. All subdivisions that create five or more lots or parcels that are 5 acres or less in size shall be processed as a plat in accordance with Minnesota Statutes, Chapter 505. 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.

- 6) Controlled Access or Recreational Lots. Lots intended as controlled accesses to public waters or for recreational use areas for use by nonriparian lots within a subdivision must meet or exceed the sizing criteria in Section 69.05 A.4. of this Chapter.

## Article 03 Development Standards

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### Division 4 ~~Division 1~~ Use Specific Standards

#### ~~43.02.41~~ 43.03.11 Purpose and Applicability

A) The purpose of the following regulations is to establish development standards that address the unique characteristics of certain principal and accessory land uses. These use-specific development standards are cross-referenced in last columns of both the **Principal Use Table** and the **Accessory Use Table** in Section 43.02.23. The principal and accessory uses listed in Sections 43.03.12 – 43.03.19 below are subject to these specific development standards, in addition to all other applicable regulations in the UDC.

A)B) Unless noted, required setbacks in this article shall not apply to landscaping, stormwater facilities, and required fencing or buffering.

#### ~~43.02.42~~ 43.03.12 Use Specific Standards for Residential Principal Uses

- A) BED AND BREAKFAST, OWNER-OCCUPIED TOURIST HOMES. All Bed and Breakfast and Tourist Homes shall be subject to the following conditions:
- 1) The home shall be located on a lot that is owned by and includes the primary residence of the host or host family. The host or host family shall reside on the lot during any period of guest stay.
  - 2) The home may be located within a principal or accessory structure, provided that all applicable building, housing, and sanitation codes are met.
  - 3) Minimum lot area shall be computed at the rate of 1,500 square feet per guest room. This computation shall not include any portion of a lot that is considered to be undevelopable by local or state law.
  - 4) Paying overnight guests may be served only breakfast by the host or host family. The preparation of food by paying overnight guests may be permitted within guest rooms if properly inspected and licensed for that purpose.
  - 5) Guest stay shall be limited to a maximum of twenty-nine (29) continuous days within a sixty (60) day period.
  - 6) Off-street parking shall be provided on the basis of two spaces for the host or host family, plus one space per guest room. All off-street parking shall conform to location, design and maintenance standards of Section 43.37.
  - 7) One unlighted exterior sign shall be permitted. The sign shall not exceed two square feet in area and be attached flat to the wall of the principal structure.
  - 8) Bed and Breakfast homes shall be subject to all terms and conditions of the hotel/motel tax as defined in Chapter 64 and be operated in accordance with state law.

- 9) A home must be annually inspected and licensed pursuant to all city, county and state housing, building, fire and environmental health codes and ordinances. Proof of such licensing must be submitted to the Department of Community Development by the host or host family.

**B) DWELLING, APARTMENT**

- 1) In the B districts, an apartment dwelling is permitted if it is a permitted use in the residential district adjoining the B district.

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**B)C) DWELLING, APARTMENT MIXED USE**

- 1) In the Mixed Use districts:
- Exclusive of required entrances, the residential use may occupy no portion of the front one-half of the first story floor area.
  - Any part of a rear building line located within 100 feet of a public parking lot, no residential use may occupy the rear one-half of the first story floor area.
  - In the case of a corner lot having two building frontages, no rear first story residential use shall be permitted which has, other than required entrances, openings which are visible from a public street.
  - The Commission may apply additional requirements of the applicant which it feels are necessary to protect future residents from the day to day activity of adjacent non-residential use.

**C)D) DWELLING, ATTACHED TOWNHOUSE OR ROWHOUSE**

- 1) The minimum width of each individual dwelling unit in such townhouse or rowhouse, measured from interior wall to interior wall along the exterior wall, shall be not less than 18 feet.
- 2) In the R-1, R-1.5, and R-2 districts, an attached townhouse or rowhouse dwelling constructed after June 30, 2017 shall only be located on a corner lot with access to an arterial or collector street.
- 3) In the B districts, an attached townhouse or rowhouse dwelling is permitted if it is a permitted use in the residential district adjoining the B district.

**D)E) DWELLING, CONVERSION TO TWO, THREE, AND FOUR FAMILY**

- 1) Conversion of a dwelling into a two, three or four-family dwelling; provided, that these conform with the lot area frontage and yard requirements prescribed for such two, three and four-family dwellings in this chapter and with all other applicable requirements of this chapter.

**E)F) DWELLING, TWO TO FOUR FAMILY**

- 1) In the R-1 district, two to four family dwellings constructed after June 30, 2017 may shall only be located on a corner lot adjoining or within 100 feet of a less restricted district or on a lot abutting and with access to a primary or secondary thoroughfare, an arterial or collector street.

**G) FRATERNITY OR SORORITY**

- 1) The use shall be located within one-half (½) mile of the educational facility served.
- 2) The fraternity or sorority shall be chartered by a national or local organization officially recognized by the educational institution.
- 3) On-site services shall be for residents of the facility only.

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- 4) To the extent practical, all new construction or additions to existing buildings shall be compatible with the scale and character of the surroundings, and exterior building materials shall be harmonious with other buildings in the neighborhood.
- 5) An appropriate transition area between the use and adjacent property shall be provided by landscaping, screening, and other site improvements consistent with the character of the neighborhood.
- 6) The operator shall submit a management plan for the facility and a floor plan showing sleeping areas, emergency exits and bathrooms.
- 7) A minimum of one parking space per resident shall be provided on the site.
- 8) Such use shall be subject to the 30% Rental Housing Rule.

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F)H) MANUFACTURED HOME PARK

- 1) Unless specified as follows, no manufactured or mobile home, as defined in Section 43.04 Article 7 of this chapter, which is to be used for human occupancy, shall be located outside of an approved manufactured home park. Manufactured homes may be placed on permanent foundations in any zone which permits single family detached dwellings provided that the following criteria are met:
  - a) The home is to be occupied only as a residence.
  - b) The home will meet all pertinent zoning requirements.
  - c) The home meets manufactured home building specifications pursuant to appropriate state laws.
  - d) The home is located on a permanent foundation which is approved by the building inspection office.
  - e) The home will not be in conflict with covenants or restrictions applicable to the lot on which it is to be located.
  - f) In order to provide for the purpose and scope of this chapter, the proposed home shall bear a reasonable aesthetic relationship to existing dwelling within the immediate area of the lot to be developed. Pursuant to Section 43.28(a) and (b), compatibility shall be a determination of the Architectural Review Board upon referral from the Chief Code Enforcement Official. The Board shall act according to its duties as found in Section 43.29. The Board shall consider how the home relates to the surrounding area in terms of structural width and length, exterior covering, architectural detail, roofing material and pitch, roof overhang and bulk. The Board shall give specific reasons for its action(s).

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G)I) MOTEL OR MOTOR HOTEL

- 1) The sanitary regulations prescribed by the board of health or other authority having jurisdiction, the regulations of the Building Code of the city and as may otherwise be required by law shall be complied with by motels and motor hotels.
- 2) Area and yard requirements. Motels shall comply with all area and yard requirements prescribed for such uses in the district in which located.
- 3) Lot area occupancy. The building(s) of any motel, together with any non-accessory buildings already on the lot, shall not occupy, in the aggregate, more than 25 percent of the area of the

~~lot. Parking. All areas used for automobile access and parking shall comply with the applicable provisions of article V of this chapter.~~

- 4) Entrance to motels. No vehicular entrance to or exit from any motel, wherever such may be located, shall be within 200 feet along streets from any school, public playground, church, hospital, library or institution for dependents or for children, except where such property is in another block or another street which the premises in question do not abut.
- 5) Landscaping of unused areas. All areas not used for access, parking, circulation, buildings and services shall be completely and permanently landscaped and the entire site maintained in good condition. ~~Electric appliances in motels, etc. All appliances and lighting fixtures d equipment in a motel shall be electric facilities. Enlargement. Any enlargement or extension to any existing motel shall require application for a zoning certificate, as if it were a new establishment. No enlargement or extensions to any motel shall be permitted, unless the existing one is made to conform substantially with all the requirements for new construction for such an establishment.~~

H)J) RESIDENTIAL RETREAT CENTERS, NON-OWNER-OCCUPIED TOURIST HOMES

- 1) ~~Retreat center shall not be rented to more than one common party at a time.~~
- 2) ~~The premises shall not be the primary residence of owner.~~
- 3) ~~The owner shall not occupy the premises during the rental period.~~
- 4) ~~No meals shall be catered.~~
- 5) ~~Number of guests limited to a maximum of twelve (12) at one time.~~

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- ~~6) The use shall be subject to the 30% Rental Housing Rule.~~
- 2) ~~Any principal or accessory structure which is, in any way, designed to facilitate the use, shall meet all applicable lot area and yard requirements for single-family detached structures of the underlying zoning district.~~
- ~~3) 7) Parking – one off-street parking space per guest room, provided that if a single-family dwelling is rented as a single dwelling unit to no more than three (3) unrelated people, two off-street parking spaces shall be required. certified person. All off-street parking areas shall be subject to standards of Section 43.37 All signs for the use shall meet provisions of Section 43.43.~~
- 4) ~~The use shall be subject to the City hotel/motel tax.~~

- 5) ~~In the R-3 district, in addition to the four standards above, the home must be certified in accordance with applicable local, county, or state standards.~~
- 6) 8) In the R-R, R-S, R-1, R-1.5, and R-2 districts, ~~in addition to the five standards above,~~ the use shall be located upon, and with direct access to, ~~an designated major arterial, minor arterial, or collector street.~~

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**43.02.43—Use Specific Standards for Public and Institutional Principal Uses  
EMERGENCY SERVICE FACILITY**

- ~~4) 43.03.13 In any R district, building shall be located a minimum of 60 feet from any lot line.~~

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B)A) HOSPITAL

- 4) In R districts, any lot or tract of land in such use shall be not less than 15,000 square feet in area and any buildings in which patients are housed shall be at least 50 feet distant from any lot line. ~~MUNICIPAL, COUNTY, STATE, OR FEDERAL ADMINISTRATIVE BUILDING~~

~~In any R district, building shall be located a minimum of 60 feet from any lot line.~~

C)B) RELIGIOUS FACILITY

- 1) In any R or AG district, building shall not be located less than 40 feet from any lot line.
- 4)2) ~~In the DTMU district, where buildings are connected, the use shall not occupy more than 25 feet of a building's frontage.~~

D)C) SCHOOL

- 1) In any R or AG district, building shall not be located less than 40 feet from any lot line.

~~43.02.4443.03.14~~ **43.03.14 Use Specific Standards for Commercial Principal Uses**

A) COMMERCIAL, ALL

- 1) In any ~~M-I~~ district:
- 2) Commercial uses which are open 24 hours shall not adjoin a residential district.
- 3) Commercial uses shall not be located on a lot larger than 2.1 acres.
- 4) Any new commercial uses established after September 9, 2010, shall be located on premises which contain frontage on a street officially classified as a collector or an arterial on the official thoroughfare plan. ~~These provisions shall not apply to such uses which are incidental and accessory to a permitted principal use or service stations and such commercial and other uses as are first permitted in the B-3 district.~~

B) ADULT USE ESTABLISHMENT

- 1) Findings ~~and Purpose~~. The Minnesota State Attorney General's Office and the cities of St. Paul, Minneapolis, Rochester, and Ramsey, Minnesota, as well as Phoenix, Arizona, Seattle, Washington, Indianapolis, Indiana, and Adams County, Colorado, have conducted studies of the impact of Adult Use Establishments on their respective communities. The American Society of Planning Officials (ASPO) has also issued a report providing an overview of concerns related to the regulation of adult entertainment businesses. On the basis of these studies and reports and other information available to it, the City Council of the City of Winona finds that Adult Use Establishments generate harmful secondary effects which negatively impact neighborhoods. These secondary effects, include but are not limited to, the following:
- Residential neighborhoods located within close proximity to adult theaters, bookstores, and other Adult Use Establishments experience increased crime rates (sex-related crimes in particular), lowered property values, increased transiency, neighborhood blight, and potential health risks.
  - Adult Use Establishments can have an adverse impact on adjacent commercial uses.
  - The adverse impacts which Adult Use Establishments have on surrounding areas diminish as the distance from the adult establishments increases.
  - Many members of the public perceive areas within which Adult Use Establishments are located as less safe than other areas which do not have such uses.

- e) Adult Use Establishments can exert a dehumanizing influence on persons attending nearby places of worship; children attending family day care homes, group family day care homes and child care centers; students attending schools; and people using parks.
  - f) The concentration of Adult Use Establishments in one area can have a substantially detrimental effect on the area in which such businesses are concentrated and on the overall quality of urban life. A cycle of decay can result from the concentration of adult establishments. The presence of such businesses is perceived by others as an indication that the area is deteriorating which can cause other businesses and residents to move out of the vicinity. Declining real estate values, which can result from the concentration of such businesses, erode the City's tax base and contribute to a feeling that the section of the City is depressed.
- 2) Purpose. In recognizing that the suburban characteristics of the City of Winona are similar to those cited by the reports, the purpose of this Article is to regulate Adult Use Establishments in order to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of Adult Use Establishments within the City. The provisions of this Article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Article to condone or legitimize the distribution of obscene material.
- 3) Permitted Use. An Adult Use Establishment is permitted within any B-3, M-1, and M-2 Zoning district provided that the following requirements standards are met:
- a) All such uses shall be located a minimum of 600 feet from any residential zoning district boundary, school, place of worship, any adjacent municipal boundary or licensed daycare center. For purposes of this section, distances shall be determined by a straight horizontal line measured between the building or structure containing the Adult Use Establishment to the property line of the nearest residential zoning district, school, place of worship, adjacent municipal boundary, or licensed daycare centers.
  - b) No Adult Use Establishment shall be located closer than 1,200 feet to any other Adult Use Establishment. For purposes of this section, distances shall be determined by a straight horizontal line measured between the closest exterior walls of the structure in which each business is located.
  - c) No Adult Use Establishment shall be conducted in any manner which permits the perception or observation from any property, not approved as an Adult Use Establishment, of any materials depicting, describing, or related to "specified sexual activities" or "specified anatomical areas" by any visual or auditory media including display, decoration, sign, show window, sound transmission or other means.
  - d) No Adult Use Establishment shall sell or dispense 3.2 percent malt liquor or intoxicating liquor, or be located within a building which contains a business which sells or dispenses 3.2 malt liquor or intoxicating liquor.
  - e) No Adult Use Establishment shall permit any person under the age of 18 onto the premises of said establishment. Nor shall any person under the age of 18 be permitted access to material displayed or offered for sale or rent by the Adult Use Establishment.

- 4) Nonconforming Uses. Any Adult Use Establishment lawfully operating on the adoption date of this Article and which is in violation of [Section 43.78 standards \(a\) through \(e\) of this Article above](#), shall be deemed a nonconforming use. The nonconforming use shall be permitted to continue for a period not to exceed five years unless sooner terminated for any reason. Such nonconforming uses shall be maintained in accordance with the provisions of [Section 43.01.25](#).

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C) ANIMAL HOSPITAL OR VETERINARY CLINIC

- 1) The enclosure or building in which the animals are kept shall be at least 200 feet from any R or MU district and at least 100 feet from any B-1 district.
- 2) Any building or room within a building in which animals are housed on an overnight basis shall not have openings other than stationary windows and required fire exits.
- 3) Exercise runs shall be enclosed on four sides by a sight-obscuring, unpierced fence or wall at least five feet in height.

D) ANIMAL KENNEL

- 1) Agricultural use provided that the number of animal units permitted on a property may not exceed a total of 1 per acre and provided further that any building which is used to house said animals shall be located the following distances from any residential district:
  - a) 1-5 Animal Units - 50 Feet
  - b) 6-10 Animal Units - 100 Feet
  - c) More than 10 Animal Units - 200 Feet

E) AUTOMOTIVE FUEL GAS STATION

- 1) [In the MU-DE district, a gas station constructed after June 30, 2017 shall be located at least 150 feet from any R district.](#)
- 2) [In the MU-DE district, a gas station constructed after June 30, 2017 which is open 24 hours a day shall be located at least 300 feet from any R district. A gas station that is not open 24 hours a day but has gas pumps that are in operation 24 hours a day shall not be considered open 24 hours a day.](#)
- 3) [In the MU-DE district, a gas station constructed after June 30, 2017 shall be located on an arterial street.](#)
- 4) Except in the [downtown MU-DE](#) district, use shall not have an entrance or exit for vehicles within 200 feet along the same side of a street of any school, public playground, church, hospital, public library or institution for dependents or for children, except where such property is in another block ~~or on another street which the lot in question does not abut.~~
- 5) No automotive fuel station shall be permitted where any oil draining pit or visible appliance for any such purpose, other than filling caps, is located within 12 feet of any street lot line or within 25 feet of any R district, except where such appliance or pit is within a building.

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F) AUTOMOTIVE REPAIR, MAJOR

- 1) Use shall not be located within [50-100](#) feet of any R district.
- 2) Except in the [downtown-Mixed Use](#) districts, use shall not have an entrance or exit for vehicles within 200 feet along the same side of a street of any school, public playground, church,

hospital, public library or institution for dependents or for children, ~~except where such property is in another block or on another street which the lot in question does not abut.~~

G) AUTOMOTIVE REPAIR, MINOR

- 1) Any portion of a building used for minor repair shall be located at least 50 feet from any R district and shall have no openings adjoining any R district, other than stationary windows and fire escapes. ~~Parking lots are permitted subject to applicable requirements of Sections 43.33 and 43.44.~~
- 2) Except in the downtown districts, use shall not have an entrance or exit for vehicles within 200 feet along the same side of a street of any school, public playground, church, hospital, public library or institution for dependents or for children, except where such property is in another block or on another street which the lot in question does not abut.

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H) AUTOMOTIVE SALES AND LEASING

- 1) Use shall not be located within ~~50-150~~ feet of any R district.

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I) BILLBOARD OR OUTDOOR ADVERTISING, OFF-PREMISE SIGN

- 1) Display signs, billboards and other outdoor advertising signs and structures subject to the provisions of Article 5 of this chapter.

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J) COMMERCIAL RECREATION OR ENTERTAINMENT, INDOOR

- 1) Building shall be located no less than 100 feet from any R district.

K) PUBLIC RECREATIONAL FACILITY, INDOOR

- 1) Building shall be located no less than 100 feet from any R district.

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L) RESTAURANT, DRIVE-THROUGH OR DRIVE-IN

- 1) Principal building is distant not less than 200 feet from any R-S or R-1 district.

M) THEATER

- 1) Building shall be located no less than 100 feet from any R district.

43.02.4543.03.15 Use Specific Standards for Manufacturing Principal Uses

A) BREWERY, LARGE

- 1) No portion of any structure, which is used for the production (excluding warehousing or storage) of malt liquors, shall be located closer than ~~100-200~~ feet from any R district.

B) BREWERY, SMALL

- 1) No portion of any structure, which is used for the production (excluding warehousing or storage) of malt liquors, shall be located closer than 100 feet from any R district, ~~and said uses shall comply with those performance standards of Section 43.33.~~

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C) CONSTRUCTION CONTRACTOR YARD

- 1) Use shall be conducted either wholly within a completely enclosed building, except storage of vehicles.
- 2) ,which Contractor yard buildings shall be distant at least 100 feet from any R district, unless such building has no openings other than stationary windows and required fire exits within such distance.

~~4)3) but Contractor yard buildings shall not be located within 50 feet of any R district in any case, or when conducted within an area completely enclosed on all sides with a solid wall or uniformly painted solid board fence not less than 6 feet high, but not within 200 feet of any R district.~~

~~2)4) All storage yards shall be enclosed by a solid board fence not less than 6 feet high on all sides which face a residential or commercial zoning district.~~

D) CREMATORY

1) Building shall be located no less than 200 feet from any R or MU district.

E) MANUFACTURING, LIGHT

1) For bottling works and wholesale bakeries, a building shall be at least 200 feet from any ~~R-S or R-1 district and 100 feet from any R-2 or R-3R~~ district.

2) For specialized metal working, sheet metal shops, welding shops, and machine shops, provided that no use shall employ punch presses, drop hammers, or similar equipment and provided further that no part of a building occupied by such uses shall have any opening other than stationary windows or required fire exits within 100 feet of any ~~R-S or R-1 district and within 50 feet from any R-2 or R-3R~~ district.

~~3) All uses shall be conducted wholly within a completely enclosed building except for the incidental display of finished merchandise, or the storage of vehicles and raw materials.~~

~~3)4) ; provided further that a) All material storage yards shall be located a minimum of 50 feet from any residential district and shall be screened from the district by a solid board fence or other suitable screening which is not less than 6 feet in height by a solid board fence not less than 6 feet high on all sides which face a residential or commercial zoning district.~~

F) MANUFACTURING, HEAVY

1) ~~In the M-1 district, n) No part of a building occupied by heavy manufacturing uses shall have any opening other than stationary windows or required fire exits, within 200 feet of any R-S or R-1 district and within 100 feet of any R-2 or R-3R~~ district.

2) Any building which includes the cutting of stone through saw or hydraulic methods shall be located a minimum of ~~70-100~~ feet from any residential district. ~~Additionally, any such building which is located within 100 feet of a residential district shall be constructed to meet those noise source requirements of Section 39.03.~~

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G) MICRODISTILLERY

1) ~~No portion of any structure, which is used for the production (excluding warehousing or storage) of malt liquors, shall be located closer than 100 feet from any R district, and said uses shall comply with those performance standards of Article 3, Division 7, of this chapter.~~

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G)H) PRINTING

1) Use shall not be located within 100 feet of any R-S or R-1 district.

H)I) SCRAP OR SALVAGE YARD

1) ~~If Such use shall not be~~ located ~~not~~ less than 200 feet from any R district

2) ~~;~~ ~~provided, that the~~Such use shall not involve the handling or storage of putrescible solid waste materials.

~~3)~~ ~~and a~~ Any outside storage areas ~~are shall be~~ enclosed on all sides with a solid wall or uniform tight board fence, not less than 8 feet high.

~~4)4)~~ ~~and that s~~ Such operation shall not be visible from the nearest street or highway.

~~4)J)~~ SILICA SAND PROCESSING FACILITY

- 1) Silica sand processing facilities, including silica sand washing and drying facilities. In addition to the general performance standards set forth in [Article 3, Division 7, of this chapter](#) ~~Section 43.33~~, silica sand processing facilities shall also comply with the following specific conditions:
- 2) Hard Surfacing. Asphalt or concrete surfacing shall be required in any truck or equipment maneuvering area.
- 3) Truck Washing Equipment and/or Tracking Pads. Truck washing equipment or tracking pads, or a combination of both, shall be required at each facility.
- 4) Truck Route Designation. All trucks entering and leaving such facilities shall enter and exit Winona on designated truck routes. Such routes shall avoid residentially zoned property to the greatest extent possible.
- 5) Transportation Impact Analysis. Notwithstanding the provisions of Section 43.03.36 (1) ~~89 (a)~~, all silica sand facilities shall complete a Transportation Impact Analysis in accordance with [Article XIX of this Chapter](#) ~~43.03.36~~.
- 6) Maximum Permitted Daily Trip Volume. A maximum number of daily truck trips shall be established for each facility.
- 7) Enclosure and Covering of Processing Equipment and Stockpiles. Processing equipment (including dryers, washers, ~~and~~ screeners, ~~and loading/unloading equipment~~) and stockpiles within 500 feet of any ~~R or B district adjacent property~~ shall be enclosed by a structure. Stockpiles greater than 500 feet from an ~~R or B district adjacent property~~ and undisturbed for more than one week shall be covered.
- 8) Setback. All ~~silica sand processing or transportation uses including access drives structures housing processing equipment and stockpiles~~ shall be located a minimum of 500' ~~feet~~ from a residential property.
- 9) Stockpile Watering. Uncovered stockpiles shall be watered regularly to prevent surface areas from drying out and becoming susceptible to wind erosion.
- 10) Hours of Operation. Hours of operation for truck traffic and equipment/ machinery with back-up alarms shall be limited to 7 a.m. – 7 p.m.
- 11) Landscaping and Screening. Sufficient landscaping and screening, including but not limited to fences, [earthen berming](#), walls and/or vegetative screens, as approved by the City of Winona, shall be provided to mitigate visual impacts of ~~operation a facility~~ on adjacent properties.
- 12) Contact Information. Facility operators shall provide current contact information to the City of Winona to facilitate response to concerns.
- 13) Permits and Reports Obtained and Placed on File. Any applicable state or federal permits shall be obtained and placed on file with the City of Winona. Any reports generated to fulfill permit requirements shall be submitted to the City of Winona.

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~~43.02.46~~ **43.03.16 Use Specific Standards for Recreation and Open Space Principal Uses**

A) CAMPGROUND

- 1) General Requirements.
  - a) The sanitary regulations prescribed by the board of health or other authority having jurisdiction, the regulations of the Building Code of the city and as may otherwise be required by law shall be complied with by trailer parks. ~~Area and yard requirements. Motels shall comply with all area and yard requirements prescribed for such uses in the district in which located.~~
  - b) Lot area occupancy. The building(s) of any trailer park, together with any non-accessory buildings already on the lot, shall not occupy, in the aggregate, more than 25 percent of the area of the lot. ~~Parking. All areas used for automobile access and parking shall comply with the applicable provisions of article V of this chapter.~~
  - c) Entrance to motels. No vehicular entrance to or exit from any trailer park, wherever such may be located, shall be within 200 feet along streets from any school, public playground, church, hospital, library or institution for dependents or for children, except where such property is in another block or another street which the premises in question do not abut.
  - d) Landscaping of unused areas. All areas not used for access, parking, circulation, buildings and services shall be completely and permanently landscaped and the entire site maintained in good condition.
  - e) Enlargement. Any enlargement or extension to any existing trailer park shall require application for a zoning certificate, as if it were a new establishment.
  - f) No enlargement or extensions to any trailer park shall be permitted, unless the existing one is made to conform substantially with all the requirements for new construction for such an establishment.
- 2) Submission of Plans. An application for the establishment of a trailer park shall be filed with the zoning administrator and must be accompanied by a scale drawing certified by a registered civil engineer. Such drawing shall contain the following information:
  - a) Accurate dimensions of the proposed trailer park in feet.
  - b) All roads and approaches and the method of ingress and egress from public highways.
  - c) The complete electric service installation, wire service outlets and lighting facilities.
  - d) A complete layout of unit parking spaces and the number of square feet therein, together with the dimensions thereof.
  - e) The location of electric power distributing systems, water mains or wells for water supply outlets for domestic water users, location of sanitary facilities, washrooms, garbage disposal units, incinerators, sanitary sewers or septic tanks, sewer drain lines, leeching beds, fire protection stalls, and other buildings or structures contemplated to be used by such applicant in connection with such business.
- 3) Design and Maintenance. Trailer parks shall be designed and maintained in accordance with the following requirements:
  - a) Park area. The minimum trailer park area shall be 40,000 square feet.

- b) Lot area. The minimum lot area per trailer unit shall be 2,000 square feet.
- c) Distance between trailers. The minimum distance between neighboring trailers shall be not less than 20 feet. Each trailer unit shall set back not less than 10 feet from the exterior lines of the trailer unit lot upon which it is located.
- d) Concrete slab. Each trailer unit lot shall be equipped with a concrete slab of sufficient size to support the wheels and the front parking jack. Such slab shall have a minimum horizontal dimension of 8 x 10 feet and a minimum thickness of 4 inches.
- e) Utilities. Each trailer unit shall be equipped with one electric outlet. A sanitary sewer and water system shall be installed in accordance with city specifications. Trailer units not directly connected with the water and sewer system shall be located not more than 200 feet from a community utility building providing separate toilet and shower facilities for each sex.
- f) Interior streets. The minimum width of interior one-way streets with parking permitted on one side shall be 21 feet. The minimum width of two-way streets with parking permitted on one side shall be 26 feet. Such streets shall be graveled or paved, maintained in a good condition and lighted at night.
- g) Length of occupancy. No trailer shall remain in a trailer park for a period exceeding 15 days without connection to the permanent sanitary sewer system of the park.
- h) Additional requirements. In addition to the foregoing, the board may impose such other conditions, requirements or limitations concerning the design, development and operation of such trailer parks as it may deem necessary for the protection of adjacent properties and the public interest.

#### B) COMMERCIAL RECREATION, OUTDOOR

- 1) ~~Any type of commercial recreation, including baseball fields, swimming pools, skating rinks, golf driving ranges, and similar open air facilities; provided, that such establishments~~ shall be distant at least 200 feet from any R district except city parks.

#### C) PUBLIC RECREATION, OUTDOOR

- 1) ~~Public recreation uses shall be distant at least 200 feet from any R district except city parks.~~

### ~~43.02.47~~ 43.03.17 Use Specific Standards for Natural Resources and Agricultural Principal Uses

#### A) AGRICULTURE – RAISING OF LIVESTOCK

- 1) In R-R districts, Agricultural uses, commercial nurseries and greenhouses, but not including kennels; provided, that any lot or tract in such use shall not be less than 3 acres in area that no more than 1 animal unit per acre shall be permitted, and that any building in which animals are kept shall be located the following distances from any residential district:
  - a) ~~1-5~~ Animal Units - 50 Feet
  - b) 6-10 Animal Units - 100 Feet
  - c) More than 10 Animal Units - 200 Feet
- 2) In AG districts, Agricultural use provided that the number of animal units permitted on a property may not exceed a total of 1 per acre and provided further that any building which is used to house said animals shall be located the following distances from any residential district:

- a) 1-5 ~~Animal Units~~ - 50 Feet
- b) 6-10 Animal Units - 100 Feet
- c) More than 10 Animal Units - 200 Feet

B) ANIMAL STABLE

- 1) Agricultural use provided that the number of animal units permitted on a property may not exceed a total of 1 per acre and provided further that any building which is used to house said animals shall be located the following distances from any residential district:
  - a) 1-5 ~~Animal Units~~ - 50 Feet
  - b) 6-10 Animal Units - 100 Feet
  - c) More than 10 Animal Units - 200 Feet

C) COMMERCIAL GREENHOUSE, NURSERY, TREE FARM, OR ORCHARD

- 1) In R-R districts, Agricultural uses, commercial nurseries and greenhouses, but not including kennels; provided, that any lot or tract in such use shall not be less than 3 acres in area that no more than 1 animal unit per acre shall be permitted, and that any building in which animals are kept shall be located the following distances from any residential district:
  - a) 1-~~5~~ ~~Animal Units~~ - 50 Feet
  - b) 6-10 Animal Units - 100 Feet
  - c) More than 10 Animal Units - 200 Feet

D) EXTRACTION PITS

- 1) General Requirements. Unless otherwise provided, the Planning Commission shall grant a conditional use permit for all such uses in accordance with Section 43.06.14 (B); Section 43.30 Article 3, Division 7; the underlying zoning district, and the following conditions:
  - a) No part of an extraction operation shall be conducted closer than 2,000 feet to any residential district and 500 feet to any residential or commercial structure. No extraction operation or any stock pile placed closer than 50 feet to any property line, unless a greater distance is specified by the Commission where such is deemed necessary for the protection of adjacent property; provided that this distance requirement may be reduced to 25 feet by written consent of the owner of the abutting property.
  - b) No excavation shall occur within 200 feet of a top of bluff as defined in Article XVII Section 43.02.32 Bluffland Protection.
  - c) In the event that the site of the extraction operation is adjacent to the right-of-way of any public street or road, no part of such operation shall take place closer than 30 feet to the nearest line of such right-of-way.
  - d) Fencing shall be erected and maintained around the entire site or portions thereof where, in the opinion of the Commission, such fencing is necessary for the protection of the public safety, and shall be of a type and height specified by the Commission.
  - e) All equipment and machinery shall be operated and maintained in such manner as to minimize dust, noise, and vibration. Access roads shall be maintained in dust-free condition by surfacing or other treatment, as may be specified by the Commission, following consultation with the City Engineer.

- f) Washing, refining or other similar processing may be authorized by the Commission as an accessory use; provided that such accessory processing shall not be in conflict with the land use regulations of the district in which the operation is located.
- g) Hours of operation for all mines shall be 6:00 a.m. to 9:00 p.m.
- h) All local, state or federal laws applicable to the specific extraction activity and subsequent rehabilitation must be met.
- i) Water Quality Monitoring. The mine operator/owner shall install groundwater monitoring wells adjacent to the proposed mine site where the site is adjacent to residential plats or suburban development, springs, sinkholes and/or wellhead protection areas or community wells and shall provide the City with groundwater testing by an independent environmental engineer, approved by the City, at the time of commencement of disturbance activities and twice per year until 1 year after the mine has been completely reclaimed.
- j) Phase 1 Archeological Study. Any land disturbance activity (e.g. excavation, construction, alteration of existing vegetation) within 1000 feet of a top of bluff as defined in [Section 43.02.32 Article XVII](#) shall complete a Phase 1 Archeological Study. The study shall be prepared by a qualified professional, as defined by MS 138.31, subd. 10, or who is listed on the Minnesota State Historic Preservation Office Archeological Contractors list, and in accordance with protocols of the State Historic Preservation Office document entitled "SHPO Manual for Archeological Projects in Minnesota", July, 2005, or as amended. The scope of the study shall include all land located within 150 feet from the limits of any proposed land disturbance activity, or at the applicant's property line, whichever is less. The study shall follow the process detailed in [Section 43.02.32 Article XVII](#).
- k) Prohibited Activities. Blasting and crushing shall not be permitted at the mine site, except by specific Planning Commission approval with specified time limits, mitigation of airborne particulate, and in compliance with Chapter 63. Applicants intending on blasting must submit detailed information as to the frequency, duration, schedule and vibration standard/thresholds for review and approval by the Planning Commission.
- l) Project Manager/ Contact Person Required. Owner/applicant shall at all times have an agent whose name, fax number, telephone number/cellular number and email address are on file with the City in order to respond promptly to concerns. The agent's name and contact information shall be available on site on a 2' x 3' placard or sign at the site entrance.
- m) Contact with Other Jurisdictions. Mines with property and/or entrances/exits in other jurisdictions shall obtain appropriate permits from such jurisdictions and provide the permits to the City of Winona.
- n) Access Permit. Owner/applicant shall obtain an access permit from the road jurisdiction where mine traffic enters or exits. Such permit shall be placed on file with the City.
- o) Tracking Pad Required. The owner/applicant shall be responsible for asphalt paving the approach to adjacent roads for a minimum distance of 40 feet.
- p) Reporting Vehicle Weights. Owner/Applicant shall be required to identify a method of positive controls regarding the weight of vehicles leaving the mine and method to insure vehicles do not exceed the weight limits of the roads and bridges upon which they will travel, and obtain approval by the City Engineer on the methods and frequency of inspection used. Controls such as scales and regular reporting on vehicle weights shall be implemented with weekly reporting to the City Engineer.

- q) Street Maintenance and Sweeping Required. Owner/applicant shall be responsible for monitoring roadways and roadway sweeping as necessary to maintain safe conditions. All transportation routes used by the mine shall not have any accumulation of visible debris or sand from the mine site. The owner/applicant shall take all necessary precautions to avoid spillage on roadways.
  - r) Requirement for Secure Loads. No vehicle shall be driven or moved on any roadway unless such vehicle has the load securely covered as to prevent any of its load from dropping, sifting, leaking, blowing, or otherwise escaping from vehicles.
  - s) Transportation Impact Analysis. Notwithstanding the provisions of 43.03.36 (1), all extraction operations/mines shall complete a Transportation Impact Analysis in accordance with ~~Article XIX~~ 43.03.36 "Transportation Impact Analyses and Road Use Agreements."
  - t) Road Use Agreement. A road use agreement shall be required in accordance with Section 43.9443.03.36 (3) for projects subject to a Transportation Impact Analysis.
  - u) Reclamation Plan Required. A complete and detailed reclamation plan shall accompany all applications which meets or exceeds the requirements of paragraph (e) of this section.
  - v) Subterranean Engineering Analysis Required. Owner/applicant shall submit an analysis prepared by a qualified independent engineering firm of the existing geologic conditions both in the extraction area and sub-extraction area and the impacts of the mining operations, including the applicability of the reclamation plan including any potential adverse effect on area hydrology, springs or Karst formations. The City reserves the right to have this data reviewed by state geologists/hydrologists and/or SWCD staff.
  - w) Performance Guarantees Required. Performance bonds shall be required for the following:
    - i. 110% of the estimated cost of reclamation for a period equal to the life of the quarry plus 2 years. Performance bonds for reclamation may only cover the areas of disturbance for the duration of mining activity and may 'roll' with disturbance activity accordingly in order to minimize financial burden on the applicant.
    - ii. A performance surety shall be provided in the amount of \$1,000 per acre for the total proposed site disturbance. The surety shall be used to reimburse the City for any monies, labor, or material expended to bring the operation into compliance with the conditions of the permit.
  - x) An EAW or EIS May be required. Discretionary environmental review can be initiated by the Planning Commission and City Council upon review of a discretionary EAW checklist on file in the office of the City Planner. If ordered, the owner/applicant shall provide an Environmental Assessment Worksheet for the proposed site in accordance with standards determined by the City of Winona.
- 2) Performance Standards. Extraction uses shall also comply with the following performance standards:
- a) Water Resources: The extraction pit or land alteration operation shall not be allowed to interfere with surface water drainage beyond the boundaries of the operation. The work done shall not adversely affect the quality of surface or subsurface water resources. Surface water originating outside and passing through the mining district shall, at its point of departure from the site, be of equal quality to the water at the point where it enters the site.

- b) Access Roads: The location of the intersection of access roads with any public roads shall be selected such that traffic on the access roads will have a sufficient distance or public road in view so that any turns onto the public road can be completed with a margin of safety.
  - c) Appearance: All buildings, structures and plants used for the production of processing of sand and gravel shall be maintained in such a manner as is practical and according to acceptable industrial practice as to assure that such buildings, structures and plants will not become dangerously dilapidated.
  - d) Topsoil Management:
    - i. Removal: Removal of on-site topsoil and topsoil substitute material removal, when specified in the reclamation plan, shall be performed, prior to any mining activity associated with any specific phase of the mining operation.
    - ii. Volume: The operator shall obtain the volume of soil required to perform final reclamation by removal of on-site topsoil or topsoil substitute material or by obtaining topsoil or substitute material as needed to make up the volume of topsoil as specified in the reclamation plan approved pursuant to this chapter.
    - iii. Storage: Once removed, topsoil or topsoil substitute material shall, as required by the reclamation plan approved pursuant to this chapter, either be used in contemporaneous reclamation or stored in an environmentally acceptable manner. The location of stockpiled topsoil or topsoil substitute material shall be chosen to protect the material from erosion or further disturbance or contamination. Runoff water shall be diverted around all locations in which topsoil or topsoil substitute material is stockpiled.
  - e) Driveway/Access to the commercial/industrial site shall not be located within twenty-five (25) feet of adjacent property boundaries.
- 3) Financial Ability of Applicant. In accepting such plan for review, the Commission must be satisfied that the proponents are financially able to carry out the proposed extraction and rehabilitation operation in accordance with the plans and specifications submitted.
- 4) Application. An application for such operation shall set forth the following information:
- a) The name of the owner of the land from which removal is to be made.
  - b) The name of the applicant making request for such a permit.
  - c) The name of the person or corporation conducting the actual removal operation.
  - d) A legal property description and acreage of the area to be mined.
  - e) Maps of the entire site and all areas within two thousand (2,000) feet of the site. Such maps shall show land use, zoning, bluffland, and shoreland information. In addition, the maps described below shall be provided for the entire site. All maps shall be drawn at a scale of one (1) inch to one hundred (100) feet unless otherwise stated below.
  - f) Map/Document A - Existing conditions to include:
    - i. Contour lines at five (5) foot intervals.
    - ii. Existing vegetation.
    - iii. Existing drainage & permanent water areas.

- iv. Existing structures.
  - v. Existing wells.
  - g) Map/Document B – Proposed operations to include:
    - i. Structures to be erected.
    - ii. Location of sites to be excavated showing depth of proposed excavation.
    - iii. Location of excavated deposits showing maximum height of deposits.
    - iv. Location of storage of excavated materials, showing the height of storage deposits.
    - v. Location of vehicle parking.
    - vi. Location of storage of explosives.
    - vii. Erosion and sediment control structures.
  - h) Map/Document C – Reclamation Plan to include:
    - i. Final grade of proposed site showing elevations and contour lines at five (5) foot intervals.
    - ii. Location and non-invasive species of vegetation to be replanted.
    - iii. Location and nature of any structures to be erected in relation the end use plan.
    - iv. Stipulations and standards of paragraph (e) below.
  - i) The type of resources or materials to be removed.
  - j) The proposed method of removal and whether or not the use of explosives will be required.
  - k) A description of all equipment to be used.
  - l) Hours of operation.
  - m) A soil erosion and sediment control plan.
  - n) A plan for dust and noise control.
  - o) A full and adequate description of all phases of the proposed operation to include an estimate of duration of the mining operation.
  - p) Responses to stipulations of paragraphs (a), (b), and (e) of this section.
  - q) Any other information requested by the Planning Commission.
- 5) Reclamation.
- a) Reclamation shall be complete within one (1) calendar year after the operation ceases. A performance bond shall be required for 110% of the estimated cost of reclamation for a period equal to the life of the quarry plus 2 years. Performance bonds for reclamation may only cover the areas of disturbance for the duration of mining activity and may 'roll' with disturbance activity accordingly in order to minimize financial burden on the applicant. The plan shall specify a systematic approach to land reclamation for the mining site, including phases and schedule for reclamation. The City reserves the right to review the conditional use permit annually to enforce compliance.

- b) Reclamation plans for sand mining sites shall include a land use/cover plan equal to the actual land use/cover types previous to mining operations. Areas intended for post-mining agricultural uses must include approval by SWCD for best management practices.
- c) Inactivity at the mine site shall require reclamation in accordance with the terms of an NPDES permit. The NPDES permit shall be placed on file with the City of Winona before extraction/mining operations commence. Inactivity shall be defined as when an operator of a surface mining operation has curtailed production at the site/operation with the intent to resume at a date more than one year in the future.
- d) Within a period of three (3) months after the termination of an operation, or within three (3) months after abandonment of such operation for a period of six (6) months, or within three (3) months after expiration of a permit, all buildings, structures and plans incidental to such operation shall be dismantled and removed by, and at the expense of, the mining operator last operating such buildings, structures and plants.
- e) The following standards shall apply to the reclamation plan:
  - i. When the post-mining land use includes a body of water, all excavation shall be made to a water producing depth, not less than 5 feet below the bow watermark. A slope no steeper than 3:1 shall be created to allow for a safe exit.
  - ii. Excavation may also be graded or backfilled with non-noxious, nonflammable and noncombustible solids, to secure (a) that the excavated area shall not collect and permit to remain therein stagnant water or (b) that the surface of such area which is not permanently submerged is graded or backfilled as necessary so as to reduce the peaks and depressions thereof, so as to produce a gently running surface that will minimize erosion due to rainfall and which will be in substantial conformity to the adjoining land area.
  - iii. Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 4:1 horizontal to vertical incline, unless demonstrated based on site-specific engineering analysis performed by a registered professional engineer. All areas in the extraction pit site where topsoil or topsoil substitute material is to be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provide the optimum adherence between the topsoil or topsoil substitute material and the underlying material.
  - iv. Topsoil Redistribution for Reclamation: Topsoil or topsoil substitute material shall be redistributed in a manner which minimizes compacting and prevents erosion. Topsoil or topsoil substitute material shall be uniformly redistributed except where uniform redistribution is undesirable or impractical. Topsoil or topsoil substitute material redistribution may not be performed during or immediately after a precipitation event until the soils have sufficiently dried.
  - v. Vegetation shall be restored by appropriate seeding of grasses or planting of shrubs or trees in all parts of such extraction area where such area is not to be submerged under water.
- f) The criteria for assessing when reclamation is complete shall be specified in the reclamation plan. Criteria to evaluate reclamation success shall be quantifiable.
- g) Compliance with the re-vegetation success standards in the approved reclamation plan shall be determined by:

- i. On-site inspections by the City of Winona or its agent;
  - ii. Reports presenting results obtained during reclamation evaluations including summarized data on re-vegetation, photo documentation or other evidence that the criteria in the reclamation plan have been met; or
  - iii. A combination of inspections and reports. In those cases where the post mining land use specified in the reclamation plan requires a return of the mining site to a pre-mining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success pursuant to this section.
- h) Re-vegetation success may be determined by:
- i. Comparison to an appropriate reference area;
  - ii. Comparison to baseline data acquired at the mining site prior to its being affected by mining; or
  - iii. Comparison to an approved alternate technical standard.
- i) Re-vegetation using a variety of plants indigenous to the area is encouraged.
- j) Maintenance: During the period of the site reclamation the operator shall perform any maintenance necessary to prevent erosion, sedimentation or environmental pollution.
- k) In addition to the foregoing, the Commission may impose such other conditions, requirements, or limitations concerning the nature, extent of the use, and operation of the extraction pit as the Commission may deem necessary for the protection of adjacent properties and the public interest. The conditions shall be determined by the Commission prior to issuance of the conditional use permit.

~~43.02.4843.03.18~~ **43.03.18 Use Specific Standards for Utilities and Transportation Principal Uses**

A) **STANDALONE PARKING, STRUCTURAL OR NON-STRUCTURAL**

- 1) Use shall not be located within 50 feet of any R district.
- 2) Except in the ~~downtown Mixed Use~~ districts, use shall not have an entrance or exit for vehicles within 200 feet along the same side of a street of any school, public playground, church, hospital, public library or institution for dependents or for children, except where such property is in another block ~~or on another street which the lot in question does not abut.~~
- 2)3) ~~In the Mixed Use districts, any parking area for more than three vehicles shall be enclosed by a decorative fence and/or landscaping as approved by the Community Development Department.~~
- 3) ~~No parking garage shall be permitted where any oil draining pit or visible appliance for any such purpose, other than filling caps, is located within 12 feet of any street lot line or within 25 feet of any R district, except where such appliance or pit is within a building.~~

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B) **RAILROAD YARD OR FREIGHT STATION**

- 1) ~~Such Use, including access drives,~~ shall be located not less than 200 feet from any R district.

C) **TRANSFER STATION**

- 1) Use shall be located not less than 300 feet from any R or B district; that any outside storage areas are enclosed on all sides with a solid wall or uniform tight board fence, not less than 8 feet high, and that such operation shall not be visible from the nearest street or highway.

D) TRANSPORTATION FACILITY USED TO SHIP SILICA SAND

- 1) Transportation facilities used to ship silica sand, except for dredged material (e.g. river sand) from the Mississippi River. In addition to the general performance standards set forth in Section 43.33, transportation facilities used to ship sand shall also comply with the specific conditions set forth under 43.63 (b) (39)43.03.15 J) above.

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Section 43.63

Silica Sand processing facilities, including silica sand washing and drying facilities. In addition to the general performance standards set forth in Section 43.33, silica sand processing facilities shall also comply with the following specific conditions:

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Hard Surfacing. Asphalt or concrete surfacing shall be required in any truck or equipment maneuvering area.

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Truck Washing Equipment and/or Tracking Pads. Truck washing equipment or tracking pads, or a combination of both, shall be required at each facility.

Truck Route Designation. All trucks entering and leaving such facilities shall enter and exit Winona on designated truck routes. Such routes shall avoid residentially zoned property to the greatest extent possible.

Transportation Impact Analysis. Notwithstanding the provisions of Section 43.89 (a), all silica sand facilities shall complete a Transportation Impact Analysis in accordance with Article XIX of this Chapter.

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Enclosure and Covering of Processing Equipment and Stockpiles. Processing equipment (including dryers, washers, and screeners) and stockpiles within 500 feet of any R or B district shall be enclosed by a structure. Stockpiles greater than 500 feet from an R or B district and undisturbed for more than one week shall be covered.

Setback. All structures housing processing equipment and stockpiles shall be located a minimum of 500' from a residential property.

Stockpile Watering. Uncovered stockpiles shall be watered regularly to prevent surface areas from drying out and becoming susceptible to wind erosion.

Hours of Operation. Hours of operation for truck traffic and equipment/ machinery with back-up alarms shall be limited to 7 a.m. — 7 p.m.

Landscaping and Screening. Sufficient landscaping and screening, including but not limited to fences, walls and/or vegetative screens, as approved by the City of Winona, shall be provided to mitigate visual impacts of operation on adjacent properties.

Contact Information. Facility operators shall provide current contact information to the City of Winona to facilitate response to concerns.

Permits and Reports Obtained and Placed on File. Any applicable state or federal permits shall be obtained and placed on file with the City of Winona. Any reports generated to fulfill permit requirements shall be submitted to the City of Winona. Use Specific Standards for Accessory Uses

E) ACCESSORY BUILDING

- 1) Generally. An accessory building may be erected detached from the principal building or, except when a stable, may be erected as an integral part of the principal building or may be connected therewith by a breezeway or similar structure. Except as provided in Section 43.53(f) and (g), No accessory building shall be erected in any required front or side yard or court, except a rear yard, and shall occupy more than 15 percent of a required rear yard.

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- 2) ~~Corner Lots. In any R district, where a corner lot adjoins in the rear a lot fronting on the side street and located in an R district, no part of an accessory building on such corner lot within 25 feet of the common lot line shall be nearer a side street lot line than the least depth of the front yard required along such side street for a dwelling on such adjoining lot. In no case shall any part of such accessory buildings shall~~ be nearer to the side street lot line than ~~the least width of the side yard required for~~ the principal building to which it is necessary.
- 3) ~~Front Setback. No accessory use or structure in any R district, except an off-street parking area subject to the provisions of article V, shall be permitted nearer to any front lot line than 60 feet, unless such use or structure is contained within or constitutes an integral part of the main building; provided, that in case of a corner lot where the board approved the choice by the owner of the longer street lot line as the front lot line, this requirement shall apply only to the distance of an accessory building from the shorter street lot line.~~
- 4) Yard Requirements. Except as provided in Section 43.53(a) through (e), an accessory building, if ~~not located in the rear~~located in a front or side yard, shall be an integral part of or connected with the principal building to which it is accessory and shall be so placed as to meet all yard and court requirements for a the principal building of the same height and other dimensions as such accessory building.
- 5) Not to be Built Prior to Construction of Main Building. In any R district no accessory building or structure shall be erected or constructed prior to the erection or construction of the principal or main building. (08-17-59)
- 5)6) GARAGE DOORS. Every garage building or portion of a main building used for garage purposes shall be so equipped that the doors when open or being opened will not project beyond any lot line of the lot on which such building is located. When such doors open to an alley the wall or portion thereof containing such doors shall be at least 6 feet from the line forming the common boundary between such lot and the alley. (08-17-59)

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F) ACCESSORY DWELLING UNIT (ADU)

- 1) One ADU is permitted per lot.
- 2) Lot must be a minimum of 7,000 square feet to accommodate an ADU.
- 3) An ADU shall not have more than 800 square feet of usable floor area.
- 4) An ADU must be detached from the primary structure.
- 5) An ADU shall only be located in a rear yard
- 6) The maximum occupancy of an ADU is two (2) persons.
- 7) One off-street parking space shall be provided for the ADU in addition to any parking required for the primary dwelling.
- 8) An ADU shall be inspected and certified for rental by the City of Winona.
- 9) The primary dwelling shall be owner occupied at all times. In accordance, the primary structure shall not be certified for rental.
- 10) Use is not subject to the 30% Rental Housing Rule.
- 11) An ADU shall be connected to all utilities available to the lot including sewer, water, and electric. The utility connections shall be permanent (non-temporary).

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G) BILLBOARD OR OUTDOOR ADVERTISING, OFF-PREMISE SIGN

- 1) Display signs, billboards and other outdoor advertising signs and structures subject to the provisions of Section 43.43.

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F)H) CONSTRUCTION SITE HOME

- 1) A construction site home may be located at or immediately adjoining a major construction or demolition site. The occupancy of such use shall be concurrent with the building permit of the project, and shall be removed upon completion of the project. Such homes may be located upon either temporary or permanent foundations.

G)I) DETACHED HEATING SYSTEM

- 1) Permit Required. No person shall allow, maintain or use any detached heating system in the City of Winona without first obtaining a mechanical permit for the installation/operation of said appliance. The permit will be issued to install only new "listed" appliances. All detached heating systems are to meet emission standards currently required by the Environmental Protection Agency (EPA) and the Underwriters Laboratories (UL) listing. This documentation must be provided to the Building Inspector at the time the Permit Application is made.
- 2) Compliance Requirements. Any existing detached heating system shall immediately comply with all manufacturer's requirements and appropriate fuel requirements. Any person having installed a detached heating system without a mechanical permit must obtain a permit and conform to the requirements of this section within 60 days of adoption. Detached heating systems without a mechanical permit that do not conform to the requirements of this section shall be removed within 60 days of adoption. Detached heating systems installed with a mechanical permit shall comply as closely as possible with the requirements of this section. Legal non-conforming detached heating system shall not be replaced once it is no longer operational.
- 3) Location.
  - a) No detached heating system shall be located in a front or street yard. The intended location shall be behind the rear building line of the principal structure served by the appliance.
  - b) Setbacks shall be as follows: Side and rear yard setbacks shall be not less than 150 feet to the lot line.
  - c) Distance to buildings served by the appliance shall be per the manufacturer's installation instructions.
  - d) Distance to any structures of adjoining properties not served by the appliance, and related stack heights, will be as follows:
    - i. 150-250 feet away from adjoining property structure: stack height to meet or exceed the peak line of the residence plus two feet.
    - ii. 250 feet away from adjoining property structure: 20 foot minimum stack height measured from the adjoining grade to the appliance. The minimum chimney height shall be 20 feet unless a greater height is required by the above requirements.
    - iii. Stacks shall be designed, constructed and maintained to withstand horizontal wind pressures of not less than 30 pounds per square feet.
- 4) Operation of Detached Heating System.

- a) Installation.
    - i. All detached heating systems shall be installed, operated and maintained in strict conformance with the manufacturer's instructions and the regulations promulgated hereunder. In the event of a conflict, the regulations promulgated hereunder shall apply unless the manufacturer's instructions are stricter than the regulations promulgated hereunder, in which case the manufacturer's instructions shall apply.
    - ii. The heating appliance shall be installed on a concrete slab that extends a minimum of 2 feet past the rear and sides of the appliance and shall provide a minimum 5 foot by 5 foot area at the loading end of the appliance.
  - b) Fuel. Fuel shall be only natural untreated dry wood or wood specifically permitted by the manufacturer or other fuels listed by the manufacturer of the unit. Notwithstanding the foregoing following fuels are strictly prohibited:
    - i. The burning of processed wood products and other non-wood products, including but not limited to pallet lumber.
    - ii. Kerosene
    - iii. Garbage/Trash
    - iv. Painted wood and/or any "treated" wood
    - v. Any other item not specifically allowed by the manufacturer or this provision.
- 5) Enforcement/Penalties. Any person violating any provision of this section, including the operation of a detached heating system without a permit, shall be guilty of a misdemeanor. Every twenty-four (24) hours of continued unauthorized or illegal use after the initial citation may be cited as a separate occurrence. Any enforcement officer with citation powers may issue the citation for the offense.

#### HJJ HOME OCCUPATIONS

- 1) Professional Offices. The office or studio in the residence of a physician, dentist, artist, lawyer, planner, engineer, teacher, minister, architect, cosmetologist, barber, daycare provider, or other member of a recognized service profession, but not including schools of any kind with organized classes or similar activity provided that:
  - a) Not more than one person, not a resident of the premises, is employed.
  - b) The use is established in accordance with applicable local and state licensing requirements.
  - c) Exclusive of licensed daycare facilities, the use shall be designed to serve no more than one client at a time.
  - d) Exclusive of licensed daycare facilities, not more than one half of the floor area of one floor of the principal dwelling shall be devoted to the use.
- 2) Home Occupations. Customary home occupations, such as handicrafts, dressmaking, millinery, laundry, preserving and home cooking; provided, that such occupations shall be conducted exclusively by resident occupants, and that no more than one quarter of the area of one floor of the dwelling shall be used for such purpose.  
In addition to the previous, the following standards shall be applicable to all professional office or home occupation uses:

- a) No structural alteration or constructions involving features not customarily found in dwellings shall be made.
- b) One unlighted sign with a maximum area of two square feet in area and attached flat against the building shall be permitted.
- c) No mechanical or electric equipment shall be used which will interfere with TV or radio reception or affect the health and safety of residents of the area.
- d) The use shall not emit any noise, air pollution, fumes, or odors, which are customary for a residence.
- e) The use shall not generate or dispose of any liquid effluent other than household waste.
- f) If not connected to public sewers, the use shall not generate waste exceeding the design standards for residential use under current building codes for new construction.
- g) The use shall not include the outside storage of supplies, materials, or equipment.

~~I) MICROWAVE RECEIVING DISH~~

~~J) A ground mounted receiving dish, which is not supported by a building, may be located within any rear or side yard area provided, that the receiving dish shall meet the yard and height requirements for accessory structures in the zoning district in which it is located. In the case of corner lots, the provisions of 43.53(d) and 43.53(e) shall also apply.~~

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~~K) A receiving dish mounted on, or supported by, a principal or accessory building shall meet the yard and height requirements for principal or accessory building in the zoning district in which it is located.~~

~~L) Any receiving dish which is to be mounted to or supported by any principal or accessory building shall be inspected by the Building Official. An application for such an inspection shall be made at the City Building Inspection Division and shall be accompanied by sufficient information to ensure compliance with applicable local and state codes. An inspection fee, as set forth in Section 51.01, shall be paid at the time of application. When building alterations are required, the applicable building permit shall also be obtained.~~

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~~M) Any receiving dish constructed or erected prior to adoption of this ordinance, but which does not conform in all respects to it, is declared to be a nonconforming use. Such a use may continue provided:~~

~~N) The receiving dish is registered with the Zoning Administrator within sixty (60) days after adoption of this section.~~

~~O)K) Any receiving dish attached to, or supported by, a principal or accessory building shall be inspected to ensure that the installation complies with applicable building codes. In these cases, an inspection fee shall not be required, however, when building alterations are required, the applicable building permit shall be obtained. If required, such alterations shall commence within ninety (90) days after the inspection.~~ SWIMMING POOL, PRIVATE

- 1) No private swimming pool, including a temporary swimming pool, shall be allowed in any district, except as an accessory use and unless it complies with the conditions and requirements set out in this section.
- 2) Temporary swimming pools are only to occupy yards from May 1 to September 30. No such pool should be allowed in any district except as an accessory use and then only if it meets the conditions and requirements that follow below.

- 3) Exclusive Private Use. Temporary and permanent private swimming pools are intended and are to be used solely for the enjoyment of the occupants of the principal use of the property on which they are located and their guests.
- 4) Permit Requirements. ~~It shall be unlawful for any person to establish the presence of a permanent private swimming pool in their yard without first obtaining a permit.~~ All temporary pools as defined in ~~43.23.1.b~~ [Article 7](#) and pools shorter than 24 inches in depth are not required to obtain a permit. Any private swimming pool, ~~no matter its construction~~, that occupies a yard between October 1 and April 30 will be considered a permanent structure and shall be subject to ~~the permitting process~~ [a building permit](#).
- 5) Setback Requirements. Permanent private swimming pools and their adjoining decks may not be located closer than 10 feet to any property line; provided that pump and filter installations shall be located not closer than 20 feet to any property line. On corner lots, the side street setback for permanent private swimming pools or pool and deck shall be 25 feet unless the house is located closer than 25 feet to the side street property line. If the house is located closer than 25 feet to the side street property line, the side street setback shall be the same as the house located on the corner lot. Temporary private swimming pools are subject to side and rear yard accessory structure setback requirements ~~in sections 43.20 and Articles XIII and XIII.I of Chapter 43 of the City Code.~~ Pumps and filters associated with temporary pools shall be located not closer than 20 feet to any property line. No permanent or temporary private swimming pool shall be located in an easement.
- 6) Fencing. All permanent and temporary private swimming pools ~~less than 48 inches above the ground~~ are required to be enclosed by a permanent fence of at least 48 inches in height and not more than 72 inches in height. The fence shall be able to withstand 200 pounds of force in any direction. The bottom of the fence shall be no more than four inches off of the ground. Any gaps in the fence shall be no more than four inches. ~~Where the fence is chain link or composed of diagonal members, the maximum opening shall not be more than 2.5 inches. Any fence composed entirely of horizontal members, save for support beams, shall have a maximum gap of a half-inch between members. Permanent and temporary pools 48 inches or higher above the ground are not required to be fenced. If a ladder is used to access the water, such ladder shall be removed when the pool is not in use.~~
- 7) All gates on required fences shall be self-closing and self-latching with a latch on the inside of the gate, not readily available to children and in good repair. ~~The gate and fence shall have no opening greater than one-half inch within 18 inches of the release mechanism, which shall be located on the pool side of the gate at least three inches below the top of the gate.~~ Gates shall be able to be securely locked.
- 8) Above ground or partially sunken pools that are accessed by deck must be provided with a gate that meets the ~~same above~~ standards ~~and a guardrail~~. The guardrail around the pool must be at least 36 inches high above the deck surface and at least 48 inches high above the surrounding grade. ~~This Gaps in the guardrail must be provided with intermediate guardrails and any gaps between the guardrails and between the top of the pool structure and the bottom of the barrier shall be no more than four inches. The required fence must be erected prior to filling of the pool.~~
- 9) Exempt from the fencing requirement shall be ~~rented~~ hot tubs ~~that are present for a period of less than 48 hours. Such hot tubs shall have with~~ locking solid structural covers that shall be in place when the hot tub is not in use.

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~~7)10)~~ Yard Placement. Permanent and temporary private swimming pools are not permitted in front yards.

~~P)L)~~ VENDING MACHINES – RESIDENTIAL DISTRICTS

- 1) The sale or display of a product or commodity by vending machine shall be prohibited except by vending machines that are neither visible nor accessible to nonresidents of the property. This prohibition shall apply to any property or building, any portion of which is used for residential purposes.

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~~Division 5~~ **Division 2** **Form Based Design Standards**

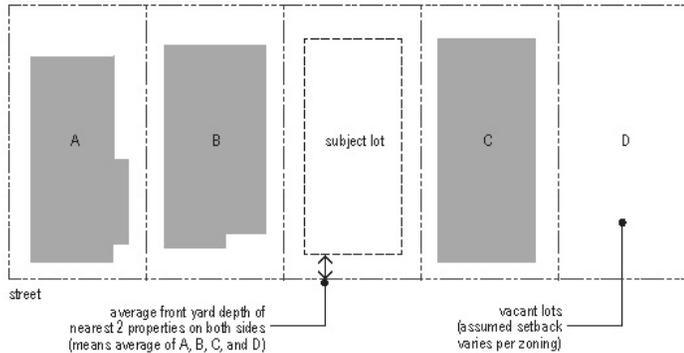
~~43.02.51~~ **43.03.21 Purpose and Applicability**

- A) Purpose. The purpose of the following form based design standards is to foster high-quality development and redevelopment that is compatible with the traditional character and scale of the city's historic downtown and residential neighborhoods.
- B) Applicability.
  - 1) The form based design standards established in Section 43.03.22 are required for all proposed new development, including construction, reconstruction, or structural alteration of a structure, subdivisions, and new land uses, for all use types when located in any Mixed Use District.
  - 2) The form based design standards established in Section 43.03.23 are required for all proposed new development, including construction, reconstruction, or structural alteration of a structure, subdivisions, and new land uses, for the following residential use types when located in any Residential District.
    - a) Dwelling, attached townhouse or rowhouse
    - b) Dwelling, apartment
    - c) Dwelling, apartment mixed use
- C) Determination. Conformance of proposed new development with these form based design standards shall be determined by the Zoning Administrator. Any appeal to the Zoning Administrator's determination shall be heard by the Board of Adjustment.

~~43.02.52~~ **43.03.22 Design Standards for All Mixed Use Districts**

- A) Building Siting Standards
  - ~~1)~~ Building Placement

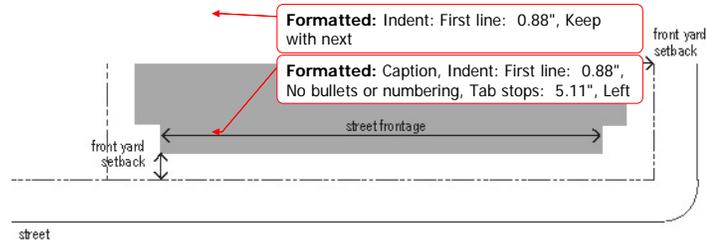
Figure 43-1: Average Front Yard Setback



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- 4) a) The maximum front yard setback of a new building/addition shall be based on the pattern of front yard setbacks of adjacent buildings on the same blockfront, which shall be calculated as the average of the front yard setbacks of adjacent buildings on the same blockfront. A new building/addition can be located closer to the front property line than this maximum front yard setback.

Figure 43-2: Building Placement Terminology



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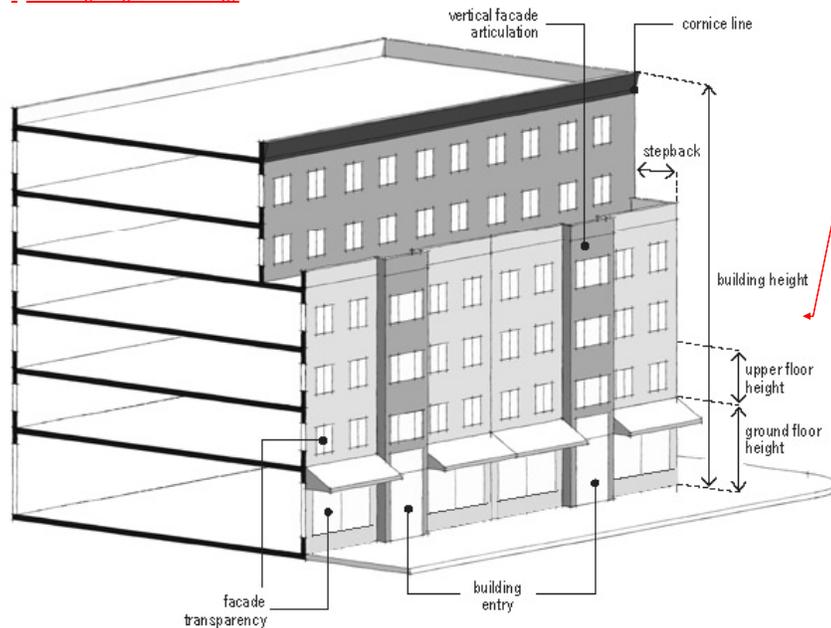
- a)
  - b) In any case, a new non-residential or mixed-use building/addition shall not have a front yard setback greater than 10 feet and a new residential building/addition shall not have a front yard setback greater than 20 feet.
  - c) In a historic district, a new building/addition shall be placed up to the front property line with no setback.
- 2) Building Street Frontage
  - a) On each lot, the minimum percentage of the street frontage that must be occupied by a building façade, as measured at the required maximum front yard setback, is 75%. The portion of a lot's front property line that does not have a building façade located at the maximum front yard setback, up to 25% of the lot's front property line, shall be designed and used for outdoor seating or dining, building entries, landscaping, or a mid-block pedestrian pathway. Recesses in a building façade do not qualify as meeting the minimum building street frontage standard. This standard applies to the front property line frontage and, for a corner lot, the exterior side property line frontage.
  - b) In a historic district, the minimum percentage is ~~90~~100%.
- 3) Off-Street Parking Location
  - a) Off-street surface parking shall not be allowed between a building and sidewalk.

- b) Parking entrances and exits shall be located on secondary streets or alleys, where possible.
- c) A parking structure shall meet all building siting, height, and facade standards.

B) Building Height Standards

1) Building Height

Figure 43-3: Building Height Terminology



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- a) A new non-residential building/addition shall have a minimum building height of 1.5 stories and a new mixed-use or residential building/addition shall have a minimum building height of 2 stories.
- b) A new building/addition shall not be more than one story taller or shorter than historic buildings on directly adjacent lots.
- c) A new building/addition that is more than one story taller than directly adjacent buildings (non-historic) shall incorporate a minimum 8 feet stepback for the stories that are more than one story above directly adjacent buildings.
- d) For an addition to a historic building, the cornice line on the principal façade of an addition shall be equal to or lower than the cornice line on the principal façade of the historic structure. Likewise, the roof ridge line on the principal façade of an addition shall be equal to or lower than the roof ridge line on the principal façade of the historic structure.

2) Ground Story Height

- a) A new building/addition shall have a minimum ground story height of 12 feet; minimum height for upper stories shall be 9 feet.

- b) For an addition to a historic building, ground/upper story heights shall be equal to or lower than the ground/upper story heights of the principal structure.

C) Building Façade Standards

1) Façade Horizontal Articulation/Divisions

- a) A building façade fronting on a public street, park, or plaza shall have an architectural feature at the top of the ground story and below the top story.
- b) A non-residential or mixed-use building façade fronting on a public street, park, or plaza shall have flat or low-slope roofs with a parapet or cornice cap; residential buildings are allowed to have a variety of roof types.



Upper Story Stepback – 2<sup>nd</sup> Story

2) Façade Vertical Articulation/Divisions

- a) Any ground story façade fronting on a public street, park, or plaza that exceeds 40 feet in width shall be visually divided into smaller sections through articulation of the façade. Articulation techniques include recesses or projections of the building façade, window bays, balconies, and changes in exterior materials.
- b) For upper stories, façade articulation shall occur for facades exceeding 80 feet in width.



Façade Horizontal Articulation/Divisions

3) Façade Transparency

- a) A ground story façade of a non-residential or mixed-use building fronting on a public street, park, or plaza shall have a minimum transparency of 60%; residential buildings shall have a minimum of 20%.
- b) Upper story facades fronting on a public street, park, or plaza shall have a minimum transparency of 20%.
- c) Side and rear facades shall have a minimum transparency of 12%.
- d) Tinted or reflective glass, and glass block, are prohibited for windows and doors on facades fronting on a public street, park, or plaza.



Façade Vertical Articulation/Divisions

- e) Blank wall areas fronting on a public street, park, or plaza shall not exceed a rectangular area greater than 30% of a story's façade, as measured from floor to floor, and shall not exceed a horizontal distance greater than 15 feet of a story's façade.



Façade Transparency

4) Façade Materials

- a) Dominant materials on a façade fronting on a public street, park, or plaza shall be masonry and other high



Façade Materials

quality, durable finish materials, such as brick, natural stone, textured concrete masonry units, wood and fiber cement siding.

b) Prohibited dominant materials on a façade fronting on a public street, park, or plaza are lower quality, less durable finish materials, such as exposed concrete, non-textured concrete masonry units, cement-based stucco, synthetic stucco or EIFS, glass block, metal, vinyl, and aluminum.

c) Accent materials allowed on a façade fronting on a public street, park, or plaza include dominant façade materials, as well as other high quality materials, such as glass, metal, and decorative tile.

e)d) The façade materials standards above shall apply to all facades of buildings that are three (3) stories and taller.

5) Building Entries

a) A prominent entry is required on the primary building façade on a façade fronting on a public street, park, or plaza.



Upper Story Stepback – 5<sup>th</sup> Story



Façade Materials Façade Transparency

43.02.5343.03.23 Design Standards for All Residential Districts

A) Building Siting Standards

1) Front Yard Setback

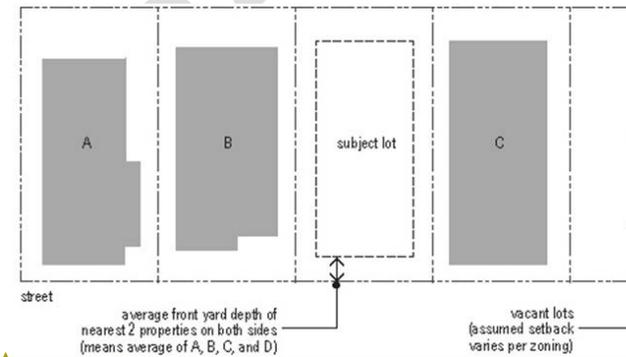
a) The minimum front yard setback of a new building/addition shall be based on the pattern of front yard setbacks of adjacent buildings on the same blockfront, which shall be calculated as the average of the front yard setbacks of adjacent buildings on the same blockfront, as displayed in Figure 43-1.



Building Entries

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Building Siting



Building Vertical Articulation

B) Building Height Standards

1) Upper Stories Stepback

~~a)~~ New buildings/additions that are more than one story taller than adjacent buildings shall incorporate a minimum 8 feet stepback for the stories that are more than one story above adjacent buildings.

~~a)~~

C) Building Façade Standards

1) Façade Horizontal Articulation/Divisions

a) A building façade fronting on a public street, park, or plaza shall have an architectural feature at the top of the ground story and below the top story.

2) Façade Vertical Articulation/Divisions

a) A ground story façade fronting on a public street, park, or plaza that exceeds 40 feet in width shall be visually divided into smaller sections through articulation of the façade. Articulation techniques include recesses or projections of the building façade, window bays, balconies, and changes in exterior materials.

b) For upper stories, façade articulation shall occur for façades exceeding 80 feet in width.

3) Façade Transparency

a) A residential building façade fronting on a public street, park, or plaza shall have a minimum transparency of 20%.

b) Side and rear façades shall have a minimum transparency of 12%.

c) Blank wall areas fronting on a public street, park, or plaza shall not exceed a rectangular area greater than 30% of a story's façade, as measured from floor to floor, and shall not exceed a horizontal distance greater than 15 feet of a story's façade.

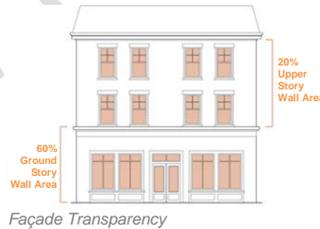
4) Façade Materials

a) Dominant materials on a façade fronting on a public street, park, or plaza shall be masonry and other high quality, durable finish materials, such as brick, natural stone, textured concrete masonry units, wood and fiber cement siding.

b) Prohibited dominant materials on a façade fronting on a public street, park, or plaza are lower quality, less durable finish materials, such as exposed concrete, non-textured concrete masonry units, cement-based stucco, synthetic stucco or EIFS, glass block, metal, vinyl, and aluminum.

c) Accent materials allowed on a façade fronting on a public street, park, or plaza include dominant façade materials, as well as other high quality materials, such as glass, metal, and decorative tile.

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e)d) [The façade materials standards above shall apply to all facades of buildings that are three \(3\) stories and taller.](#)

5) Building Entries

- a) A prominent entry is required on any building façade fronting on a public street, park, or plaza.

#### **43.03.24 Historic District Design Guidelines**

[A\) A new building or addition within a historic district shall be in substantial conformance with the New Construction Design Guidelines established in the city's Historic District Design Guidelines document. Development proposals will be reviewed as part of the Site Plan and Certificate of Appropriateness processes for conformance with the City Codes and the Historic District Design Guidelines.](#)

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### **Division 6 Division 3 Parking, Loading, and Circulation**

#### **43.02.6443.03.31 General Provisions**

- A) When Required. In all districts, in connection with every industrial, business, institutional, recreational, residential or other use, there shall be provided at the time any building or structure is erected or is enlarged or increased in capacity, off-street parking spaces for automobiles in accordance with the requirements herein.
- B) Off-Street Parking Plan. In order to obtain a building permit for creation of any residential structure or conversion to a greater number of dwelling units in a residential structure, an off-street parking plan shall be submitted to the Zoning Administrator.
- C) Modifications. The board may authorize, on appeal, a modification, reduction or waiver of the foregoing requirements, if it should find that, in the particular case appealed, the peculiar nature of the residential, business, trade, industrial or other use or the exceptional shape or size of the property or other exceptional situation or condition, would justify such action.
- D) Units of Measurement. For purposes of this article the following units of measurement shall apply:
- 1) Floor area: In the case of offices, merchandising or service types of uses, "floor area" shall mean the gross floor area used or intended to be used by tenants, or for service to the public as customers, patrons, clients or patients, including areas occupied by fixtures and equipment used for display or sale of merchandise. It shall not include areas used principally for nonpublic purposes, such as storage, incidental repair, processing or packaging of merchandise, for show windows, for offices, incidental to the management or maintenance of stores or buildings, for toilet or rest rooms, for utilities or for dressing rooms, fitting or alteration rooms.
  - 2) Hospital bassinets: In hospitals, bassinets shall not be counted as beds.
  - 3) Places of public assembly, benches, etc.: In stadiums, sports arenas, churches and other places of public assembly in which patrons or spectators occupy benches, pews or other seating facilities, each 20 inches of such seating facilities shall be counted as one seat for the purpose of determining requirements for off-street parking facilities under this chapter.
  - 4) Fractions: When units of measurements determining number of required parking spaces result in requirement of a fractional space, required parking shall be of the next highest whole number.

- E) Mixed Occupancies and Uses Not Specified. In the case of mixed uses, the total requirements for off-street parking facilities shall be the sum of the requirements for the various uses computed separately. In the case of a use not specifically mentioned in Section 43.03.32, the requirements for off-street parking facilities for a use which is so mentioned, and to which such use is similar, shall apply. Off-street parking facilities for one use shall not be considered as providing required parking facilities for any other use, except as specified for joint use in Section 43.03.31(E).
- F) Collective Provision of Parking Space. Nothing in this article shall be construed to prevent collective provision of off-street parking facilities for 2 or more buildings or uses; provided, that the total of such off-street parking spaces supplied collectively shall not be less than the sum of the requirements for the various uses computed separately; provided also, that the requirements set forth in Section 43.03.31(E) as to maximum distances between parking areas and establishments served shall apply to each such establishment participating in the collective provisions of parking.
- G) Joint Use of Facilities.
  - 1) Not more than 50 percent of the off-street parking facilities required under this article for a theatre, bowling alley, dance ball, or an establishment for the sale and consumption on the premises of food, alcoholic beverages or refreshments, and up to 100 percent of such facilities required for a church or an auditorium incidental to a public or parochial school may be supplied by off-street parking facilities provided for certain other kinds of buildings or uses specified in paragraph (2) below, which are not normally open, used or operated during the principal operating hours of theatres, churches, or the aforesaid establishments. Not more than 50 percent of the off-street parking facilities required under this article for certain buildings or uses specified in paragraph (2) below may be supplied by such facilities provided for theatres, churches or other aforesaid establishments; provided, that a properly drawn legal instrument is executed by the parties concerned for the joint use of the off-street parking facilities, which instrument, duly approved as to form and manner of execution by the city attorney, shall be filed with the application for a building permit.
  - 2) Buildings or uses not normally open, used or operated during the principal operating hours of theatres, churches, or other of the aforesaid establishments are defined as banks, business offices, retail stores, personal service shops, household equipment or furniture shops, clothing or shoe repair or service shops, manufacturing buildings and similar uses.

~~43.02.62~~ 43.03.32 Required Parking Spaces

A) Number of Off-Street Parking Spaces Required. The minimum number of off-street parking spaces required by use under this article shall be as follows: ~~Table 43.36: Number of Off-Street Parking Spaces Required~~

Table 43-17: Number of Off-Street Parking Spaces Required

Use	Parking Spaces Required
<u>Assisted living facility</u>	<u>0.5 for each unit plus 1 for each employee on maximum shift</u>
Automobile or machinery sales and service garages	1 for each 800 sq. ft. floor area
Banks, business and professional offices	1 for each 400 sq. ft. floor area
Bowling alleys	5 for each alley
Churches and schools	1 for each 8 seats in an auditorium or one for each 17 classroom seats; whichever is greater
College/University Housing	1 space per resident
Dance halls and assembly halls without fixed seats,	1 for each 100 sq. ft. of floor area used for assembly

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**Table 43-17: Number of Off-Street Parking Spaces Required**

Use	Parking Spaces Required
exhibition halls except church assembly rooms in conjunction with auditorium	or dancing
Dwellings	2 for each family or dwelling unit
Funeral homes, mortuaries	4 for each parlor or 1 for each 50 sq. ft. of floor area
Furniture and appliance stores, household equipment or furniture repair shop over 1,000 sq. ft. floor area	1 for each 400 sq. ft. of floor area
Hospitals	1 for each 2 beds
Hotels, motels and motor hotels	1 for each living or sleeping unit
Libraries, museums or art galleries	1 for each 500 sq. ft. of area
Lodging houses, roominghouses, fraternities and sororities	1 space per person certified as established by the Housing Code
Manufacturing plants, research or testing laboratories, bottling plants, over 1,000 sq. ft. in area	1 for each 3 employees in the maximum working shift, or 1,200 sq. ft. of floor area, whichever is greater
Medical or dental clinics	1 for each 200 sq. ft. of floor area
Restaurants, beer parlors and night clubs, of over 1,000 sq. ft. in area	1 for each 200 sq. ft. of floor area
Retail stores, shops, etc., of over 2,000 sq. ft. floor area	1 for each 450-250 sq. ft. of floor area
Roominghouse	1 for each unit
Sanitariums, convalescent homes children's homes Long-term or transitional care facility and residential care facility	1 for each 6 beds
Sports arenas, auditoriums, theaters, assembly halls other than schools	1 for each 6 seats
Wholesale establishments or warehouses	1 for each 3 employees on maximum shift or for each 3,000 sq. ft. of floor area, whichever is greater

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A) In the MU-DC and MU-DF districts, the following uses shall have alternative minimum off-street parking space requirements from those established in Table 43-17 Table above:

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- 1) All commercial uses – none required.
- 2) Dwelling, attached rowhouse or townhouse - 1 for each dwelling unit.
- 3) Dwelling, apartment - 1 for each dwelling unit
- 4) Dwelling, apartment mixed use – 1 for each dwelling unit above four units.

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C) Parking Credit for MU-DC and MU-DF districts. The number of off-street parking spaces provided for a building in the MU-DC and MU-DF districts constructed prior to June 2017 shall satisfy the requirement of this section for any use that is determined to be retail sales; personal services; business or technical services; or similar use, as determined by Staff. When such structure is reconstructed, enlarged, structurally altered, changed in occupancy to a more intensive use category or otherwise increased in capacity, off-street parking shall be provided for that portion of the structure or use constituting the increase in capacity. Notwithstanding the provisions above, any parking areas now serving such existing buildings shall not be reduced below the requirements established in this section in the future.

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D) In the MU-N district, the following uses shall have alternative minimum off-street parking space requirements from those established in Table 43-17 Table above:

- B)1) All uses classified as household living residential in Table 43-17 Table 1 for each dwelling unit.

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~~C)E)~~ In the case of any building, structure or premise, the use of which is not specifically mentioned herein, the provisions for a use which is so mentioned and to which such use is similar, shall apply.

#### ~~43.02.63~~43.03.33 Location

- A) Every parcel of land hereafter used as a public or private parking area, including a commercial parking lot and also an automobile or trailer sales lot, shall be developed and maintained in accordance with the following requirements:
- 1) Type of Use. Parking spaces for all types of uses may be provided either in garages or parking areas conforming to the provisions of this chapter.
  - 2) Location. Off-street parking facilities shall be located as hereinafter specified. Where a distance is specified, such distance shall be the walking distance measured from the nearest point of the parking facility to the nearest point of the building that such facility is required to serve:
    - a) One ~~and two~~ four (1-4) family dwellings. On the same lot with the building they are required to serve.
    - ~~b) Multiple dwellings, attached townhouse or rowhouse or apartment.~~ On the same lot as, not more than 200 feet from the building they are required to serve.
    - ~~b)c) Residential uses in the MU-DC and MU-DF districts. Not more than 300 feet from the building they are intended to serve, provided that off-site parking shall be under the same ownership or subject to a recorded parking easement.~~
    - ~~e)d) Commercial and public/institutional uses. For uses located and first permitted in the B-1, B-2, and B-3 districts and for hospitals, sanitariums, asylums, orphanages, rooming houses, lodging houses, clubrooms, fraternity and sorority houses, and theme houses, not more than 300 feet from the building they are required to serve, provided that off-site parking shall be under the same ownership or subject to a recorded parking easement.~~
    - ~~e)e) Other uses. For u) Uses other than those specified heretofore, n) Not more than 300 feet from the building they are intended to serve, provided that off-site parking shall be under the same ownership or subject to a recorded parking easement.~~
  - 3) Front Yard Location. In no case shall parking or hard or gravel surfacing for parking be located within five feet of the public right-of-way, not including alleys, other than the driveway. In any R district and on any property used primarily for residential use, off-street parking spaces shall not be located within any required front yard or side yard adjacent to the public right-of-way other than the driveway.

#### ~~43.02.64~~43.03.34 Design and Maintenance Standards

- A) Every parcel of land hereafter used as a public or private parking area, including a commercial parking lot and also an automobile or trailer sales lot, shall be developed and maintained in accordance with the following requirements:
- 1) Parking Space and Vehicle Aisle Dimensions.
    - a) All parking spaces must comply with the minimum space dimensions stated in **Table 43.37 (1)**, save for compact car spaces, which must comply with the minimum dimensions stated in **Table 43.37 (2)**.

- b) Smaller parking spaces for compact cars are allowed only on parking lots that consist of 10 or more off-street parking spaces. These parking spaces must comply with the minimum dimensions for spaces stated in **Table 43.37 (2)**. No more than 20 percent of the required off-street parking spaces shall be designated for compact cars. All compact car spaces shall be clearly identified with signs. When computing the number of permitted compact car spaces results in a fractional number, the number of permitted compact car spaces shall be rounded to the next lowest number.
- c) If the degree of parking angle provided is not listed in **Table 43.37 (1)** or **Table 43.37 (2)**, the aisle width shall be based on the next largest parking angle shown in **Table 43.37 (1)** or **Table 43.37 (2)**. In circumstances in which a strict application would result in unnecessary practical difficulties, the Board of Adjustment may, after notice and hearing, authorize such specific, limited exceptions to the below tables of dimensions as it shall find warranted and consistent with:
  - i. Protecting landscaping features; and

— Adequate space for maneuvering of trucks, vans and full-size passenger vehicles. No exceptions shall be allowed for any other feature of these off-street parking rules.

ii.

- d) No exceptions shall be allowed for any other feature of these off-street rules. **Table 43.37 (1): Full-Sized Vehicles Parking Space and Aisle Requirements**

**Table 43-18: Full-Sized Vehicles Parking Space and Aisle Requirements**

Parking Angle	0°	20°	30°	40°	45°	50°	60°	70°	80°	90°
Curb Length per Space	N/A	26.3'	18.0'	14.0'	12.7'	11.7'	10.4'	9.6'	9.1'	9.0'
Space Depth	9.0'	15.0'	17.3'	19.1'	19.8'	20.3'	21.0'	21.0'	20.3'	19.0'
Access Aisle Width	12.0'	12.0'	12.0'	12.0'	13.0'	15.0'	18.0'	19.0'	24.0'	24.0'
Space Width	9.0'	9.0'	9.0'	9.0'	9.0'	9.0'	9.0'	9.0'	9.0'	9.0'

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**Table 43.37 (2): Compact Vehicles Parking Space and Aisle Requirements**

**Table 43-19: Compact Vehicles Parking Space and Aisle Requirements**

Parking Angle	0°	20°	30°	40°	45°	50°	60°	70°	80°	90°
Curb Length per Space	N/A	23.4'	16.0'	12.4'	11.3'	10.4'	9.2'	9.5'	8.1'	8.0'
Space Depth	8.0'	13.0'	14.9'	16.4'	17.0'	17.4'	17.9'	17.8'	17.1'	16.0'
Access Aisle Width	12.0'	12.0'	12.0'	12.0'	13.0'	15.0'	18.0'	19.0'	24.0'	24.0'
Space Width	8.0'	8.0'	8.0'	8.0'	8.0'	8.0'	8.0'	8.0'	8.0'	8.0'

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- 2) Access. There shall be adequate provision for ingress and egress to all required parking spaces. Where a lot does not abut on a street or alley, there shall be provided an access drive not less than 8 feet in width in the case of a one family dwelling, equaling widths called for in **Table 43-16 and Table 43-17 Tables 43.37 (1) and (2)** in all other cases for parking, and 18 feet leading to the storage areas or loading or unloading spaces required by this section in such manner as to secure the most appropriate development of the property in question. Easements of access or access drives to a use in a nonresidential district shall not be located within a residential district.

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- 3) ~~Screening and Landscaping. Off-street parking areas for more than 3 vehicles shall be effectively screened on each side which adjoins or faces premises situated in any R district or institutional premises by a masonry wall or solid fence of acceptable design. Such wall or fence shall be not less than 4 feet or more than 6 feet in height and shall be maintained in good condition and the area between such wall or fence and the nearest side lot line or the front lot line, shall be landscaped with grass, hardy shrubs or evergreen ground cover and maintained in good condition.~~
- 4) Surfacing.
- a) Any off-street parking area or driveway shall be surfaced with an asphaltic or Portland cement binder pavement so as to provide a durable surface, shall be so graded and drained as to dispose of all surface water accumulated within the area and shall be so arranged and marked as to provide for orderly and safe loading or unloading and parking and storage of self-propelled vehicles. The foregoing requirements with respect to surfacing shall not apply to a parking area in an M district if more than 200 feet from any R district or a residential unit with eight or fewer spaces, provided that no part of the driveway or parking area is within three feet of a neighboring property line and provided that in all cases, such parking areas and driveways shall be covered with at least a six- inch depth of class 5 aggregate and shall be reasonably maintained in such a manner so as to not constitute a nuisance pursuant to Section 32.01 (b).
- b) Notwithstanding the foregoing, the use of any off-street parking area or driveway that has not been hard surfaced as of February 24, 2006, shall be permitted as a non- conforming use, provided that such area shall meet the above stated requirements for gravel.
- 5) ~~Lighting. Any lighting used to illuminate any off-street parking area shall be so arranged as to reflect the light away from adjoining premises in any R district.~~
- 6) Rear Yard Coverage. In R districts, a maximum of 50 percent of the rear yard on a residential lot shall be used for parking, which does not include any garage or vehicle maneuvering area. However any residence shall be allowed three parking spaces regardless of the proportion of the rear yard they occupy. All spaces must meet the parking lot size requirement in 43.03.34 (1).
- 7) Driveway Approaches. All properties shall conform to the regulations hereinafter specified and in sections (g) and (h) above.
- a) Anyone wishing to create a driveway approach shall apply to the Engineering Department to obtain a permit.
- b) Residential properties with public alley access that house one to four residential units shall not be permitted to have a driveway approach.
- c) Residential properties without public alley access that house one to four residential units shall be permitted one driveway approach.
- d) Residential properties housing more than four residential units and non-residential properties shall be permitted one driveway approach for each lineal 150 feet or fraction thereof of public right-of-way frontage.
- e) Driveways shall lead directly to a garage opening or parking area that conforms to the provisions of Section 43.03.34.

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- 8) Parking Lots and Loading Areas. Parking lots shall be desired to avoid creating large open expanses of paving; parking lots and loading areas shall be designed to avoid the problem of vehicles backing onto streets, alleys and, sidewalks; vehicular traffic flow to, from and within the land containing a parking lot shall be controlled by appropriate traffic-control signs and surface markings; adequate provision shall be made for vehicle egress from the land to the street and ingress to the land; provision shall be made for a safe and convenient circulation pattern within any parking lot consistent with vehicular and pedestrian safety; curb cut radii shall allow safe ingress and egress of vehicles from and to the proper lane of traffic on the street which they adjoin; existing curb cuts and curb cut radii shall be used only if they comply with the standards for proposed curb cuts and curb cut radii; vehicular bumper guards or wheel stops shall be provided to prevent encroachment of vehicles on sidewalks.

#### ~~43.02.65~~43.03.35 Off-Street Loading Standards

- A) When Required. In any district, in connection with every building or part thereof hereafter erected and having a gross floor area of 10,000 square feet or more, which is to be occupied by manufacturing, storage, warehouse, goods display, retail store, wholesale store, market, hotel, hospital, mortuary, laundry, dry cleaning or other uses similarly requiring the receipt or distribution by vehicles of material or merchandise, there shall be provided and maintained, on the same lot with such building, at least one off-street loading space plus one additional such loading space for each 20,000 square feet or major fraction thereof of gross floor area so used in excess of 20,000 square feet.
- B) Size. Each loading space shall not be less than 10 feet in width, 25 feet in length and 14 feet in height.
- C) In Yards. Subject to the limitations in the following section, no off-street loading space shall be permitted within a required front yard or in any required side yard which faces or adjoins a residential district.
- D) Distance from R Districts. No off-street loading space, maneuvering area, access aisle or drive shall be located closer than 50 feet to any lot located in any R district, unless effectively screened from the residential district by a wall or uniformly painted solid board fence not less than 6 feet in height.
- E) Required Surfacing. Requirements shall be the same as required under Section 43.03.34(4).
- F) ~~Lighting. Requirements shall be the same as required under Section 43.03.34(i).~~

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#### ~~Division 7~~Division 4 Landscaping

##### ~~43.02.74~~43.03.41 Applicability

- A) The standards of this Division shall apply to all uses, except dwellings with four (4) or less units, that contain a primary structure in all zones, except I-1, I-2, and AG, when any of the following conditions occur:
- 1) A new principal structure is constructed;
  - 2) The floor area in an existing principal structure(s), taken collectively, is increased by more than 25 percent;
  - 3) An existing primary structure is relocated on the lot or parcel;

- ~~4)4)~~ The principal structure is renovated or redeveloped and the value of that renovation or redevelopment is 25 percent or more of the pre-application assessor's market value of the principal structure.

**43.02.7243.03.42 Landscaping Standards**

- A) Landscaping. All sites shall be landscaped as approved by the Department of Community Development; existing trees shall be preserved where possible; surfaces denuded of vegetation shall be appropriately landscaped or surfaced to prevent soil erosion.
- B) Off-Street Parking Area Landscaping. The area between such wall or fence and the nearest side lot line or the front lot line, shall be landscaped with grass, hardy shrubs or evergreen ground cover and maintained in good condition.

**Division 5 Screening, Walls, and Fences**

**43.02.8143.03.51 Applicability**

- A) The standards of this Division shall apply to all uses, except dwellings with four (4) or less units, that contain a primary structure in all zones, except I-1, I-2, and AG, when any of the following conditions occur:
  - 1) A new principal structure is constructed;
  - 2) The floor area in an existing principal structure(s), taken collectively, is increased by more than 25 percent;
  - 3) An existing primary structure is relocated on the lot or parcel;
  - 4) The principal structure is renovated or redeveloped and the value of that renovation or redevelopment is 25 percent or more of the pre-application assessor's market value of the principal structure.

**43.02.8243.03.52 Screening, Walls, and Fences Standards**

- A) Light Glare from Vehicles. When an off-street parking lot adjoins a residential area, provisions shall be made to screen all vehicle lights to curtail direct illumination of the residential area.
- B) Off-Street Parking and Loading Area Screening and Landscaping. Off-street parking areas for more than 3 vehicles and loading areas shall be effectively screened on each side which adjoins or faces premises situated in any R district or institutional premises by a masonry wall, or solid decorative fence of acceptable design (not chain link), hedge, or berm, or a combination thereof.
  - 1) Such wall or fence screening shall be not less than 4 three (3) feet or and not more than 6 four (4) feet in height and shall be maintained in good condition.
  - 2) Screening shall not be less than fifty (50) percent opaque.
  - B)3) Benches, bike racks, transit shelters, or similar features may be integrated as part of the screening as approved by the Zoning Administrator.
- C) Traffic Visibility across Corner Lots. In any R-district on any corner lot, no fence, structure or planting more than two feet in height above the grade measured at the line between the property and the right-of-way shall be erected or maintained within the triangular area of a corner parcel enclosing an isosceles triangle scribed by two eight (8)-foot legs extending each way from the intersection of right-of-way lines. An exception is that fences shall be allowed up to four feet in height so long as they do

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not obstruct more than ten percent of the "through vision" and have no posts with diameters greater than three and one-half inches. Any fence between two and four feet in height to be placed within the triangular area scribed by two eight (8)-foot legs extending each way from the intersection of right-of-way lines shall need to be approved by the Zoning Administrator.

- D) ~~Rubbish, garbage, Service, trash, and~~ storage ~~and burning~~ areas. Outside ~~rubbish, garbage, storage and burning~~ ~~service, trash, and storage~~ areas shall be permanently screened from view by a wall or fence to a height of six (6) feet, constructed of materials compatible with the principal building, and ~~shall be~~ constructed to prevent accidental dispersal of the materials contained therein.

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### ~~Division 9~~Division 6 Exterior Lighting

#### ~~43.02.91~~43.03.61 Applicability

A) The standards of this Division shall apply to all uses, except dwellings with four (4) or less units, that contain a primary structure in all zones, except I-1, I-2, and AG, when any of the following conditions occur:

- 1) A new principal structure is constructed;
- 2) The floor area in an existing principal structure(s), taken collectively, is increased by more than 25 percent;
- 3) An existing primary structure is relocated on the lot or parcel;
- A)4) The principal structure is renovated or redeveloped and the value of that renovation or redevelopment is 25 percent or more of the pre-application assessor's market value of the principal structure.

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#### ~~43.02.92~~43.03.62 Design and Illumination Standards

A) General Site Lighting. Lights should be directed towards the structures or areas to be illuminated. Site lighting shall empty full cut-off style lights, lighting shields or fixtures as appropriate to keep glare on-site and minimize glare onto adjacent properties. The design and placement of lighting fixtures shall not have an adverse effect upon abutting properties.

B) Off-Street Parking ~~Lot and Loading Area~~ Lighting.

- 1) A parking lot shall be lighted for vehicular and pedestrian safety. In residential areas, the maximum height above ground level of lights shall be 15 feet; maximum foot candles at ground level shall be 1; minimum foot candles at ground level shall be .5; flood and spotlights shall be shielded to prevent glare on adjoining lands. In commercial or industrial areas the maximum height above ground level of lights shall be 30 feet; minimum foot candles at ground level shall be 2 in shopping centers, 1 in self-parking areas, 2 in attended or shelter parking areas and 1 in industrial areas.
- 2) Any lighting used to illuminate any off-street parking area shall be so arranged as to reflect the light away from adjoining premises in any R district.

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### ~~Division 10~~Division 7 General Performance Standards

#### ~~43.02.101~~43.03.71 Applicability

A) Compliance with Regulations. No land or building in any district shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable fire, explosive

or other hazard, noise or vibration, smoke, dust, odor or other form of air pollution, heat, cold, dampness, electrical or other substance, condition or element in such a manner or in such amount as to adversely affect the surrounding area or adjoining premises (referred to herein as "dangerous or objectionable elements"); provided, that any use permitted or not expressly prohibited by this chapter may be undertaken and maintained if it conforms to the regulations of this section limiting dangerous and objectionable elements at the point of the determination of their existence.

- B) Enforcement Provisions Applicable to Other Uses. Even though compliance with performance standards procedure in obtaining a zoning certificate is not required for a particular use, initial and continued compliance with performance standards is required of every use and provisions for enforcement of continued compliance with performance standards shall be invoked by the zoning administrator or board as the case may be, against any use, if there are reasonable grounds to believe that performance standards are being violated by such use.
- C) Locations where Determinations are to be Made for Enforcement of Performance Standards. The determination of the existence of any dangerous and objectionable elements shall be made at the location of the use creating the same and at any points where the existence of such elements may be more apparent (herein referred to as "at any point"); provided, however, that the measurements necessary for enforcement of performance standards set forth in this section shall be taken at different points in different districts in relation to the establishment or use creating the element being measured (herein referred to as "point of measurement") as follows:
- 1) In any R District and B-1 and B-2 Districts. Twenty-five feet from the establishment or use or at the lot line of the use, if closer to the establishment or use.
  - 2) In B-2.5, B-3 and M Districts. At the boundary of the district or at any point within an adjacent R district.

#### ~~43.02.102~~43.03.72 **General Performance Standards**

- A) Performance Standards, Regulations. The following provisions, standards and specifications shall apply:
- 1) Fire and explosion hazard. All activities involving and all storage of inflammable and explosive materials shall be provided at any point with adequate safety devices against the hazard of fire and explosion and adequate firefighting and fire suppression equipment and devices standards in the industry. Burning of waste materials in open fire shall be prohibited at any point. The relevant provisions of state and local laws and regulations shall also apply.
  - 2) Radioactivity or electric disturbance. No activities shall be permitted which emit dangerous radioactivity at any point or electrical disturbance adversely affecting the operation at any point of any equipment other than that of the creator of such disturbance.
  - 3) Noise. In accordance with measured at locations stated in Chapter 39.
  - 4) Vibration. No vibration shall be permitted which is discernible without instruments at the points of measurement specified in subsection (d) above.
  - 5) Smoke. No emission shall be permitted at any point, from any chimney or otherwise, of visible gray smoke of a shade equal to or darker than No. 2 of the Power's Micro-Ringlemann Chart, published by McGraw-Hill Publishing Company, Inc., and copyright 1954 (being a direct facsimile reduction of the standard Ringlemann Chart as issued by the United States Bureau of Mines), except that visible gray smoke of a shade equal to No. 2 on said Chart may be emitted

for 4 minutes in any 30 minutes. These provisions applicable to visible gray smoke shall also apply to visible smoke of different color but with an apparently equivalent capacity.

- 6) Odors. No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be offensive at the points of measurement specified in subsection (d) above. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system, so that control will be maintained if the primary safeguard system should fail. There is hereby established as a guide in determining such quantities of offensive odors Table III, "Odor Thresholds," in Chapter 5 "Air Pollution Abatement Manual," copyright 1951 by Manufacturing Chemists' Assn., Inc., Washington, D.C.
- 7) Fly ash, dust, fumes, vapors, gases, and other forms of air pollution. No emission shall be permitted which can cause any damage to health, to animals, vegetation or other forms of property, or which can cause any excessive soiling, at any point; and in no event any emission, from any chimney or otherwise, of any solid or liquid particles in concentrations exceeding 3/10 grains per cubic foot of the conveying gas at any point. For measurement of the amount of particles in gases resulting from combustion, standard corrections shall be applied to a stack temperature of 500 degrees Fahrenheit and 50 percent excess air. All activities shall comply with applicable state law, rules and local ordinances for dust and Particulate Matter generation, and any stockpiles (including sand and dirt) which product windblown dust shall be covered. A fugitive dust control plan may be required detailing dust control measures both on-site and off-site. Moisture testing of sand or other materials with the potential to produce Particulate Matter emissions may be required to ensure that moisture levels are above 2.5%. A substitute for moisture testing is air quality monitoring completed in correspondence with the MPCA and according to applicable state regulations.
- 8) Glare. No direct or sky-reflected glare, whether from floodlights or from high-temperature processes, such as combustion, welding or otherwise, so as to be visible at the points of measurement specified in subsection (d) above. This restriction shall not apply to signs otherwise permitted by the provisions of this chapter.
- 9) Liquid or solid wastes. No discharge at any point into any public sewer, private sewage disposal system or stream or into the ground, except in accord with standards approved by the department of health of the state or standards equivalent to those approved by such department for similar uses of any materials of such nature or temperature as can contaminate any water supply or otherwise cause the emission of dangerous or offensive elements.
- 10) [Drainage designs. Runoff water from parking lots, roofs and driveways shall not be allowed to cross sidewalks or to run onto private property that is not a part of the site unless easements have been obtained; surface runoff waters shall be directed into municipal facilities; where municipal facilities are not available, a drywell or drainage area owned or controlled by the owner or developer shall be provided; sanitary sewage shall be directed into municipal facilities where such facilities are available; where municipal facilities are not available and approval of the city engineer is secured, a septic tank shall be provided; retaining walls shall be constructed where necessary for land stabilization.](#)
- 11) Additional Requirements. The City of Winona reserves the right to impose additional conditions to, within and upon the issuance of a Conditional Use Permit as it deems necessary or appropriate to protect the health, safety, morals and general welfare of the public.

## ~~43.02.103~~ **Article 04** **Subdivision Standards**

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### ~~Division 11~~ **Division 1** **Basic Subdivision Requirements**

#### ~~43.02.111~~ **43.04.11** **Purpose**

A) The purpose of this article is to protect and provide for the public health, safety, and general welfare of the City and its people, and to specifically achieve the following purposes:

- 1) The implementation of the Comprehensive Plan
- 2) The subdivision of land in an orderly manner which provides for the wise use and management of land and natural resources throughout the City.
- 3) The provision of adequate public infrastructure, facilities, and services.

#### ~~43.02.112~~ **43.04.12** **Jurisdiction**

A) The rules and regulations governing plats and subdivisions of land contained herein shall apply within the corporate limits of the City of Winona, and within the unincorporated area within 2 miles beyond such corporate limits.

#### ~~43.02.113~~ **43.04.13** **Required Minimum Improvements**

A) Minimum improvements shall be installed:

- 1) In the case of subdivisions within the city, in accordance with the requirements of Appendix ~~Article 4, Division 2 Subdivision Design Standards;~~ and
- 2) In the case of subdivisions outside the corporate limits of the city, in accordance with rules and regulations adopted by the board of county commissioners, provided, such county rules and regulations are equally or more restrictive than the requirements of Appendix ~~Article 4, Division 2 Subdivision Design Standards.~~ In the event that the applicable county requirements are less restrictive, the provisions of ~~Appendix Article 4, Division 2 Subdivision Design Standards~~ shall govern.

### ~~Division 12~~ **Division 2** **Subdivision Design Standards**

#### ~~43.02.121~~ **43.04.21** **Streets and Blocks**

A) The subdivision layout shall conform to the official Thoroughfare Plan Roadway Functional Classification map. Whenever a tract to be subdivided embraces any part of an arterial, collector, or local street-highway, thoroughfare or parkway, so designated on said plan, such part of such public way shall be platted by the subdivider in the location and at the width indicated on the plan in Section 43.04.21 D.

B) The street layout of the subdivision shall be in general conformity with a plan for the most advantageous development of adjoining areas and the entire neighborhood.

- 1) Where appropriate to the design, proposed streets shall be continuous and in alignment with existing, planned or platted streets with which they are to connect.
- 2) Proposed streets shall be extended to the boundary lines of the tract to be subdivided, unless prevented by topography or other physical conditions or unless, in the opinion of the commission, such extension is not necessary or desirable for the coordination of the layout of

the subdivision with the existing layout or the most advantageous future development of adjacent tracts. Dead-end streets of reasonable length will be approved where necessitated by topography, or where, in the opinion of the commission, they are appropriate for the type of development contemplated.

- 3) Proposed streets shall intersect one another as nearly at right angles as topography and other limiting factors of good design permit.
  - 4) Wherever there exists adjacent to the tract to be subdivided a dedicated or platted and recorded half-width street or alley, the other half width of such street or alley shall be platted.
  - 5) Alleys shall be platted in all business districts. To provide safe access to residential lots fronting on ~~thoroughfares, major streets and parkways~~ arterials and collectors, alleys shall be platted in the rear of such lots or service drives provided in front thereof. Alleys will not be approved in other locations in residence districts, unless required by unusual topography or other exceptional conditions.
  - 6) Lands abutting ~~highways or principal thoroughfares~~ arterials should be platted with the view of making the lots, if for residential use, desirable for such use by cushioning the impact of heavy traffic on such traffic ways; and with the view also of minimizing interference with traffic on such traffic ways as well as the accident hazard. This may be accomplished in several ways one of the following ways.
    - a) By platting the lots abutting such traffic ways at very generous depth; and by providing vehicular access to them by means of either alleys or service drives in the rear, or frontage access roads next to the highway, connected therewith at infrequent intervals.
    - b) Another more desirable and usually more economical method consists of not fronting the lots on the highway but on a minor street paralleling the highway at a distance of a generous lot depth. Private driveways in this case would, of course, connect with such minor street.
    - c) Under still another scheme, a collector street may be platted more or less parallel with the highway, 600 to 1,000 feet distant therefrom, from which loop streets or dead-end streets would extend toward the highway, the ends of which give access to the lots abutting the highway to their rear. Selection, in a specific case, among the foregoing or other methods for accomplishing the purposes in view, must necessarily be made in consideration of topography and other physical conditions, the character of existing and contemplated developments and other pertinent factors that apply in each case.
  - 7) Subdivisions abutting a stream or lake are required to provide at least 60 feet wide access to the low water mark so that there will be access at 1/2 mile intervals as measured along the stream or lake shore.
- C) Blocks shall have sufficient width to provide for 2 tiers of lots of appropriate depth.
- 1) The lengths of blocks shall be such as, in the opinion of the commission, are appropriate for the locality and the type of development contemplated, but shall not exceed 1,800 feet where the average size of lots does not exceed 2 acres in area.
  - 2) In any block over 900 feet in length the commission may require that a crosswalk or pedestrian way, not less than 10 feet wide, be provided near the center and entirely across such block.

- 3) The number of intersecting streets along ~~arterials and collectors highways, thoroughfares and parkways~~ shall be held to a minimum. Wherever practicable, blocks along such traffic ways shall not be less than 1,200 feet in length.
- D) Minimum Right-of-way Widths of Streets, Alleys, and Easements for Utilities.
- 1) Arterials, as specified in the official ~~Roadway Functional Classification map~~ Thoroughfare Plan, but not less than 100 feet wide in any case.
  - 2) Collectors, as specified in the official ~~Roadway Functional Classification map~~ Thoroughfare Plan, but not less than 80 feet wide in any case.
  - 3) Local streets or collector streets; 60 feet.
  - 4) Minor streets and dead-end streets; 60 feet. All dead-end streets shall terminate in a circular turnaround having a minimum right-of-way diameter of 120 feet.
  - 5) Where easements are required for utilities their width shall be at least 10 feet along rear or side lot lines.
- E) Minimum Pavement Widths.
- 1) Minimum pavement widths, face to face of curb, required to be installed at subdivider's expense, shall be as follows:
  - 2) Arterials; local streets or collector streets; and minor streets over 600 feet long; 36 feet. In the case of an arterial and in the case of a local street or collector street, usually requiring pavements wider than 36 feet, the matter of financial and other arrangements for installing such wider pavements at the time the subdivider will make the improvement shall be taken upon with the subdivider by the officials having jurisdiction.
  - 3) Minor and dead-end streets not over 600 feet long; 32 feet. The pavement of a turning circle at the end of a dead-end street shall have a minimum outside diameter of 100 feet.
  - 4) Alleys and service drives; 18 feet.
- F) Street Grades, Curves, and Sight Distances.
- 1) The grades of streets shall not exceed the following, except that where unusual or exceptional conditions exist the commission may modify these regulations:
    - a) Arterials; 4 percent.
    - b) Collectors; 7 percent.
    - c) Local streets, minor streets, service drives, and alleys; 10 percent.
    - d) Pedestrian ways or crosswalks; 5 percent.
  - 2) All changes in street grades in excess of one percent shall be connected by vertical curves meeting standard sight distance requirements.
  - 3) The radii of curvature on the center line shall not be less than the following:
    - a) Arterials; 500 feet.
    - b) Collectors; 300 feet.
    - c) Local streets, minor streets and service drives; 100 feet.
- G) Intersections.

- 1) Street curb intersections shall be rounded by radii of at least 15 feet.
- 2) The above minimum radii shall be increased when the smallest angle of intersection is less than 60 degrees.

#### ~~43.02.122~~43.04.22 **Lots**

- A) The size, shape and orientation of lots shall be appropriate for the location of the proposed subdivision and for the type of development contemplated; ~~provided, that no lot shall contain less than 6,000 square feet in area.~~
- B) Excessive depth in relation to width shall be avoided. (A proportion of 2 to 1 shall normally be considered as appropriate, except in the case of narrow lots.)
- C) Every lot shall abut on a street.
- D) ~~Lots for residence purposes shall be at least 50 feet wide at the building setback lines, in order to permit compliance with the side yard requirements of the Zoning Ordinance and still be adequate for a building of practicable width.~~
- E) Double frontage lots and reversed frontage lots shall be avoided.
- F) Side lot lines shall be approximately at right angles to the right-of-way line of the street on which the lot faces.
- G) Corner lots for residential use shall be platted wider than interior lots in order to permit conformance with the front yard setback on the side street ~~required by the Zoning Ordinance.~~
- H) Residential lots fronting or abutting on ~~highways, thoroughfares and other important traffic ways arterials and collectors~~ should have extra depth to permit deep setbacks for the buildings from such traffic ways.
- I) Permanent iron monuments shall be placed at all lot corners.

#### ~~43.02.123~~43.04.23 **Public Improvements**

- A) Water, Sanitary, Storm Sewers.
  - 1) Upon petition by a developer, the City will consider designing and constructing a water, sanitary and storm sewer collection system from the existing systems up to a proposed subdivision.
  - 2) All design, construction and other costs for construction within the subdivision shall be the responsibility of the developer. In extraordinary circumstances, the City Council may, upon written request, consider assessing all costs of design and construction of improvements but only if the developer remains the sole owner of all lots within the subdivision and the developer has signed a waiver of its rights to appeal the assessments. If the request is granted upon extraordinary circumstances being shown, the cost of improvements, or any portion allowed by the City Council, at its election, will be reimbursed and assessed upon satisfactory completion of the improvement construction.
  - 3) If the City determines that a pipe larger than 8 inches is required within a subdivision for future extensions of water or sanitary sewer, the City shall pay for the additional cost due to the required oversizing. All costs for construction up to the subdivision shall be paid by the City.
  - 4) An access fee for water, sanitary and storm sewer access shall be paid in advance by the developer prior to the recording of a final plat. The access fee shall be established annually by the City Council and shall be set forth in **Section 51.01** of this Code. The fee shall be based on

platted acreage within the subdivision, excluding required natural state areas and floodways.

For any property platted prior to July 1, 2003, however, a developer may choose to pay all costs for construction up to the subdivision, including engineering costs, in lieu of payment of the access fee. All work must be guaranteed for a period of two years by the contractor and backed by a performance bond.

B) Curb and Gutter.

- 1) Curb and gutters are required in all subdivisions within the corporate limits except where determined by the City Engineer as inappropriate due to drainage and erosion concerns.
- 2) The developer shall design, construct and pay for all curb and gutter. All curb and gutter shall be constructed to standard city specifications.
- 3) The developer shall also pay for all necessary grading and construction of the street between the curb and gutter to within 4 inches of finished grade. The city will determine the amount and type of base required both for curb and gutter and the roadway.
- 4) The city will furnish inspection for all street construction and, if street construction conforms to the specifications, acceptance of the work.
- 5) All work must be guaranteed for a period of two years by the contractor and backed by a performance bond.

C) Sidewalks.

- 1) Sidewalks are not required on all streets. If sidewalks are required by the city council, the developer shall pay for the same. The same regulations that apply for curb and gutter under subsection (e) above shall apply for sidewalk. All work must be guaranteed for a period of two years by the contractor and backed by a performance bond.

D) Street Surfacing.

- 1) Subdivision streets shall be designed to meet a 16 gravel equivalent (GE) value with a minimum of 3 inches of bituminous pavement or be paved with a minimum of 6 inches of concrete pavement on a minimum of 6 inches of Class 5 Aggregate.
- 2) The construction of the street shall comply with Minnesota Department of Transportation Specifications for roadway construction in effect at the time of construction.
- 3) The developer shall design, construct, and pay for all streets. The street shall not be constructed prior to the time all water services and sewer laterals are constructed by the developer.
- 4) All work, including lack of trench settlement, shall be guaranteed for a period of two years by the contractor and backed by a performance bond in favor of the city.

~~43.02.12443.04.24~~ **43.04.24 Land for Public Purposes**

- A) Purpose. The City Council recognizes that it has a responsibility for vigilance over those factors that affect the health, safety, and welfare of the residents of Winona. Council further recognizes that the development and preservation of park, playground and open public land within the City is one of these factors. The purpose of this section is to assure that the development and preservation of such lands keeps pace with the development of the City as a whole.
- B) The need for parks, playground and open public spaces (hereafter referred to as public recreational space) is directly related to the density and intensity of the development of other lands within the City.

All new subdivision(s) and residential developments of land affect the density and intensity of land use within the City. Consequently, the Council establishes the following policies and guidelines to assure that the development of public recreational space progresses in parallel with all other land development.

The accepted national standard for neighborhood parks within the City is four (4) acres per 1,000 population. Pursuant to the Winona Comprehensive ~~Park and Recreation Master~~-Plan, the City of Winona has slightly in excess of two (2) usable acres of neighborhood park land per 1,000 population.

- C) Procedure. All new subdivision(s) of land within the City which are to be developed for residential uses shall provide for the enhancement of public recreational space within the City. Said enhancement shall be the responsibility of the subdivider who shall discharge the responsibility as follows:
- 1) The subdivider shall, subsequent to approval of the final plat by the City Council, submit a cash payment to be placed in a special fund which is reserved by the City for the acquisition and development of public recreational space or for the retirement of debt incurred in connection with public recreational space. Unless special arrangements are made pursuant to part (e), this cash payment shall be received by the City Finance Director prior to the registration of the final plat by the City Clerk and ~~Chairman of the Planning Commission~~Mayor. The amount of the cash payment shall be determined in accordance with paragraph (c) below. Cash payments received shall be used only for the purposes for which the money was obtained.
  - 2) In lieu of the cash payment, the subdivider may propose the dedication of a specific parcel of land equal in value to the cash payment. The Commission shall review such a proposal during consideration of the preliminary plat. The Commission shall accept or reject such a proposal based upon the provisions of paragraph (f). Should the Commission accept such a proposal, the final plat submitted for approval shall contain provisions for dedication of said parcel to the City. Unless authorized by the City, no proposal for land dedication in lieu of the cash payment shall be considered unless the parcel being proposed for dedication is at least three (3) acres in size. In determining whether this minimum will be achieved, 523 square feet of public recreational space for every dwelling unit is required. This figure is the result of utilizing a public recreational space requirement of four (4) acres per 1,000 population and an average family unit size of three persons.
  - 3) In lieu of cash payment, the City may determine that the recreational needs of the subdivision could best be met through the dedication of land. In this case, the City may require that all or a portion of the required square footage be met through public dedication. If only a portion of the area is to be dedicated, the difference between the required area and land actually dedicated shall be made through a cash payment as determined in paragraph (c) below.
- D) Required Fees.
- 1) The developer of any land which is to be used for residential purposes shall pay to the City a park land dedication fee as set forth in Chapter 51 of this Code.
  - 2) Any amendment to an approved residential development which will either increase or decrease the requirements of this section shall be reviewed by the City and appropriate fees or land adjustments may be made at this time.
  - 3) No credit for private open space/parks will be permitted.

- 4) **Required Fees - Other Developments.** A developer of a mobile home park or any residential development which will result in a net increase of dwelling units on a property, and for which no subdivision of land is required, shall comply with the requirements of paragraph (c). All cash payments shall be made to the City Finance Department prior to approval of a required site plan or prior to the issuance of building and housing certification permits.
- 5) **Land-in-lieu of cash donations** may be made subject to recommendation by the Planning Commission and acceptance by the City Council in accordance with provisions of paragraph (f). Unless authorized by the City, no proposal for land dedication shall be considered unless the parcel being proposed for dedication is at least three (3) acres in size. In determining whether this minimum will be achieved, 523 square feet of public recreational space for every dwelling unit is required.
- E) **Installment Payments.** During consideration of the final plat, the City Council, at its option, may permit the developer to submit the cash payment over a period of time pursuant to an installment payment agreement approved by the City Attorney.

The agreement shall require the payment of interest on the unpaid principal and shall require final payment within eighteen months. The City may withhold development or building permits if the developer does not comply with the terms of the installment agreement.
- F) **Criteria for Determining Suitability of Land to be Dedicated in Lieu of Cash.** Subdividers wishing to propose the dedication of land in lieu of cash payments must specify the precise parcel of land that would be dedicated. Council shall obtain the opinion of the City Planning Commission as to the acceptability of that parcel for public recreational space utilization. The Planning Commission, in arriving at its recommendation, shall review the proposal with the City Parks and Recreation Department. The following factors shall be relevant in the review process: the size, shape, accessibility, maintainability, usability, contour and slope. The question of whether the proposed parcel, in conjunction with other public recreational space in the vicinity, would best meet the needs of the area or whether the City could better use the cash to enhance public recreational space in other ways shall also be a factor in the deliberations of the Commission.
- G) **Exemptions.** This section shall not apply to any approved preliminary or final subdivision or any residential development for which fee donations and/or park land provisions have been made, nor to residential dwelling units existing prior to the effective date of this ordinance.

#### ~~43.02.125~~43.04.25 **Protection from Flood Damage**

- A) All subdivision design shall be consistent with the need to minimize flood damage.
- B) All public utilities and facilities, such as sewer, gas, electrical and water systems, shall be located, elevated and constructed to minimize or eliminate flood damage.
- C) Adequate drainage shall be provided so as to reduce exposure to flood hazards.
- D) Water and sewer systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- E) On-site waste disposal systems shall be located so as to avoid impairment of them or contamination from them during flooding.

#### ~~43.02.126~~43.04.26 **Natural State Areas (NSA)**

- A) **Establishment.** The following environments shall be designated as NSA on any approved preliminary or final plat:

- 1) Any delineated wetland that is not to be impacted, or otherwise replaced, pursuant to MN Rules Chapter 8420.
- 2) Land located within a Bluff Impact Overlay District as defined in [Section 43.82](#).
- 3) All lands located within 100 feet from the normal high water mark of any Special Water river or stream, as defined per [Section 69.04](#). This requirement does not apply to water crossings, or limited water access if documented pursuant to requirements of [Section 68.07 \(K\) \(8\)](#).
- 4) Any other environment that is, following special study, or by state/federal law, required to be maintained in an undisturbed condition.

B) **Disturbance.** Once designated, no person shall conduct any land disturbance activity, within an NSA, unless in accordance with this section [and section 43.02.32](#). The term "Land Disturbance Activity" shall be defined as a change in the use of land that would result in any form of topographic modification, increase in impervious surface coverage, or vegetative alteration.

- 1) Land Disturbance activity shall include, but not be limited to:
  - a) Any grading, grubbing, filling, and excavating
  - b) The construction of any structure, building, impervious walk/path, swimming pool, deck, patio, driveway, street, retaining wall, and public/private utility.
  - c) The establishment of formal lawns and gardens, or the cutting, thinning, and/or removal of existing living and dead vegetation.
- 2) This term shall not include:
  - a) The removal of an immediate safety hazard to persons or property from a designated NSA. Following documentation of a hazard by the City Planner, or designated representative, the underlying property owner of the NSA shall be responsible for the immediate correction of the hazard. This action may employ any reasonable method necessary to mitigate the hazard, provided that adjacent NSA lands are not impaired. Should the property owner fail to correct the hazard, it may be abated in accordance with provisions of [Chapter 32](#).
  - b) The removal of noxious weeds, as defined by [Minnesota Rules Section 1505.0751, subp. 8](#) from a designated NSA, provided that the method of removal is by hand pulling, hand cutting, and/or the hand application, excluding sprays, of appropriate herbicides. If the method of noxious weed removal involves the use of motorized or mechanical equipment, spraying, or the disturbance of vegetation which is not classified as noxious, approval shall be required.

C) Determination of Maximum Density. Natural State Areas may be used in calculating the maximum density of a lot and to fulfill lot area and yard requirements provided that they are not disturbed, unless in conformance with ~~subpart 4D~~ [this section and section 43.02.32](#).

~~D) Disturbance of Natural State Areas~~

- ~~1) No land disturbance activity shall be permitted on any established NSA designation unless permitted under [Section 43.83 \(f\)](#).~~
- ~~2) Any person, who feels that the strict enforcement of this section would cause practical difficulties because of circumstances unique to his/her property, may request a variance from the Board of Adjustment, in accordance with provisions of [Section 22.21](#). In cases where the management of a specific environment falls under the jurisdiction of a State, Federal, or other~~

~~governmental agency, the Board shall seek required approvals, or an opinion, from the agency prior to acting on the variance.~~

- ~~3)1)~~ Modification of Natural State Area. Following final plat approval, no boundary of a defined Natural State Area may be modified unless ~~the modification a revised final plat for the lot is submitted to the Planning Commission and City Council for approval pursuant to the requirements of Sections 42.03(e) and (f).~~

~~E)D)~~ Preservation Method. The applicant for subdivision approval shall demonstrate to the satisfaction of the Planning Commission and City Council that a required Natural State Area will be permanently maintained. Methods acceptable for this purpose include: special agreements, easements, or donation or dedication to the City, or other public entity. Once the method of preservation is defined, it shall clearly be referenced on the final plat. Any agreement, easement, or other preservation document shall be recorded with the plat and shall serve as a restriction to the Natural State Area designation.

~~F)E)~~ Natural State Areas B Field Identification

- 1) Upon final plat approval, no portion of the development may be disturbed until such time that Natural State Areas are clearly field identified and protected pursuant to methods as outlined in the approved final grading management plan. Once identified, it shall be the responsibility of the developer, property owner, or, in the case of those public improvements which may be administered by the City of Winona, the City, to advise contractors of the location, purpose and intent of such areas, and to ensure that such areas are not disturbed. For purposes of this section, all Natural State Area boundaries shall be field staked by a Minnesota Registered land surveyor. Once established, the developer shall locate steel sign posts at all points where a Natural State Area intersects with a lot line, or at 150 foot intervals, whichever is less. Such posts shall have a total length of six feet, when installed have an exposed height of three feet above the ground, and shall include a 10"X10" metal sign identifying land beyond the post as a Natural State Area. Although the City will specify the design and supplier of signs, the developer shall be directly responsible for their order and payment. All signs, required under this provision, shall be constructed prior to initiating any land disturbance of the site, and shall remain intact/identifiable at all times. If a stake is removed or lost, the underlying property owner of the Natural State Area shall be responsible for its replacement.

~~G)F)~~ Natural State Areas – Previous Approval. Any Natural State Area that was created prior to adoption of this ordinance shall continue to be managed and maintained in accordance with terms and conditions of its initial approval.

## ~~Article 03~~ **Article 05 Signage**

### ~~43.03.11~~ **43.05.11 General Provisions**

A) Purpose.

- 1) Because signs are an important and necessary element to business and organizations in all segments of the community, the purpose of this section is to promote growth in an orderly and attractive manner and to provide standards to safeguard life, health, property and public welfare, by regulating the type, area, height, construction, illumination, location, and maintenance of all signs and sign structures in the City.

- 2) In furthering this purpose, it is recognized that not all signs existing at the time of adoption of this section will conform with it. Therefore, provisions are included whereby certain nonconforming signs will be given a period of ten years in which to conform while others may be continued for an indefinite period. The purposes of such provisions are to promote conformance within a reasonable time-frame and to minimize hardships on property owners of nonconforming signs.

B) Sign Area.

- 1) Measurements.
  - a) The area of a wall, projecting, or ground sign where the sign consists of letters, numerals, or symbols painted on, hung, or affixed to a supporting structure shall be the entire area within a continuous perimeter enclosing the extreme limits of the message delineated by said letters, numerals, or symbols.
  - b) The area of a wall, projecting, or ground sign where the letters, numerals, or symbols are on a sign face, shall be the total area of the hung or affixed surfaces visible from the public right-of-way or other area from which the sign is intended to be viewed.
  - c) In all cases, the area of each face of a multi-faced sign shall be considered separately.
- 2) Calculation of Allowable Sign Area on Corner Lots. On corner lots where a building abuts two streets, the permitted sign area, as determined by each frontage, shall be placed only on the frontage from which it is determined, provided that if a sign is intended to be viewed from both fronting streets, a maximum of 50% of the allowable area of each frontage may be transferred to the sign
- 3) Calculation of Aggregate Gross Surface Area. The aggregate gross surface area of all signs permitted on a property shall be the sum total of all single or double faced display surfaces.

C) Non-Conforming Signs.

- 1) All signs existing on the effective date of this section that are found to violate any portion of this section shall be deemed nonconforming signs and shall be subject to removal or rehabilitation by September 1, 2001, provided that:
  - a) All nonconforming signs shall be subject to the provisions of Section 43.01.25.
  - b) Such signs which are found to violate any portion of Section 43.05.13(A) shall be removed within 10 days following September 1, 1991.
  - c) Within 120 days following September 1, 1991, permits shall be secured for those signs which have no valid permit. Permit applications for these signs shall be accompanied by permit fees as established under Chapter 51. Once valid permits for all signs on a property have been obtained, no additional sign permits may be issued to the property until such time that all signs on it are brought into conformance with this section.
  - d) On-premise or off-premise signs with valid permits in existence on the effective date of this section and which do not conform with all provisions of this section, may be continued for an indefinite period of time under the provisions of paragraph (C)(1)(a) above.
  - e) Any residential district on-premise sign which identifies a legal nonconforming or permitted use existing at the effective date of this chapter and which does not meet the requirements of Section 43.05.14(E) may be continued for an indefinite period of time under the provisions of paragraph (C)(1)(a) and paragraph (j)(1)(c) above.

## D) Separability Clause/Penalties.

- 1) If any paragraph, part or portion of this section is declared invalid by a court of competent jurisdiction, it shall not be held to invalidate any other portion thereof.
- 2) A violation of any provision of this section shall be declared to be a nuisance which shall be remedied pursuant to Chapter 32.

**43.03.1243.05.12 Permit Requirements**

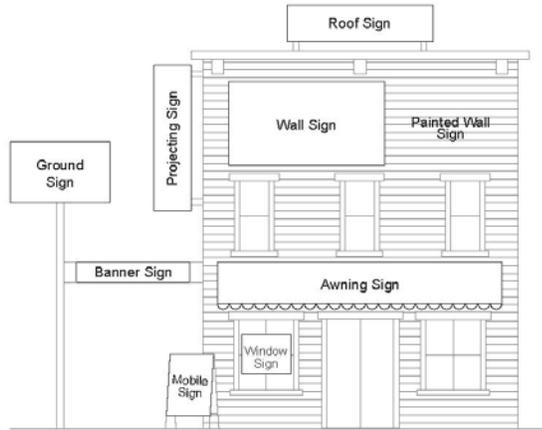
- A) Generally. It shall be unlawful for any person to erect, alter, relocate or keep within the City of Winona any sign or other advertising structure as defined in this chapter, except as exempted under Sections 43.05.13(B), (C), or (E), without first obtaining a sign permit from the Department of Community Development pursuant to this section.
- B) Application for Sign Permit. Any application for a sign permit shall be made upon forms provided by the Department of Community Development and shall contain or have attached thereto the following information:
- 1) Name, address and telephone number of the applicant.
  - 2) Location of building, structure, or lot to which or upon which the sign or other advertising structure is to be attached or erected.
  - 3) Position of the sign or other advertising structure in relation to nearby buildings or structures.
  - 4) Two (2) blueprints, photocopy, or ink drawings of the plans and specifications and method of construction and attachment to the building or in the ground.
  - 5) Name of person, firm, corporation or association erecting structure.
  - 6) Written consent of the owner of the building, structure or land to which or on which the structure is to be erected.
  - 7) Such other information as the City Planner shall require to show full compliance with city ordinance.
- C) Sign Permit Fees. Every applicant, before being granted a permit hereunder, shall pay to the City Finance Department, required fees as established in Chapter 51. In determining this fee, each face of a multi-faced sign shall be considered separately.
- D) Issuance of Sign Permit. It shall be the duty of the Department of Community Development, upon the filing of an application for a sign permit, to examine such plans and specifications and other data and the premises upon which the proposed sign or other advertising structure is to be erected. If it shall appear that the proposed structure is in compliance with all the requirements of this chapter and City of Winona building and electrical codes, a sign permit shall be issued. If the work authorized under a sign permit has not been completed within six (6) months after date of issuance, the said permit shall become null and void.
- E) Sign Permit Revocable. All rights and privileges acquired under the provisions of this section or any amendment thereto, are mere licenses which, upon a finding of noncompliance with any paragraph of this section, may be revoked at any time by the City of Winona. All such permits shall contain this provision.

**43.03.1343.05.13 Sign Types**

- A) Prohibited Signs. The following signs shall not be allowed within the limits of the City:







C) Temporary or Seasonal Signs. Signs, other than those listed under Section 43.05.13(B), which are designed to advertise or promote special events, shall be permitted under the conditions of individual sign districts, provided:

- 1) That such signs are temporarily displayed no more than thirty (30) days per calendar year.
- 2) The establishment wishing to display such sign shall contact the office of the Zoning Administrator, prior to displaying, to give notice of the intent, and the period during which the sign will be displayed. No permit is required.
- 3) That such signs not exceed in area an amount equal to 50% of the permitted gross sign area of the property.
- 4) That such signs shall be located on the zoning lot on which the special event is occurring and shall not violate any provision of this section.
- 5) That such signs are located, constructed and supported in conformance with Sections 43.05.15 and 43.05.16 and shall not project over public property.
- 6) In addition to the above, one sign may be displayed more than thirty days per calendar year if it meets the requirements under Section 43.05.13(E).

D) Park Signs. No permanent or temporary signs, other than the following, shall be permitted within any city owned park or open space area [as defined on page II 4 of the Winona Comprehensive Park and Recreation Master Plan \(dated 1979\).](#)

- 1) Permanent signs used to identify parks and park activity areas and those signs incidental to park activity areas which further direct, define or explain their use. (Examples: Ballfields, tennis courts, information center, arboretum and plant identification system, game rule boards, etc.)

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- 2) Permanent signs for the purpose of directing pedestrians or vehicular traffic flow and signs informing the public of laws or statutes pertaining to park use.
  - 3) Temporary signs associated with special events or activities approved by the City Council. Such signs shall be located within the park in which the approved activity is located and shall be removed upon completion of the activity. (Examples: Steamboat Days, Winter Carnival, Victorian Fair, rallies, marathons, etc.)
  - 4) Permanent signs associated with seasonal concession activities approved by the City Council. Such signs shall be unlit and attached directly to the structure housing the concession. Such signs shall be approved by the Planning Commission relative to size, color, and location prior to the approval of formal agreements.
- E) Sidewalk Signs. Signs, other than those listed under Section 43.05.13(B), which are to be placed in the public right-of-way, shall be permitted under the conditions of individual sign districts. In lieu of a sidewalk sign, a business property may place a sign on its own property. A sign may only be placed provided the following conditions are met:
- 1) A person desiring to place a sidewalk sign in the public right-of-way shall apply for a permit from the Department of Community Development. The applicant shall provide evidence of liability insurance with limits not less than the maximum liability limits for a municipality as provided in Minnesota Statutes Section 466.04; the City of Winona shall be a named insured. The applicant's insurance policy and certificate shall not be cancelled or its conditions altered in any manner without ten (10) days prior written notice to the City Clerk of Winona. The insuring company shall deliver to the City Clerk certificates of all insurance required, signed by an authorized representative and stating that all provisions of the specified requirements are satisfied. Failure to maintain such insurance coverage shall result in a revocation of the permit.
  - 2) The sign may only be placed on right-of-way that is adjacent to the property that houses the business(es) being advertised or on the property that houses the business(es) being advertised.
  - 3) Only one sign is to be utilized by each business.
  - 4) Commercial properties with multiple tenants are permitted one sign upon which all interior tenants may advertise.
  - 5) The sign shall have a maximum of two opposing faces.
  - 6) Sign height shall be not less than 30 inches and shall not reach more than 48 inches off of the ground. Sign width shall be no more than 36 inches. Sign height and width shall include sign faces and any support structure.
  - 7) The sign shall not be placed nearer than 24 inches from the street curb face. The sign shall be placed so that the continuous, unobstructed width of the sidewalk remains at a minimum of six (6) feet.
  - 8) No sign may obstruct an entrance to a building or any steps.
  - 9) Where two streets intersect at a 90 degree angle, no sign may be placed in the area created by extending both intersecting property lines to the centerline of the streets. Where two streets do not intersect at a 90 degree angle, no sign may be placed in the triangular area scribed by two lines extending from the intersection of two streets to the far end of the pedestrian curb ramp/s. In no case shall a sign be placed within four feet of an alley or driveway.
  - 10) No advertising for off-premise parties shall be permitted on the sign.

- 11) The sign may not be chained or in any way fastened to boulevard trees, tree guards, signs, bollards, street lights or any City streetscape furniture or any street furniture owned or placed by the building or business owner.
- 12) Sign colors shall be non-reflective.
- 13) The sign may not contain "dispensing pockets" or be used in any way to dispense materials such as, but not limited to, menus, flyers and advertising brochures.
- 14) No materials (i.e. paper, flags, balloons, etc.) may be attached to the sign.
- 15) The sign shall not contain lights of any kind or any devices that emit sound, odor, smoke or other airborne materials.
- 16) The sign may only be displayed during a business' open hours.

#### ~~43.03.1443.05.14~~ **43.05.14 Sign Districts**

##### A) Downtown District.

- 1) Defined: Any non-residentially zoned parcel of land located within [an area bound by the river on the north, Fifth Street on the south, Harriet on the west, and Franklin on the east a MU-DC or MU-DT district.](#)
- 2) Off-Premise Signs: All off-premise signs shall meet the requirements of Sections 43.05.14(A)(4)-(7), and the following:
  - a) Location. No portion of any off-premise sign structure shall:
    - i. Project over any public street or alley.
    - ii. Be located within a distance of 200 feet from any residential, ~~conservancy~~, or agricultural zoning district.
    - iii. Be located within a distance of 200 feet from the nearest line of any property which is occupied by a public park, school, or church.
    - iv. Be located within any designated National Register or Local Historic District of the City.
  - b) Area. Off-premise signs shall not exceed one (1) display to each facing or 250 square feet per display.
  - c) Spacing. No portion of any off-premise sign shall be located within 650 feet from the closest projection of any other off-premise sign which is oriented toward the same street right-of-way, provided that, in no event shall any off-premise sign be located within a distance of 300 feet from any other off-premise sign.
- 3) On-Premise Sign Area: All on-premise signs shall meet the requirements of Section 43.05.14(A)(4)-(7) and the following:
  - a) At any time, the aggregate gross surface area of all on-premise signs located on a property shall be no greater than two square feet of display surface for every lineal foot of street frontage provided that:
    - i. In the case of buildings under one ownership containing more than one business or use, sign area for each business or use may be determined separately.
    - ii. A property under single ownership containing more than four businesses shall be entitled to one shopping center sign. Such sign shall not exceed a surface area of one-

half square foot for each lineal foot of street frontage and shall display only the name and address of the shopping center.

iii. In the case of a corner lot, the amount of permitted sign area per street frontage shall be based upon the provisions of Section 43.05.11(B)(2).

4) Wall Signs:

- a) Location: A wall sign may be located on the outermost wall of any principal building.
- b) Height: A wall sign shall not project above the parapet line of the wall to which the sign is to be affixed or exceed 24 feet in height, as measured from finished grade to the sign's uppermost feature, whichever is lower.

5) Projecting Signs:

- a) Height: The lowest part of any projecting sign which is located over any public or private walkway or within a radius of 30 feet of any intersecting curb shall be not less than 8 feet above the finished grade of the surface below it. Projecting signs shall not be permitted over any public alley and shall not project above the parapet line of the wall to which it is attached, or exceed 24 feet in height and measured from finished grade to the sign's uppermost feature, whichever is lower.
- b) Setback: Projecting signs shall not extend to more than 8 feet from a building or 2 feet from the inner curb line of the nearest street, whichever is less.

6) Ground Signs:

- a) Location: A ground sign may be located within any yard, provided that no ground sign shall be located closer to any residential district line a distance equal to the height of the sign, and shall not project over a public alley.
- b) Height: The lower edge of any ground sign which is located over any public or private walkway or within a radius of 30 feet of any intersecting curb shall be no less than 8 feet above the finished grade of the surface below it. A ground sign may be constructed to a maximum height of 24 feet above the ground on which it is located.

7) In addition to the previous requirements, any person designing and erecting any sign shall be encouraged to:

- a) Utilize sign materials which will compliment building materials of the principal structure, and
- b) Locate signs in such a way as to minimize negative impacts on significant building components.

B) Highway District.

1) Defined: Any parcel of nonresidentially zoned land which shares a common lot line with rights-of-way for Highway 61, 14, and 43 within the city limits excluding any such property located within the [Central BusinessDowntown](#) District [defined above](#).

2) Off-Premise Signs: All off-premise signs shall meet the requirements of Section 43.05.14(A)(2) provided that:

- a) Any ground sign may be 40 feet in height above the ground upon which it is located.
- b) All signs permitted under this section shall be subject to provisions of State Law 1971, Chapter 883, and approval by the Minnesota Department of Transportation.
- c) Off-premise signs shall not exceed two (2) displays to each facing or 300 square feet per

display.

- 3) On-Premise Signs: All on-premise signs shall meet the requirements of Section 43.05.14(A)(4)-(7). In addition, the following shall apply:
  - a) Area: At any time, the aggregate gross surface area of all on-premise signs shall be no greater than three (3) square feet of display surface for every lineal foot of street frontage, provided that:
    - i. A property under single ownership, containing more than four businesses, shall be entitled to one shopping center sign not to exceed a surface area of one (1) additional square foot for each lineal foot of street frontage. Such sign shall display only the name and address of the shopping area upon which it is located.
  - b) All signs permitted under this section shall be subject to provisions of State Law 1971, Chapter 883, and approval by the Minnesota Department of Transportation.

C) Neighborhood Retail District.

- 1) Defined: Any property located within a MU-N, B-1, B-2, or B-3 district which does not fall within the defined C-B-D-Downtown or highway eDistricts.
- 2) Requirements: Same as C-B-D-Downtown District.

D) Industrial District.

- 1) Defined: Any property located within an MI-1 or MI-2 zoning district and which does not fall within the defined C-B-D-Downtown or highway eDistricts.
- 2) Requirements: Same as C-B-D-Downtown District provided that one industrial park sign may be erected for each defined industrial park. Such signs shall not exceed 350 square feet in total surface area and shall identify only the name and location of the industrial park.

E) Residential District.

- 1) Defined: Any property located within any ~~conservancy or~~ residential zoning district.
- 2) Permitted Signs: Any sign listed and as regulated under Section 43.05.13(B). In addition:
  - a) Any multi-family residential complex consisting of more than one building or more than six units shall be permitted one identification sign which shall not exceed 64 square feet of total surface area, or 32 square feet of area per sign face. Such signs shall not exceed a height of five feet or be located closer than 10 feet to any property line. Such signs may be indirectly lit and shall serve to identify only the name and address of residential complex.
  - b) One permanent subdivision identification sign may be permitted. Such signs shall not exceed 32 square feet of total surface area or a height of 8 feet. Such signs may be indirectly lit and shall be located at the primary entrance into the subdivision.
  - c) Legal non-conforming nonresidential uses are permitted 1 square foot of signage for each foot of lineal street frontage. Maximum sign height allowed is 14 feet. Lighting of signs is prohibited. Ground signs and projecting signs are prohibited. Only one sign per street frontage is permitted. Maximum size of an individual sign is 100 square feet.
  - d) Any nonresidential use permitted under these districts is permitted 1 square foot of signage for each foot of lineal street frontage. Maximum sign height allowed is 14 feet. Projecting signs are prohibited. Ground signs shall not exceed a height of five feet or be located closer than 10 feet to any property line. Lighting of wall signs is prohibited. Ground signs may be indirectly lit. Only one sign per street frontage is permitted. Maximum size of an individual sign is 100 square feet.
  - e) Sign standards for home occupations are contained in Section 43.05.19(F)(2).

- F) Dynamic Display Overlay District. Entities desiring dynamic displays on signs must first follow applicable sign regulations of the rest of Article 5, Signage, and then the following language (where applicable) to obtain a dynamic display permit in accordance with Section 43.05.12.
- 1) Dynamic displays are permitted for all uses in manufacturing and business districts (M-1, M-2, B-1, B-2, and B-3). Dynamic displays are prohibited in residential districts (R-R, R-S, R-1, R-1.5, R-2, R-3), the agricultural and conservancy districts (C-1 and A-G), and all historic districts.
  - 2) Off-premise dynamic display permits may only be obtained in exchange for the removal of at least two existing non-conforming off-premise sign faces within city limits. The removal shall occur within 15 days after the issuance of the dynamic display permit. The removal must include the complete removal of the structure and the foundation supporting each sign face. The permit applicant must agree that the city may remove the sign if the applicant does not timely do so, and the application must be accompanied by a cash deposit or letter of credit acceptable to the city attorney sufficient to pay the city's costs for that removal. The applicant must also agree that it is removing the sign voluntarily and that it has no right to compensation for the removed sign under any law. If the removed sign faces are those for which a state permit is required by state law, the applicant must surrender its permit to the state upon removal of the sign. The dynamic sign cannot begin to operate until proof is provided to the city that the state permit has been surrendered.
  - 3) On-premise dynamic displays may occupy no more than 50 percent of the actual copy and graphic area of a sign. Off-premise dynamic displays may occupy 100 percent of the actual copy and graphic area. For all signs - only one, contiguous dynamic display area is allowed on a sign face.
  - 4) On-premise dynamic displays may not change or move more often than once every 8 seconds. Off-premise signs may not change or move more often than once every 8 seconds. Sign owners are encouraged to provide public service announcements such as Amber Alerts during these time intervals.
  - 5) Dynamic display images and messages displayed must be static, and the transition from one static display to another must be instantaneous.
  - 6) Images and messages displayed must be complete in themselves, without continuation in content to the next image or message or to any other sign.
  - 7) Only one dynamic display is allowed per entity/business. A ground sign with two faces counts as one dynamic display; a wall sign also counts as one dynamic display. A sign with more than two dynamic display faces is prohibited.
  - 8) Dynamic displays must be designed and equipped to freeze the device in one position if a malfunction occurs. The displays must also be equipped with a means to immediately discontinue the display if it malfunctions, and the sign owner must immediately stop the dynamic display when notified by the city that it is not complying with the standards of this ordinance.
  - 9) In addition complying with brightness standards described in Section 43.05.15(B), dynamic displays must face toward the nearest right-of-ways and away from residential and scenic areas - which include the Mississippi River, Lake Winona, the conservation zoning district (C-1), and the agricultural zoning district (A-G).
  - 10) In accordance with the brightness standards described in Section 43.05.15(B), all dynamic displays must be equipped with a dimmer control or other device which allows the luminance of the display to be adjusted. Dynamic displays also must be equipped with a photo cell or other

means by which the sign can automatically adjust luminance to varying ambient light conditions. Both the dimmer and ambient light device must be in full operational capacity – non-operation of these devices is deemed a malfunction and dealt with according to clause 8.

- 11) Dynamic displays existing on (insert the effective date of this ordinance) are exempt from the provisions of this paragraph. Existing displays may not be enlarged, expanded, moved, or otherwise improved except for the purpose of normal maintenance (example: repainting, relamping, or replacing faces); and may not exceed a level 3 operating mode as described below. If an existing dynamic display is destroyed by any means by more than 50 percent of its value and/or is replaced it must comply with this paragraph.
  - a) Operating Modes for Dynamic Displays:
    - i. Level 1: Segmented static display only (message change with no transition).
    - ii. Level 2: Static display with “fade” or “dissolve” transitions and frame effects that do not have the appearance of moving text or images.
    - iii. Level 3: Static display with “travel” or “scrolling” transitions, or similar transitions and frame effects that have text or animated and frame effects that have text or animated images that appear to move or change in size or be revealed sequentially rather than all at once.
    - iv. Level 4: Full animation, flashing and video.

#### **43.03-1543.05.15 Design and Construction Standards**

- A) Wind load. All signs shall be constructed to withstand a wind pressure of at least 30 pounds per square foot of surface and shall comply with all local adopted building codes of the City
- B) Illumination. No sign shall be illuminated by other than electrical means and electrical devices and wiring shall be installed in accordance with the requirements of the State of Minnesota Electrical Code. No sign shall be illuminated to a degree of brightness that is greater than necessary for clear and adequate visibility. The light from any illuminated sign or from any light source, including interior of a building, shall be so shaded, shielded, or directed that the light intensity or brightness shall not adversely affect surrounding or facing residential districts or adversely affect safe vision of operators of vehicles moving on public or private roads, highways, or parking areas; and be of such intensity or brilliance that it interferes with the effectiveness of an official traffic sign, device or signal.
  - 1) Illumination enforcement and appeal. A person owning or controlling a sign must adjust the sign to meet brightness standards in accordance with the city's instructions. The adjustment must be made immediately upon notice of non-compliance from the city. The person owning or controlling the sign may appeal the city's determination through the following appeal procedure:
    - a) After making the adjustment required by the city, the person owning or controlling the sign may appeal the city's determination by delivering a written appeal to the community development department within 10 days after the city's non-compliance notice. The written appeal must include the name of a person unrelated to the person and business making the appeal, who will serve on the appeal panel.
    - b) Within five business days after receiving the appeal, the city must name a person who is not an official or employee of the city to serve on the appeal panel. Within five business days after the city names its representative, the city's representative must contact the sign owner's representative, and the two of them must appoint a third member to the panel within five days, who has no relationship to either party.

- c) The appeal panel may develop its own rules of procedure, but it must hold a hearing within five business days after the third member is appointed. The city and the sign owner must be given the opportunity to present testimony, and the panel may hold the hearing, or a portion of it, at the sign location. The panel must issue its decision on what level of brightness is needed to meet the brightness standards within five business days after the hearing commences. The decision will be binding on both parties. Either the person owning or controlling the sign or city staff may, within ten business days from the date of the written decision of the panel, appeal the decision to the City Council.

~~43.03.16~~ **43.05.16 Maintenance**

- A) Any person owning or controlling a sign shall keep such sign, together with all supports, braces, guy wires, and anchors in good repair at all times.
- B) Any sign, or other advertising structure regulated herein, which is unsafe or insecure, is a menace to the public, is abandoned or maintained in a dilapidated condition, or has been constructed or erected or is being maintained in violation of the provisions of this chapter, shall be declared a nuisance and shall be abated through the provisions of Section 32.02.
- C) Every sign or other advertising structure requiring a permit under this section shall display in a conspicuous place thereon and which is visible from the ground, the permit number.

~~Article 04~~ **Article 06 Administration and Procedures**

~~43.04.11~~ **43.06.11 Purpose**

- A) The purpose of this article is to identify the review procedures used in the administration of this code.

~~43.04.12~~ **43.06.12 Summary Table**

- A) Table 43-21 summarizes procedures for the various types of development application review.

Table 43-21: Development Application Review Procedures

Type of Application	Pre-Application Meeting with Staff Required	Public Notice Required <i>P-published M-mailed</i>	Public Notice Mailing Notification Distance (feet)	Administrative	Board of Adjustment	Planning Commission	City Council	Final Action
				<i>R-Review, D-Decision, A-Appeal PH - Public Hearing</i>				
<b>Site Related</b>								
Appeal of UDC Interpretation		P, M	350			D PH	A	Resolution
Site Plan Approval	Yes	M	150	D		A		Letter
Conditional Use Permit		P,M	350			D PH	A	Resolution
Conditional Use Permit – Major Amendment		P,M	350			D PH	A	Resolution
Conditional Use Permit – Minor Amendment						D	A	Resolution
Variance		P, M	150		D PH		A	Resolution

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Table 43-21: Development Application Review Procedures

Type of Application	Pre-Application Meeting with Staff Required	Public Notice Required <i>P-published M-mailed</i>	Public Notice Mailing Notification Distance (feet)	Administrative	Board of Adjustment	Planning Commission	City Council	Final Action
				<i>R-Review, D-Decision, A-Appeal PH - Public Hearing</i>				
Wetland/WCA Determination				D			A	Letter
Environmental Review						R	D	Resolution
<b>Subdivision Related</b>								
Minor Subdivision - Final Plat	Yes	P, M	350			R PH	D	Resolution
Major Subdivision - Preliminary Plat	Yes	P, M	350			R PH	D	Resolution
Major Subdivision - Final Plat							D	Resolution
Cluster Development Plan	Yes	P, M	350			R PH	D	Resolution
<b>Ordinance or Plan Amendment Related</b>								
UDC Text Amendment		P				R PH	D	Ordinance
UDC Map Amendment		P, M	350			R PH	D	Ordinance
Comprehensive Plan Text Amendment		P				R PH	D	Resolution
Comprehensive Plan Map Amendment		P, M	350			R PH	D PH	Resolution
<b>Additional Procedures Regulated in UDC</b>								
Properties located in the following areas have additional procedural requirements that can be found in their respective regulation sections.								
1 Bluff Protection Overlay District (Land Disturbance Activity Permit) – see 43.02.32 2 Floodplain Overlay District– see 43.02.33 3 Shoreland Overlay District – see 43.02.34 4 Heritage Preservation District/Site – see 22.27								
<b>Reviews outside of UDC</b>								
Vacation of Streets and Public Grounds is regulated by City Code Section 25.26 and City Charter Section 11.06								

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**43.04.1343.06.13 Common Procedures and Requirements**

- A) Applicability. The requirements of this section shall apply to all development review applications and procedures subject to development review under the UDC unless otherwise stated.
- B) Restrictions. No conveyance of land, which is subject to the approval of a subdivision, shall be filed, or recorded, until such time that provisions of this ordinance are fully met. Conveyances not in compliance with the terms of these regulations will be refused a building permit. Upon the submittal of a required subdivision for approval, no person, firm, or corporation shall enter into a contract for the sale of any part thereof, or shall proceed with any site disturbance activity, or be issued any building permit, until such time that the final plat, for the subdivision, has been adopted by City Council. For purposes of this section, the term disturbance activity shall include, but not be limited to, vegetation removal, unless associated with agricultural use, or when required in accordance with provisions of

**Section 32.03** of this Code; any grading, filling, or excavation activity; or the construction of any structure, or utility, on the site.

C) Authority to file applications.

- 1) Unless otherwise specified in the UDC, development review applications for an individual property may be initiated by:
  - a) The owner of the property that is the subject of the application; or
  - b) An agent authorized by the owner of the property that is the subject of the application, which may include a lessee of the property.
- 2) If the property subject to an application is under more than one ownership, all owners or their authorized agents shall join in filing the application.
- 3) The Planning Commission and City Council may initiate text and map amendments to the UDC and the Comprehensive Plan with or without application from the owner of the project that is the subject of the amendment.

D) Pre-application meetings.

- 1) A pre-application meeting is an informal discussion between a potential application and city staff regarding a possible project subject to the UDC.
  - a) The purpose of the pre-application meeting is to assist the applicant in identifying the types of approvals needed, the potential review criteria, and the information to be contained in the application(s).
  - b) Subdivision review shall include consultation regarding roadway alignments, utilities, grading, and parks.
- 2) Discussions that occur during pre-application meetings are not binding on the City and do not constitute official assurances or representations on the City.
- 3) Pre-application meetings are required as identified in Table 43-21.

E) Application materials and fees

1) Application materials

- a) Each application for a permit or approval, or for a modification of a permit or approval, pursuant to the UDC, shall include all those application materials listed in the UDC application manual.
- b) The city may reject an application not meeting the requirements of the UDC, the UDC application manual, or as required or authorized by MSA 15.99

2) Fees.

- a) The City Council shall approve and adjust as needed the fees to accompany applications submitted under the UDC through the adoption of a fee schedule.
- b) No application shall be processed or deemed complete until the established fee has been paid.
- a)c) Application fees are not refundable, except where the Community Development Department determines that an application was accepted in error or when the fee paid exceeded the amount due, in which case the overpayment shall be refunded to the applicant.

F) Determination of completeness. A determination of completeness shall be made for each application pursuant to MSA 15.99.

G) Withdrawal of applications

- 1) Any request for withdrawal of an application or appeal shall be submitted in writing to the Community Development Department.
- 1)2) In all cases where the applicant has requested withdrawal of an application or appeal, the associated fee paid and any costs incurred by the City in the processing of an application or appeal shall not be refunded.

G)H) Successive applications

- 1) No application which has been denied wholly or in part may be resubmitted for at least one year from the date of its denial, unless substantial changes have been made which warrant reconsideration, as determined by the City Planner.

H)I) Public hearings and notices

1) Public hearings

- a) Public hearings as required by the UDC shall be conducted pursuant to the rules established for each of the bodies, Winona City Code, and in compliance with state law.
- b) Attendance shall be open to the public.

2) The city uses two methods to notify the public about opportunities for public input on pending applications. The types of notice required for specific applications is shown in Table 43-21.

- a) A "P" in the table means published notice in the newspaper at least ten days before the date of the public hearing
- b) A "M" in the table means a letter mailed by first class mail to property owners within the distance designated in Table 43-21 of the applicant's parcel at least ten days prior to the date of the public hearing. Failure to give mailed notice as required by this Section or any defect in the notice given shall not invalidate any action of the required body, provided that a bona fide attempt to comply with this Section has been made.

3) Each required notice shall include the following information:

- a) The name of the applicant
- b) The address, property identification number, or other method of clearly identifying the property
- c) The type of approval being sought
- d) Contact information where additional information can be obtained
- e) Date, time, and location of the public hearing
- f) Right and procedure to receive notice of any appeal

1)4) In the case of an appeal, mailed notice shall be provided to any interested parties that were notified of the original applicant and the right to receive notice of any appeal who have notified the City in writing that they would like to receive notice of the appeal.

2)5) If the application pertains to land within a Flood Plain District or shoreland under local management control, a copy of the application and notice of hearing shall be provided to the

DNR. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

## J) Appeals

### 1) Planning Commission or Board of Adjustment Decisions

- a) Appeal.—Any party in interest aggrieved by a decision of the Planning Commission or Board of Adjustment may appeal to the City Council by filing a written notice of appeal with the City Clerk within ten (10) days after the date of the decision ~~of the Planning Commission~~ accompanied by the required filing fee, as set forth in Section 51.04 a statement as to the facts of the case under appeal, any additional documents or exhibits the appellant believes are required, and a statement as to the relief requested.
- b) An appeal shall stay enforcement of the decision of the commission or board; provided, however, that there shall be no stay if the commission or board has in its decision determined that there is an imminent danger of substantial harm to life or property
- c) City Council Action on Appeal.—The City Council shall hear and decide the appeal not more than 30 days after it is filed with the City Clerk, unless in the judgment of the City Council a good and sufficient reason exists for postponement of the hearing or decision or both, in which case a postponement may be made.
- d) The City Clerk shall cause notice of the appeal hearing to be published in the official newspaper and be mailed to the appellant and to any person meeting the criteria set forth in Section 43.06.13 I. 4.
- e) At the appeal hearing, the appellant, and his or her agent or attorney, shall be given an opportunity to be heard and to show why the decision of the Planning Commission or Board of Adjustment should be overruled or amended. ~~a~~ representative of the Planning Commission or Board of Adjustment, as well as and Planning Commission City staff shall be given an equal opportunity to be heard.
- f) After the close of the appeal hearing, the City Council shall deliberate and may make motion and take action adopting findings and an order affirming, amending or overruling the decision of the Planning Commission or Board of Adjustment, or defer a decision on the matter to a subsequent meeting.
- e)g) A copy of the findings and order shall be served on the appellant, and his or her agent or attorney, by mail by the City Clerk. If a CUP is granted and the CUP pertains to land within a Flood Plain District or shoreland under local management control, a copy of the CUP shall be provided to the DNR. The decision may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

### 2) Appeals of City Council Decisions.

- a) Any person aggrieved by a decision of the City Council may seek relief therefrom in any court of competent jurisdiction as provided by the laws of the state.

## 43.04.1443.06.14 Site Related

### A) Appeal of UDC Interpretation

- 1) Purpose.

- a) ~~An Appeal~~ to the ~~board~~ Planning Commission may be taken by any person affected where it is alleged that there is an error in any order, requirement, decision, or determination made by City Staff in the interpretation or enforcement of ~~an ordinance~~ the UDC respecting an area of responsibility over which the board has jurisdiction.

2) Procedure.

- a) An appeal shall be ~~taken made~~ within 10 days after a decision has been made and transmitted by mail to a person affected by the decision of City Staff.
  - i. ~~An~~ The appeal shall be filed with ~~the secretary of the board~~ the City Clerk accompanied by the required fee as set forth in Section 51.01 herein. In the event the appeal is withdrawn before the City incurs expense for publication or before hearing by the board, the City Treasurer is authorized and directed to refund said fee when directed to do so by the secretary of the board.
  - ii. An appeal shall be in writing ~~on a form provided by the secretary and be directed to the board and~~ include a statement as to the facts of the case under appeal, any additional documents or exhibits the appellant believes are required, and a statement as to the relief requested ~~It shall succinctly state the facts, be accompanied by such documents or exhibits as the appellant believes are required, and shall state the relief requested.~~
- b) ~~As soon as reasonably may be after receipt of the appeal, the secretary shall submit the appeal and the file of the administrative officer to the board~~ An appeal shall stay enforcement of an order, requirement, decision or determination of City Staff until the board Planning Commission shall make its decision; provided, however, that there shall be no stay if City Staff certifies in writing to the chairman of the board that enforcement is required because there is an imminent danger of substantial harm to life or property.
- c) The ~~board~~ Planning Commission shall hear and decide an appeal not more than 45 days after it is filed ~~with the secretary~~, unless in the judgment of the chairman of the ~~board~~ Planning Commission a good and sufficient reason exists for postponement of the hearing or decision or both, in which case he may order a postponement.
- d) Public notice of any appeal shall follow the requirements of Table 43-21 and Section 43.06.13 I.
- e) ~~At the hearing the appellant, his agent or attorney, shall be given an opportunity to be heard and to show why the order, requirement, decision, or determination of City Staff should be overruled or amended. City Staff and any members of the public shall be given an equal opportunity to be heard.~~
- f) After the hearing, the Planning Commission shall deliberate and decide on the appeal. The decision shall state the reasons for the Planning Commission's decision and provide direction to City Staff on required actions.

B) Site Plan

1) Purpose.

- a) The purpose of site plan review is to provide a process for the evaluation and approval of site plans and building design by the City. These procedures are established in the interest of encouraging quality development, ensuring proper design of sites for the effective use of land, promoting high standards, and protecting the health and safety of the general public.

2) Procedure.

- a) ~~Site plans shall be required for any development, except the following:~~
- b) ~~a) One and two family dwellings, unless they are part of a cluster development;~~
- ~~i. When the Department of Community Development finds that a new development will have minimal impacts on existing conditions of a proposed development site. In making this finding, consideration shall be given to proposed land use, adjoining land uses and zoning, modified storm drainage volumes and patterns, new public utility extensions, parking, driveway, loading, exterior storage areas, and lighting, police and fire protection concerns, development lot slopes, modifications to adjoining streets or street rights-of-way and conformance with the general principles of design listed under (d) below.~~
- b) Application Distributed
- i. A copy of a site plan application, as determined to be complete by the Department of Community Development, shall within one business day following such determination be submitted to the City Engineer, Public Works Department, Police Department and Fire Department for review.
- ii. A copy shall also be commensurately provided to the Planning Commission for notice purposes.
- iii. ~~In addition, M~~mailed notice offering an opportunity to review said plan shall be given to property owners within 100 feet of the property upon which the proposed development is to be located.
- c) The City Planner shall be responsible for the approval, modification or denial of all site plans, unless a written request for review of the site plan by the Planning Commission is made ~~as provided in this paragraph.~~
- d) Request for Review.
- i. A person who has submitted a site plan, a reviewing department head, any member of the Planning Commission, or any other party of interest may file, with the Department of Community Development, a written request for review of the site plan by the Planning Commission.
- ii. Such a request shall be made within seven (7) calendar days of the date of the notice, as applicable, and shall state specific reasons for Planning Commission review, which reasons shall be based on consistency of the proposed site plan with the comprehensive plan, City Code, and/or the standards and criteria for site plan approval set forth in this Chapter. If specific reasons are not stated as required above, the request will not be considered by the Planning Commission.
- e) Following receipt of a valid and timely request for review, the Planning Commission shall review the proposed site plan at its next regularly scheduled meeting, except that a request for review received within 10 days of the next regularly scheduled Commission meeting shall be heard at the meeting following the next regularly scheduled Commission meeting, unless otherwise determined by the Department of Community Development.
- f) The scope of the Planning Commission's review and approval, modification or denial of a site plan shall be based on consistency of the proposed site plan with the ~~City CodeUDC, and/or the standards and criteria for site plan approval set forth in this Chapter.~~ Failure by

the Planning Commission to review the proposed site plan within this time period shall result in automatic approval of the plan.

- g) Except as otherwise provided above, a request for Planning Commission review shall serve to stay the issuance of required development permits until final action by the Commission has been taken.
- e)h) The decision of the Planning Commission shall be incorporated into a site plan and shall be a condition of any permit or certificate issued pursuant to this section.
- e)i) The Planning Commission, City Council or Department of Community Development may impose conditions in granting approval to site plans to promote the intent of this section, to protect adjacent properties, or to protect the public health, safety and welfare and may require guarantees deemed necessary to ensure compliance with the imposed conditions.
- e)j) Nothing contained in this section obligates the city to grant any other approvals required by this chapter or other requirements. Nor does this section satisfy any other procedure or requirement, including conditional use permits, variances or other required permits. All developments must remain in continual conformance with the approved site plan until or unless amended in compliance with this section. No building or grading permit can be issued except in compliance with the approved site plan and the conditions of approval.

k) Time Limit.

- i. Construction of the building or initiation of the use under which the site plan was approved shall begin within 12 months of the date of final approval of the site plan.
  - ii. After the expiration of such period the approval shall be null and void unless the planning commission grants an extension of time or a building permit has been issued and substantial work performed on the project.
  - i.iii. Upon request by the applicant, the planning commission may grant a one-year extension of time for a site plan approval. The city may decline to grant an extension if there has been a change in circumstances affecting the property or if there are other reasons to justify the denial. A change in circumstance may be an approved modification to the comprehensive plan, substantial changes to the surrounding development pattern or other items as determined by the city.
- ~~f) Any party in interest aggrieved by a decision of the Planning Commission may appeal to the City Council by filing a written notice of appeal with the City Clerk within ten (10) days after the date of the decision of the Planning Commission accompanied by the filing fee as set forth in Section 51.01. The City Council shall hear and decide the appeal not more than 30 days after it is filed with the City Clerk, unless in the judgment of the City Council a good and sufficient reason exists for postponement of the hearing or decision or both, in which case a postponement may be made. The City Clerk shall cause notice of the appeal hearing to be published in the official newspaper and be mailed to the appellant. At the appeal hearing, the appellant, and his or her agent or attorney, shall be given an opportunity to be heard and to show why the decision of the Planning Commission should be overruled or amended; a representative of the Planning Commission and Planning Commission City staff shall be given an equal opportunity to be heard. After the close of the appeal hearing, the City Council shall deliberate and may make motion and take action adopting findings and an order affirming, amending or overruling the decision of the Planning Commission, or defer a decision on the matter to a subsequent meeting. A copy~~

~~of the findings and order shall be served on the appellant, and his or her agent or attorney, by mail by the City Clerk.~~

- g) Following review and approval of a site plan, no departure from the plan shall be permitted without the express written consent of the Department of Community Development which shall consult with concerned department heads prior to rendering a decision. A substantial change to an approved site plan shall result in resubmittal of the plan and the procedure for review and approval or disapproval shall be the same as for the initial application.

m) Certificate of Occupancy

- i. The Department of Community Development shall not issue a final certificate of occupancy until the development complies with all provisions of the site plan.
- ii. The Department of Community Development may issue a temporary certificate of occupancy where the approved site plan has been substantially complied with but the owner or developer is prevented from complete compliance by reason of occurrences beyond his control.
  1. Prior to issuance of the temporary certificate of occupancy, the owner or developer following consultation with the Director of Community Development or his/her designated representative and City Engineer shall file with the city clerk a corporate bond or certified check to the city and for the use of the city in a sum sufficient to cover the cost of completion of the unfinished items required by the approved site plan. The bond or check shall be executed by the owner or developer and shall be approved by the city attorney. The condition of the bond or check shall be that if the owner or developer shall comply with the approved site plan and provide the unfinished items, and shall fully indemnify and save the city harmless from all cost and damage which it may suffer by reason of failure of the owner or developer to do so, and shall fully reimburse and repay the city all outlay and expense which it may incur in making good any default of the owner or developer, and shall pay all persons who have contracts directly with the owner or developer for labor, equipment or materials, and shall indemnify and save harmless the city from any and all costs, damage and expense occasioned by or arising directly or indirectly out of supplying all labor, equipment or materials necessary for compliance and provision of the unfinished items, terms of the bond or checks, if action is brought on the bond or check, including reasonable attorney fees in any case where such action is successfully maintained and will appear in and defend and pay and satisfy any final judgment, if any is obtained, in any suits or actions arising out of supplying all labor, equipment or materials necessary for compliance and provision of the unfinished items, or occasioned by any act or omission on the part of the owner or developer, their sub contractors, agents, employees and servants, then the obligation shall be null and void. A further condition of a bond, check, or escrow shall be that the penalty shall attach and the surety shall be liable if the owner or developer shall not have complied with the condition of the bond or check within one year after date of its execution.
  - 1.2. As an alternative to filing a bond or check, the owner or developer may, by written agreement with the City Manager, establish an escrow of money. Such agreement shall provide that the money shall be invested in the name of the city in a savings account in a local financial institution for the benefit of the city and depositor. The depositor shall be entitled to any interest earned by the money while it is invested.

The agreement shall set forth the conditions stated in the ordinance and that the escrow agent shall pay the entire sum together with interest to the depositor if he meets the conditions. The agreement shall also set forth that the city shall be entitled to the principal and the depositor to the interest if the conditions are not met. The agreement shall state that the agreement is made pursuant to section 44.06 of the City Code of Winona, 1979UDC. Any fees for service charged by an escrow agent shall be paid by the owner depositor.

~~h) The planning commission may grant a variance to any provision of this section where owing to special conditions the literal enforcement of its provisions or requirements will result in practical difficulty or hardship. However, in all cases, the spirit of the section shall be observed to the greatest extent possible.~~

### C) Conditional Use Permit

#### 1) Purpose

- (a) ~~The purpose of a conditional use permit is to evaluate each use conditionally permitted in a specific district with respect to such considerations as location, design, size, methods of operation, intensity of use, traffic generation, and those identified as use specific standards in Article 3 in order to safeguard the property rights of all individuals and the health, safety, and general welfare of the community. Purpose of Conditional Use Permits: Conditional uses are specific land use designations that are allowed in particular zoning districts under certain conditions and provided certain general and specific standards and criteria as contained in City ordinance pertaining to the conditional use are observed. A conditional use permit (CUP) is a zoning permit a City issues because of unique characteristics, hazards inherent in the conditional use, or special problems the proposed location of the conditional use may present, provided the general and specific standards and criteria contained in this Chapter have been met by the applicant.~~

#### 2) Procedure

- a) ~~The applicant shall submit an application in accordance with Section 43.06.14 Common Procedures and Requirements. Application: An application for a CUP shall be made in writing signed by the owner of the property for which the conditional use permit is sought on a form provided by the City. Should a CUP application also require variance/s, approval of the variance/s CUP shall occur prior to submittal of the CUP variance application. The application shall be filed with the City and shall address each of the general requirements in this section and the specific criteria listed under a specific conditional use within a zoning district, as applicable. Following receipt of a CUP application, City staff will provide written notification to the applicant within 15 business days if the application for a CUP is determined to be incomplete and telling the applicant what information is missing. An application determined to be incomplete by City staff, following the above written notice procedure shall not be forwarded to the Planning Commission for consideration until it is resubmitted with the missing information. If an application is determined incomplete by City staff because it that does not contain all required information, the 60-day review period applicable under Minnesota Statutes, section 15.99 shall not restart until an application is resubmitted in the same manner as the original incomplete application.~~
- b) ~~The Planning Commission shall hold a public hearing in accordance with 43.06.13 I and Table 43-21.~~
- c) ~~Upon the conclusion of the public hearing, the Planning Commission shall either grant the CUP, grant the CUP subject to amended or additional conditions, table further consideration of the CUP pending receipt of additional information necessary to consider the application, or deny the CUP.~~

- i. If the Planning Commission tables consideration, City staff shall provide notice to the applicant of the information needed and the reasons for the extension of the original 60-day review period, which extension may not exceed 60 days unless approved by the applicant.
- ii. The Planning Commission shall make findings supporting its decision following the close of the public hearing and its deliberations and adopt the same at the meeting or directing City staff to come back to the Planning Commission with recommended findings at a subsequent meeting.

iii. In granting a CUP, the Planning Commission ~~or the City Council, as applicable,~~ may impose such conditions and require such guarantees on conditional uses as it deems reasonable and necessary:

1. ~~(i)~~ to ensure compliance with the comprehensive plan, this ~~Chapter~~UDC, the general standards contained herein, and the ~~use~~ specific criteria listed ~~under a specific conditional use in a zoning district in Article 3;~~ and ~~(ii)~~

2. to protect the health, safety, morals, and general welfare of the public.

~~iii.~~iv. If a CUP is granted and the CUP pertains to land within a Flood Plain District or shoreland under local management control, a copy of the CUP shall be provided to the DNR. The decision may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

~~b.)~~d) If a conditional use permit is approved or approved with conditions, all future use of the land and structures erected on the land pursuant to the permit shall comply with its terms and conditions. The City may require that some or all of the documents presented by the applicant in support of the application, including without limitation any site plan, landscape plan, building elevation drawing or development agreement, be recorded prior to the issuance of any building permit. A decision not to require the recording of some or all of these documents shall not relieve the applicant or any successors or assigns in title to the property from the duty to comply with all terms and conditions of the permit.

### 2)3) Cancellation of Conditional Use Permits.

- a) The following conditions shall be part of every CUP unless otherwise specified by the Planning Commission or City Council at the time a CUP is granted:
  - i. In instances where a building permit is required for the conditional use that is the subject of the CUP, but subject to an extension of time granted by the City Council, an approved CUP shall expire and become null and void unless a building permit is issued by the City for the conditional use for which the CUP was granted within twelve (12) months of the date of final approval of the CUP.
  - ii. In instances where a building permit is NOT required for the conditional use that is the subject of the CUP, but subject to an extension of time granted by the City Council, an approved CUP shall expire and become null and void unless the property is put to the conditional use for which the CUP was granted and in compliance with all CUP conditions, within twelve (12) months of the date of final approval of the CUP.
  - iii. Where a CUP has been granted and the conditional use for which the CUP was approved is discontinued or abandoned for any reason for a period of ~~one (1) year~~ 12 months or more, the CUP shall expire and become null and void provided there is a

preponderance of evidence demonstrating discontinuance or abandonment of the conditional use.

- iv. Where a CUP has been granted and a conditional use has been changed to a permitted use or to any other conditional use, the CUP shall expire and become null and void.

3)4) Criteria

- a) ~~General Requirements for All Conditional Use Permits.~~ In addition to meeting all conditions listed ~~under a specific use as use specific standards in Article 3 within a zoning district,~~ as applicable, the general standards and criteria, which must be met for all CUPs, are as follows:
  - i. The extent, location and intensity of the conditional use will be in substantial compliance with the Winona Comprehensive Plan.
  - ii. The conditional use will conform to all applicable zoning regulations for the district in which the property is located.
  - iii. Considering existing circumstances and potential uses under existing zoning, the conditional use will not substantially impair the use and enjoyment of other property in the neighborhood.
  - iv. The conditional use will not impede the normal and orderly development and improvement of the surrounding property.
  - v. Considering existing circumstances and potential uses under existing zoning, the conditional use will not be detrimental to the existing character of the development in the immediate neighborhood or be incompatible with or endanger the public health, safety and general welfare.
  - vi. The conditional use will not create an excessive burden on existing parks, schools, streets/roads and other public facilities, which serve or are proposed to serve the area.
  - vii. The conditional use will not adversely affect neighboring property and dwellings because of excessive traffic generation, glare, noise or other nuisance characteristics.
  - viii. A conditional use located on property having significant historical and architectural resources shall preserve such resources, and a conditional use shall not substantially diminish other neighboring property having significant historical and architectural resources.
  - ix. The conditional use shall either preserve or not significantly negatively affect natural and environmental resources.
  - x. The conditional use will comply with other applicable city, county, state, and federal regulations, as applicable.
- b) In addition to the above mandatory criteria that must be met to grant a CUP, the Planning Commission will also consider whether the proposed use will substantially diminish property values in the neighborhood. While this criterion is not mandatory, the Planning Commission may impose additional conditions on conditional uses as it deems reasonable and necessary to mitigate negative effects on neighboring property values through screening, fencing, or buffer zones ~~or as otherwise provided in paragraph (c) below.~~
- c) ~~Additional Conditions. In addition to the general standards and criteria, the Planning Commission or the City Council, as applicable, may impose such other additional conditions~~

~~on conditional uses as it deems reasonable and necessary; (i) to ensure compliance with the comprehensive plan, this Chapter, the general standards contained herein, and the specific criteria listed under a specific conditional use in a zoning district; and (ii) to protect the health, safety, morals, and general welfare of the public.~~

4)5) Amendments.

- a) Approved conditional use permits may be amended as follows:
  - i. Minor Amendments.
    - 1. Minor amendments shall include changes in the site design of the applicable property that do not affect neighborhood compatibility or the public health, safety or welfare and that do not violate any of the approved conditions of the CUP.
    - 2. The Planning Commission shall review all proposed minor amendments.
    - 3. The Planning Commission may approve minor amendments or determine the amendments to be major amendments subject to (2) below.
  - ii. Major Amendments.
    - 1. Major amendments shall include all changes that are not classified as minor amendments above and shall be subject to Planning Commission approval under the same procedure as the original CUP.
  - iii. Accessory Uses to a Conditional Use.
    - 1. Uses and structures that are accessory to a conditional use shall be allowed without requiring a CUP amendment unless specifically required as a condition of CUP approval.

5)6) Enforcement and Revocation.

- a) Failure to comply with any condition set forth in a CUP shall constitute sufficient cause for termination of the CUP by the City Council following a public hearing.
- b) Written notification of the public hearing shall be mailed at least ten days prior to the hearing to the current holder of the CUP.
- c) The notice shall outline the violation(s) considered by the City to be grounds for revocation and inform the current holder of the CUP of the opportunity to be heard at the public hearing.

D) Variance

1) Purpose

- a) The purpose of a variance from the regulations of the UDC is to provide relief to the applicant when there is practical difficulty in the strict application of the code .

2) Procedure

- a) The applicant shall submit an application in accordance with Section 43.06.14 Common Procedures and Requirements.
- b) The Board of Adjustment shall hold a public hearing in accordance with 43.06.13 I and consider the application.

- c) Upon the conclusion of the public hearing, the Board of Adjustment shall either grant the variance, grant the variance subject to amended or additional conditions, table further consideration of the variance pending receipt of additional information necessary to consider the application, or deny the variance.
  - i. If the Board of Adjustment tables consideration, City staff shall provide notice to the applicant of the information needed and the reasons for the extension of the original 60-day review period, which extension may not exceed 60 days unless approved by the applicant.
  - ii. The Board of Adjustment shall make findings supporting its decision following the close of the public hearing and its deliberations and adopt the same at the meeting or directing City staff to come back to the Board of Adjustment with recommended findings at a subsequent meeting.
  - iii. In granting a variance, the Planning Commission, may impose such conditions and require such guarantees on conditional uses as it deems reasonable and necessary:
    - 1. to ensure compliance with the comprehensive plan and this UDC.
    - 2. to protect the health, safety, morals, and general welfare of the public.
  - iv. If a variance is granted and the variance pertains to land within a Flood Plain District or shoreland under local management control, a copy shall be provided to the DNR. The decision may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

3) Use Variances

- a) The board may not permit as a variance any use that is not permitted identified as a permitted, permitted with standards, conditional, or accessory use under the zoning ordinance for property in the zone where the affected person's land is located.

4) Conditions

- a) The board may impose conditions in the granting of variances to insure compliance and to protect adjacent properties.
- b) A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

5) Criteria

- a) A variance shall be granted if it meets all of the following criteria:
  - i. The variance is in harmony with the purpose and intent of the UDC:
    - 1. Promote the public health, safety, morals, comfort and general welfare
    - 2. Conserve and protect property and property values
    - 3. Secure the most appropriate use of land
    - 4. Facilitate adequate and economical provisions for public improvements
  - ii. The variance is consistent with the Comprehensive Plan.
  - iii. The proposal puts the property to use in a reasonable manner.
  - iv. There are unique circumstances to the property not created by the property owner.

v. The variance, if granted, will not alter the character of the neighborhood.

vi. There are other considerations for the variance besides economics.

E) Wetland/WCA Determination

1) Purpose

- a) The purpose of the Wetland/WCA Determination is to fulfill the City of Winona's responsibility as a Minnesota Wetland Conservation Act (WCA) Local Government Unit (LGU) by implementing and enforcing WCA and Minnesota Board of Water and Soil Resources (BWSR) Regulations.

2) Procedure

- a) The applicant shall submit an application in accordance with Section 43.06.14 Common Procedures and Requirements.
- b) The City Planner shall review and process applications requiring WCA determinations in accordance with WCA and BWSR regulations.
- c) Exemptions, no loss, and wetland boundary or type determinations.
- i. A Technical Evaluation Panel shall be held to review exemptions, no loss, and wetland boundary or type determinations. Written findings and recommendations shall be made by the Technical Evaluation Panel.
- ii. The City Planner shall make approve, approve with conditions, or reject decisions relating to exemptions, no loss, and wetland boundary or type determinations in accordance with applicable conditions or Minnesota Rules Chapter 8420, as may be amended, and the findings and recommendations of the Technical Evaluation Panel. The City Planner may defer a determination decision to the City Council.
- iii. A decision of the City Planner to approve, approve with conditions, or reject an exemption, no loss, or wetland boundary and type determination becomes final if not appealed to City Council within 30 calendar days after the date of the decision. Until such time that this period has fully expired, no drainage, filling, or excavation activity may be initiated on the affected property.
- d) Replacement and Banking Plans
- i. Any required decision relating to replacement and banking plan determinations, along with any other decision authority which is not granted to the City Planner, shall be made by City Council.
- ii. In such cases, the City Planner shall be responsible for securing, from a person seeking a determination, all required plans, applications, and other information as required by Minnesota Rules Chapter 8420.
- iii. The City Planner shall seek technical information from the Technical Evaluation Panel and shall secure written findings and recommendations from the panel.
- iv. When required, the City Planner shall also work with other LGU's and State and Federal agencies in processing a determination decision.
- v. Once appropriate plans and applications are prepared and deemed complete, these, along with the City Planner's Report and Technical Evaluation Panel findings and recommendations, along with appropriate information from any other agency shall be

forwarded to the City Clerk. The City Clerk shall then prepare the matter for City Council review and decision.

e) City Council Consideration

- i. The City Clerk shall establish a City Council public hearing date. Notice of the hearing shall follow the requirements of Section 43.06.13 I. Copies of the notification must be sent to any person or agency required to receive notice of the specific action, per Minnesota Rules, Chapter 8420.
- ii. The City Planner will prepare a Staff Report which describes the facts, evaluates the application of the WCA to the facts, and makes a recommendation. The Staff Report must include written findings for consideration/adoption by Council, as well as a copy of the written TEP Report/supporting documents, and the applicable report of any other person or agency.
- iii. Council hearings shall be tape recorded in order to facilitate a verbatim transcript upon an appeal of Council's decision. During the hearing, the City Planner should provide an oral report and any person desiring to speak to the matter should be given an opportunity to do so. All persons should clearly state their name and place of residence before speaking. All documents that are submitted to, or ruled upon, by Council shall be identified on the record of the meeting.
- iv. Following the hearing, the Council may approve, approve with conditions, reject, or take other appropriate action, consistent with the WCA. Any determination of the Council shall be by Resolution and shall include written findings of fact for the decision.
- v. Following Council action, its decision must be mailed to persons or agencies required to receive notice of the specific action. The Council's decision becomes final upon full expiration of local appeal procedures, as defined under Minnesota Rule Chapter 8420. Until such time that this period has fully expired, no drainage, filling, or excavation activity may be initiated on the affected property.

3) Appeal

- a) An appeal of the City Planner's decision to the City Council may be initiated by the landowner, by any of those required to receive notice of the decision, or by petition of 100 residents of the county in which a majority of the wetland is located.
- b) The appeal shall be in writing, shall state reasons for the appeal, and shall become effective upon receipt by the Winona City Clerk. Unless petitioned by a State agency or any member of the Technical Evaluation Panel, all appeals shall be accompanied by a nonrefundable application fee.
- c) Any request, appeal, petition, or other action requiring a decision by the City Council shall become effective upon receipt by the City Clerk. Once received it shall be processed as outline above in Section 43.06.14 E 2 e.

~~43.04.15~~43.06.15 **Subdivision Related**

A) Minor Subdivision – Final Plat

1) Purpose

- a) The purpose of the Minor Subdivision – Final Plat process is to ensure compliance with the UDC while simplifying the approval process for subdivisions which:

- i. Does not involve more than five lots after the original trace has been completely subdivided.
- ii. Is located along any existing public street no involving the opening, widening, or extension of any street or road
- iii. Does not involve the dedication of any other public spaces

2) Procedure

- a) The subdivider shall prepare a final plat of the proposed subdivision which shall conform with the requirements set forth in Article 4 Subdivision Standards, and shall file an application in accordance with Section 43.06.13. The City Council may consider exempting the subdivider from complying with some of the requirements stipulated in the UDC Application Manual pertaining to the preparation of the preliminary plat.
- b) The City Planner and City Engineer shall determine whether the minor subdivision final plat process will be sufficient in securing the standards and requirements of the UDC. If found insufficient, the platting procedures identified for the major subdivision preliminary and final plat shall be followed.
- c) The Planning Commission shall hold a public hearing in accordance with 43.06.13 I and consider the application.
- d) Upon the conclusion of the public hearing, the Planning Commission shall make a recommendation as to whether the minor subdivision final plat should be approved with conditions, denied, or tabled pending a request for additional information.
- e) Upon receipt of the Planning Commission recommendation, the City Council shall consider the minor subdivision final plat and make a determination regarding whether the minor subdivision final plat shall be approved, approved with conditions, denied, or tabled pending a request for additional information.
- f) Modification, Undue Hardship.
  - i. In any particular case where the subdivider can show that, by reason of exceptional topographic or other physical conditions, strict compliance with any requirement of these regulations would cause practical difficulty or exceptional and undue hardship, the commission may relax such requirement to the extent deemed just and proper, so as to relieve such difficulty or hardship; provided, such relief may be granted without detriment to the public good and without impairing the intent and purpose of these regulations or the desirable general development of the neighborhood and the community in accordance with the City Plan and the Zoning Ordinance. Any modification thus granted shall be entered in the minutes of the commission setting forth the reasons which, in the opinion of the commission, justified the modification.

B) Major Subdivision, including Cluster Development Plan

1) Purpose

- a) The purpose of the Major Subdivision process is to ensure compliance with the UDC will promoting appropriate development of the City as provided for in the purpose of this code.

2) Procedure for Preliminary Plat

- a) The subdivider shall prepare a preliminary plat of the proposed subdivision which shall conform with the requirements set forth ~~in section 42.04 following~~ in Article 4 Subdivision

~~Standards, and shall file with the commission an application application in accordance with Section 43.06.13 in writing for the tentative approval of said plat accompanied by 5 black line or photostatic copies, at least 2 weeks prior to the meeting of the commission at which action is desired.~~

~~b) Checking--Review by other Agencies.~~

- i. The preliminary plat will be checked by ~~the commission~~ City Staff as to its conformity with the ~~Thoroughfare Plan~~ Comprehensive Plan, Functional Classification Map, and the principles, standards and requirements hereinafter set forth, and copies of said preliminary plat will be referred for recommendations or other action as follows:
  1. Plat within city. In the case of plats within the city: to the city engineer for checking of matters within his jurisdiction and approval of the improvements proposed to be installed.
  2. Plat outside city. In the case of plats outside the corporate limits of the city: (1) to the county engineer for checking of matters within its jurisdiction, for reference to the board of health when regulations adopted by the county commissioners, of improvements proposed to be installed; (2) to the city engineer; and (3) to the board of the town in which the subdivision is located.

~~c) Tentative Approval. Upon receipt of the recommendations or other action concerning matters covered in the preceding paragraph, the commission will tentatively approve or disapprove the preliminary plat or approve it with modifications noting thereon any change that will be required. Such tentative approval shall be given only after a public hearing which shall be held within 30 days from the date such plat is filed with the city engineer. Notice of the hearing shall be published once in a newspaper of general circulation in the municipality and shall be mailed to all property owners within 300 feet of the area to be platted 10 calendar days prior to said hearing. One copy of the plat will be returned to the subdivider with the date of said tentative approval or disapproval endorsed thereon. Similar copies also will be transmitted to the city engineer in the case of plats within the city and to the county planning commission in the case of plats outside the corporate limits of the city. The tentative approval of the preliminary plat by the commission is to be considered only as an approval of the layout, with the understanding that the city engineer, county engineer, or other officials having jurisdiction may modify any engineering or construction details proposed by the subdivider whenever required for the protection of the public interest. The Planning Commission shall hold a public hearing in accordance with 43.06.13 I and consider the application.~~

~~d) Upon the conclusion of the public hearing, the Planning Commission shall make a recommendation as to whether the major subdivision preliminary plat should be approved with conditions, denied, or tabled pending a request for additional information.~~

~~i. If the Planning Commission tables consideration, City staff shall provide notice to the applicant of the information needed and the reasons for the extension of the original 60-day review period, which extension may not exceed 60 days unless approved by the applicant.~~

~~e) Upon receipt of the Planning Commission recommendation, the City Council shall consider the major subdivision preliminary plat and make a determination regarding whether the major subdivision-preliminary plat shall be approved, approved with conditions, denied, or tabled pending a request for additional information.~~

- i. If the City Council tables consideration, City staff shall provide notice to the applicant of the information needed and the reasons for the extension of the original 60-day review period, which extension may not exceed 60 days unless approved by the applicant.
- ii. The City Council shall make findings supporting its decision and adopt the same at the meeting or directing City staff to come back to the City Council with recommended findings at a subsequent meeting.

~~Council approval – required for cluster development only. Upon receipt of the commission's findings and recommendations, the Council shall establish a public hearing date to consider the preliminary plan. Notice of the hearing shall be published once in a newspaper of general circulation in the municipality and shall be mailed to property owners within 350 feet of the affected area 10 calendar days prior to said hearing. The action of the City Council shall be to approve, deny, or modify the plan. Modification shall be made prior to Council final action.~~

### 3) Procedure for Final Plat

#### a) Checking

- i. A copy of the final or record plat thus filed, plus the grading, utility, street and erosion control plans will be transmitted to the city engineer or the county engineer, as the case may be, for approval. If found satisfactory, ~~he will return~~ the said plat shall be returned to the City Planner to the commission, together with a two fold certificate showing:
  1. that the technical details of the plat itself have been checked and found satisfactory, and
  2. that all required improvement plans have been satisfactorily completed.
- ii. ~~Review – Other Agencies.~~ Where a preliminary plat is subject to review by any state agency, the final plat will also be submitted to such agency for review and comment.
- iii. ~~Notice.~~ Approval action by the commission on all final plats shall be preceded by notice of such pending action mailed to all property owners within 300 feet of the final plat at least 10 calendar days prior to the commission meeting at which action is scheduled.
- iv. ~~Approval.~~ Upon approval of the final plat by the state agencies concerned, or after 20 days from the date submission of the plat to said agencies, and after a copy of the final plat together with the foregoing two-fold certificate has been received by the commission from the city engineer or the county engineer and provided that the final plat is found to conform with the preliminary plat as tentatively approved, the commission will approve the final plat and will enter such approval thereon in writing by its chairman and secretary.
- iii. City Council Consideration Acceptance of Plat.
  1. Upon such approval, the commission will transmit the final plat together with all certificates and notations required by law to the city council. The council shall approve, partially approve or reject the plat.
  2. Acceptance of the plat by the council shall be deemed to constitute acceptance by the public of the dedication of any street or other proposed public way or space shown on said plat.

3. In the case of a subdivision outside the corporate limits of the city, said plat shall be referred to the board of county commissioners for such action as may be necessary to accept the plat.

4) Modifications.

a) Variations.

- i. The general principles of design and the minimum requirements for the laying out of subdivisions, stipulated in Article 4, may be varied ~~by the commission~~ in the case of a subdivision large enough to constitute a more or less self-contained neighborhood to be developed in accordance with a comprehensive plan safeguarded by appropriate restrictions, which in the judgment of the ~~commission~~ City Council make adequate provision for all essential community requirements; provided, however, that no modifications shall be made ~~by the commission~~ which would conflict with the proposals of the official ~~Thoroughfare Plan~~ Functional Classification Map, official plan for schools, parks and other open public grounds, or with other features of the City Plan of Winona, or with the intent and purpose of said general principles of design and minimum requirements.

b) Undue Hardship.

- ii. In any particular case where the subdivider can show that, by reason of exceptional topographic or other physical conditions, strict compliance with any requirement of these regulations would cause practical difficulty or exceptional and undue hardship, the commission may relax such requirement to the extent deemed just and proper, so as to relieve such difficulty or hardship; provided, such relief may be granted without detriment to the public good and without impairing the intent and purpose of these regulations or the desirable general development of the neighborhood and the community in accordance with the City Plan and the Zoning Ordinance. Any modification thus granted shall be entered in the minutes of the commission setting forth the reasons which, in the opinion of the commission, justified the modification.

**43.04.1643.06.16 Ordinance or Plan Amendment Related**

A) UDC Text Amendment

- 1) Purpose
  - a) The purpose of a UDC Text Amendment is to make an adjustment to the text of the UDC due to a change in conditions, public policy, recommendation of the comprehensive plan, or those that are necessary to advance the health, safety, and public welfare of the City.
- 2) Procedure
  - a) Initiation.
    - i. An amendment may be initiated by the city council or the planning commission or by the petition of an affected property owner or owners.
    - ii. The term "affected property owner" shall mean an owner of property for which an amendment is proposed, an owner of property adjoining property for which an amendment is proposed, any person who states in writing to the commission that he will be affected by a decision made upon an application for an amendment and who states

facts showing how he will be affected or an owner of property annexed or consolidated or to be annexed or consolidated.

- iii. If initiated by affected property owner or owners, the applicant shall submit an application in accordance with Section 43.06.14 Common Procedures and Requirements.

b) The Planning Commission shall hold a public hearing in accordance with Table 43-21 and 43.06.13 I.

~~b) Upon receipt of an application or when the planning commission has prepared its own application, the city planner or his designated representative shall set a date for a public hearing. He shall study the matter and prepare a report for presentation to the commission at the public hearing.~~

~~c) In every case, the city planner shall cause notice to be given, as required by Minnesota Statutes, Chapter 462. A notice shall contain a statement that an application for inspection by the public is on file with the Department of Community Development. It shall also contain such other information as the city planner believes will adequately inform the public of the purpose of the amendment.~~

~~d) At the public hearing, the commission shall consider, among other things, the application, the report of the City Planner and the written or verbal statement of each person desiring to be heard on the proposed amendment. When the commission is satisfied that it has received sufficient information, the chairman shall close the public hearing. Thereafter, the commission shall deliberate and attempt to arrive at a recommendation. Said recommendation shall be made within 60 days of application receipt.~~

- i. A recommendation shall be a recommendation to grant the application, or a modification thereof, or to reject the application. The commission shall give reasons for its recommendation.
- ii. A report of the action of the commission and all the appropriate records, files, reports and minutes of the commission shall be promptly transmitted to the city clerk.

~~e) Upon receipt thereof, the city clerk or his designated representative shall set a date for a public hearing and shall cause notice to be given, as required by Minnesota Statutes, Chapter 462. A notice shall contain a statement that an application for inspection by the public is on file with the city clerk; it shall also contain such other information as the clerk believes will adequately inform the public of the purpose of the amendment. At the public hearing, in its deliberation, the council shall consider, among other things, the application, records, files, reports, and minutes of the commission and the written or verbal statement of each person desiring to be heard on the proposed amendment. When the council is satisfied that it has received sufficient information, the presiding officer shall close the public hearing. Thereafter, the council shall deliberate and attempt to arrive at a decision. A decision shall be a recommendation to grant the application, or a modification thereof, or to reject the application. The decision shall be accompanied by appropriate reasons.~~

#### B) UDC Map Amendment

##### 1) Purpose

- a) The purpose of a UDC Map Amendment is to make an adjustment to the map of the UDC due to a change in conditions, public policy, recommendation of the comprehensive plan, or those that are necessary to advance the health, safety, and public welfare of the City.

## 2) Procedure

## a) Initiation.

- i. An amendment may be initiated by the city council or the planning commission or by the petition of an affected property owner or owners.
- ii. The term "affected property owner" shall mean an owner of property for which an amendment is proposed, an owner of property adjoining property for which an amendment is proposed, any person who states in writing to the commission that he will be affected by a decision made upon an application for an amendment and who states facts showing how he will be affected or an owner of property annexed or consolidated or to be annexed or consolidated.
- iii. If initiated by affected property owner or owners, the applicant shall submit an application in accordance with Section 43.06.14 Common Procedures and Requirements.

b) The Planning Commission shall hold a public hearing in accordance with Table 43-21 and 43.06.13 I.

~~b) Upon receipt of an application or when the planning commission has prepared its own application, the city planner or his designated representative shall set a date for a public hearing. He shall study the matter and prepare a report for presentation to the commission at the public hearing.~~

~~c) In every case, the city planner shall cause notice to be given, as required by Minnesota Statutes, Chapter 462. A notice shall contain a statement that an application for inspection by the public is on file with the Department of Community Development. It shall also contain such other information as the city planner believes will adequately inform the public of the purpose of the amendment.~~

~~d) At the public hearing, the commission shall consider, among other things, the application, the report of the City Planner and the written or verbal statement of each person desiring to be heard on the proposed amendment. When the commission is satisfied that it has received sufficient information, the chairman shall close the public hearing. Thereafter, the commission shall deliberate and attempt to arrive at a recommendation. Said recommendation shall be made within 60 days of application receipt.~~

- i. A recommendation shall be a recommendation to grant the application, or a modification thereof, or to reject the application. The commission shall give reasons for its recommendation.
- ii. A report of the action of the commission and all the appropriate records, files, reports and minutes of the commission shall be promptly transmitted to the city clerk.

~~e) Upon receipt thereof, the city clerk or his designated representative shall set a date for a public hearing and shall cause notice to be given, as required by Minnesota Statutes, Chapter 462. A notice shall contain a statement that an application for inspection by the public is on file with the city clerk; it shall also contain such other information as the clerk believes will adequately inform the public of the purpose of the amendment. At the public hearing, in its deliberation, the council shall consider, among other things, the application, records, files, reports, and minutes of the commission and the written or verbal statement of each person desiring to be heard on the proposed amendment. When the council is satisfied that it has received sufficient information, the presiding officer shall close the public~~

~~hearing. Thereafter, the council shall deliberate and attempt to arrive at a decision.~~ A decision shall be a recommendation to grant the application, or a modification thereof, or to reject the application. The decision shall be accompanied by appropriate reasons.

~~Generally.~~ The city council may, by ordinance, amend the zoning ordinance by a majority vote of all its members and in accordance with the requirements of Minnesota Statutes, Section 462.357, except that the adoption or amendment of any portion of the zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the city council.

C) Comprehensive Plan Text Amendment

1) Purpose

- a) ~~The purpose of a Comprehensive Plan Text Amendment is to make an adjustment to the text of the Comprehensive Plan due to a change in conditions, public policy, or those that are necessary to advance the health, safety, and public welfare of the City.~~

2) Procedure

a) Initiation.

- i. An amendment may be initiated by the city council or the planning commission or by the petition of an affected property owner or owners.
- ii. The term "affected property owner" shall mean an owner of property for which an amendment is proposed, an owner of property adjoining property for which an amendment is proposed, any person who states in writing to the commission that he will be affected by a decision made upon an application for an amendment and who states facts showing how he will be affected or an owner of property annexed or consolidated or to be annexed or consolidated.

- b) ~~The applicant shall submit an application in accordance with Section 43.06.14 Common Procedures and Requirements.~~

- c) ~~The Planning Commission shall hold a public hearing in accordance with Table 43-21 and 43.06.13 I.~~

- e) ~~Upon receipt of an application or when the planning commission has prepared its own application, the city planner or his designated representative shall set a date for a public hearing. He shall study the matter and prepare a report for presentation to the commission at the public hearing.~~

- d) ~~In every case, the city planner shall cause notice to be given, as required by Minnesota Statutes, Chapter 462. A notice shall contain a statement that an application for inspection by the public is on file with the Department of Community Development. It shall also contain such other information as the city planner believes will adequately inform the public of the purpose of the amendment.~~

- e)d) At the public hearing, the commission shall consider, among other things, the application, the report of the City Planner and the written or verbal statement of each person desiring to be heard on the proposed amendment. When the commission is satisfied that it has received sufficient information, the chairman shall close the public hearing. Thereafter, the commission shall deliberate and attempt to arrive at a recommendation. ~~Said recommendation shall be made within 60 days of application receipt.~~

- i. A recommendation shall be a recommendation to grant the application, or a modification thereof, or to reject the application. The commission shall give reasons for its recommendation.
- ii. A report of the action of the commission and all the appropriate records, files, reports and minutes of the commission shall be promptly transmitted to the city clerk.

e) The City Council shall hold a public hearing in accordance with 43.06.13 I and consider the application.

f) Upon receipt thereof, the city clerk or his designated representative shall set a date for a public hearing and shall cause notice to be given, as required by Minnesota Statutes, Chapter 462. A notice shall contain a statement that an application for inspection by the public is on file with the city clerk; it shall also contain such other information as the clerk believes will adequately inform the public of the purpose of the amendment. At the public hearing, in its deliberation, the council shall consider, among other things, the application, records, files, reports, and minutes of the commission and the written or verbal statement of each person desiring to be heard on the proposed amendment. When the council is satisfied that it has received sufficient information, the presiding officer shall close the public hearing. Thereafter, the council shall deliberate and attempt to arrive at a decision. A decision shall be a recommendation to grant the application, or a modification thereof, or to reject the application. The decision shall be accompanied by appropriate reasons.

#### D) Comprehensive Plan Map Amendment

##### 1) Purpose

a) The purpose of a Comprehensive Plan Map Amendment is to make an adjustment to the land use map of the Comprehensive Plan due to a change in conditions, public policy, or those that are necessary to advance the health, safety, and public welfare of the City.

##### 2) Procedure

###### a) Initiation.

- i. An amendment may be initiated by the city council or the planning commission or by the petition of an affected property owner or owners.
- ii. The term "affected property owner" shall mean an owner of property for which an amendment is proposed, an owner of property adjoining property for which an amendment is proposed, any person who states in writing to the commission that he will be affected by a decision made upon an application for an amendment and who states facts showing how he will be affected or an owner of property annexed or consolidated or to be annexed or consolidated.

b) The applicant shall submit an application in accordance with Section 43.06.14 Common Procedures and Requirements.

c) The Planning Commission shall hold a public hearing in accordance with Table 43-21 and 43.06.13 I.

e) Upon receipt of an application or when the planning commission has prepared its own application, the city planner or his designated representative shall set a date for a public hearing. He shall study the matter and prepare a report for presentation to the commission at the public hearing.

- ~~d) In every case, the city planner shall cause notice to be given, as required by Minnesota Statutes, Chapter 462. A notice shall contain a statement that an application for inspection by the public is on file with the Department of Community Development. It shall also contain such other information as the city planner believes will adequately inform the public of the purpose of the amendment.~~
- e)d) At the public hearing, the commission shall consider, among other things, the application, the report of the City Planner and the written or verbal statement of each person desiring to be heard on the proposed amendment. When the commission is satisfied that it has received sufficient information, the chairman shall close the public hearing. Thereafter, the commission shall deliberate and attempt to arrive at a recommendation. ~~Said recommendation shall be made within 60 days of application receipt.~~
- i. A recommendation shall be a recommendation to grant the application, or a modification thereof, or to reject the application. The commission shall give reasons for its recommendation.
  - ii. A report of the action of the commission and all the appropriate records, files, reports and minutes of the commission shall be promptly transmitted to the city clerk.
- e) The City Council shall hold a public hearing in accordance with Table 43-21 and 43.06.13 I.
- f) ~~Upon receipt thereof, the city clerk or his designated representative shall set a date for a public hearing and shall cause notice to be given, as required by Minnesota Statutes, Chapter 462. A notice shall contain a statement that an application for inspection by the public is on file with the city clerk; it shall also contain such other information as the clerk believes will adequately inform the public of the purpose of the amendment.~~ At the public hearing, the council shall consider, among other things, the application, records, files, reports, minutes of the commission and the written or verbal statement of each person desiring to be heard on the proposed amendment. When the council is satisfied that it has received sufficient information, the presiding officer shall close the public hearing. Thereafter, the council shall deliberate and attempt to arrive at a decision. A decision shall be a recommendation to grant the application, or a modification thereof, or to reject the application. The decision shall be accompanied by appropriate reasons.

~~43.04.17~~ 43.06.17 **TRANSPORTATION IMPACT ANALYSES AND ROAD USE AGREEMENTS**

A) Purpose

- 1) The intent of this article is to provide the information necessary to allow decision-makers to assess the transportation implications of traffic associated with a proposed development in relation to safety, the existing and proposed capacity and condition of the street system, congestion, and the quality of life of neighboring residents. This article establishes requirements for the analysis and evaluation of transportation impacts associated with proposed developments. Traffic studies should identify what improvements, if any, are needed to:
  - a) Ensure safe ingress to and egress from a site;
  - b) Maintain adequate street capacity on public streets serving the development;
  - c) Ensure safe and reasonable traffic operating conditions on streets and at intersections;
  - d) Avoid creation of or mitigate existing hazardous traffic conditions;

- e) Minimize the impact of non-residential traffic on residential uses in the vicinity; and
  - f) Protect the public investment in the existing street system.
- 2) Required
- a) A Transportation Impact Analysis and Road Use Agreement shall be required for any development subject to a site plan or CUP after 1/1/2013 which will generate 200 or more heavy commercial vehicle trips per day at maximum daily operating capacity.
  - b) An analysis shall be required for projects where heavy commercial vehicles from the operation would contribute more than 20% of the traffic on any local street.
  - c) These provisions shall not prevent the City from requesting a Transportation Impact Analysis be complete for projects outside the City of Winona which will have any of the aforementioned impacts on non-truck route roads in the City of Winona.
- 3) Jurisdiction
- a) The City Engineer shall have the final authority for determining the need and adequacy of Transportation Impact Analyses and Road Use Agreements
  - b) The City Engineer may waive the requirement for a Transportation Impact Analysis and/or Road Use Agreement.
- 4) Applicability
- a) A Transportation Impact Analysis shall apply to roads used for transporting materials in heavy commercial vehicles, extending from the site access to a truck route unless waived by the City Engineer.
  - b) No development application subject to a Transportation Impact Analysis or Road Use Agreement shall be considered complete unless accompanied by an appropriate traffic study except if a waiver has been granted.
- 5) Findings
- a) A Transportation Impact Analysis shall find the following:
    - i. The traffic generated by the proposed use can be safely accommodated on proposed haul routes and will not need to be upgraded or improved in order to handle the additional traffic generated by the use; or
    - ii. A Road Use Agreement is recommended specifying responsibility for improving and maintaining roads including remediation of damaged roads and specification of designated haul routes.
- B) Transportation Impact Analyses
- 1) A Transportation Impact Analysis shall contain the following information at a minimum:
- a) An analysis of existing traffic on road segments and intersections from site access to a truck route.
  - b) Traffic forecasts for road segments and intersections from site access to a truck route. Such forecasts shall be based on the maximum trips per day.
  - c) An analysis of the impact of the proposed development on residential streets in the vicinity of the site to identify any potential adverse effects of the proposed development and mitigation measures to address any impacts. Examples of possible effects include, but are not limited to, non-residential traffic impacts on residential neighborhoods, schools, pedestrian and bicyclist safety hazards (especially at points where haul routes intersect with facilities having high levels of pedestrian or bicycle traffic), traffic noise, or turning movement conflicts with other driveways or local access roads.
  - d) An analysis of level of service for intersections from site access to a truck route.
  - e) An analysis of intersection sight distances.
  - f) An analysis of the road's structural ability to handle trucks extending from site access to a truck route. Such analysis shall include an analysis of existing and projected cumulative equivalent single axle loads (ESALs) using the Minnesota Local Road Research Board (LRRB) Pavement Impacts of Large Traffic Generators methodology. A structural analysis

shall also be completed for any bridge or culvert along a public road used for a haul or access route if identified as at risk for structural failure due to increased ESAL loadings from the proposed use.

- g) A finding that traffic impacts can either be handled by the roads studied or:
  - i. A list of infrastructure improvements needed to bring the route up to commonly accepted engineering design standards and access management criteria, and/or
  - ii. A list of roadbed, ride surface, or drainage improvements that are needed to increase the structural stability of roads and any substructure, superstructure or deck improvements needed to increase the structural stability of bridges and culverts.

#### C) Road Use Agreement

- 1) A Road Use Agreement shall be prepared for developments subject to a Transportation Impact Analysis at the discretion of the City Engineer. Such agreement shall be developed in response to the findings of a Transportation Impact Analysis. The agreement may address, but is not limited to, any of the following road infrastructure matters:
  - a) Responsibility for upgrading
    - i. Pavement sections, bridges, and culverts structural condition
    - ii. Intersection signals and signage
    - iii. Geometric design, including entrances, intersections, railroad and pedestrian/bicycle facility crossings, geometric design of bridges and culverts, and typical road cross-sections;
  - b) Responsibility for exceptional maintenance attributable to the use, estimated based on Minnesota Local Road Research Board (LRRB) Pavement Impacts of Large Traffic Generators methodology;
  - c) Responsibility for clean-up of spillage and public road dust control along haul routes;
  - d) Establishment of financial accounts to address costs associated with upgrading and exceptional maintenance costs;
  - e) Delineation of a haul route between site access and a truck route;
  - f) Schedules of operation and hauling, including construction operations;
  - g) Methods to verify and report type, number, and weight of truck loads;
  - h) Emergency conditions creating a need for immediate road repairs or road closing;
  - i) Required insurance; and
  - j) Remedies and enforcement measures.

## ~~Article 05~~ Article 07 Definitions

### ~~43-05-1143.07.11~~ 43.07.11 Rules of Construction

A) All provisions, terms, phrases, and expressions contained in the UDC shall be construed according to the stated purpose and intent of the UDC.

B) Unless otherwise specifically indicated, list of items or examples that use terms such as including, such as, or similar language are intended to provide examples and not to be exhaustive lists of all possibilities.

C) Whenever a reference is made to an ordinance, statute, regulation, or document, that reference shall be construed as referring to the most recent edition of such unless otherwise expressly stated.

D) In the case of any difference in meaning between the text of the UDC and any caption or illustration, the text shall control.

A)E) Words and phrases not otherwise defined in this UDC shall be construed according to the common and approved usage of American English.

~~43.05.12~~ 43.07.12 **Definitions**

A) For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- ~~1)~~ 1) [Accessory Dwelling Unit: A dwelling unit with living and sleeping and living quarters including cooking facilities located in a detached accessory structure.](#)
- ~~2)~~ 2) Accessory Use or Structure: A use or structure subordinate to the principal use of a building or to the principal use of land and which is located on the same lot serving a purpose customarily incidental to the use of the principal building or land use.
- ~~3)~~ 3) Adult Use - Body Painting Studio: An establishment or business which provides the service of applying paint or other substance whether transparent or nontransparent to or on the body of a patron when such body is wholly or partially nude in terms of "specified anatomical areas".
- ~~4)~~ 4) Adult Use - Bookstore: A business, a significant portion of which, is devoted to the barter, rental, or sale of books, magazines, printed matter, pictures, slides, records, audiotapes, videotapes or motion picture film, that are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas".
- ~~5)~~ 5) Adult Use - Cabaret: A nightclub, bar, restaurant, or similar establishment that provides dancing or other live entertainment that is distinguished or characterized by an emphasis on the performance, depiction or description of "specified sexual activities" or "specified anatomical areas".
- ~~6)~~ 6) Adult Use - Companionship Establishment: A companionship establishment which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished, and characterized by an emphasis on "specified sexual activities" or "specified anatomical areas". The term Adult Use - Companionship Establishment shall include any "rap parlor", "conversation group", "adult encounter group", "adult sensitivity group", "personal escort service", "model service", "dancing service", or "hostess service", which is both defined and required to be licensed, pursuant to Winona City Code Section Chapter 52, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".
- ~~7)~~ 7) Adult Use - Establishments: Any business that is characterized by, or places a significant emphasis on, providing its patrons with merchandise, services or entertainment that is characterized by an emphasis on the depiction, exposing, describing, discussing of "specified sexual activities" or "specified anatomical areas". For purposes of this definition, Adult Use - Establishments include, without limitation, adult bookstores, adult motion picture theaters, adult massage parlors, adult saunas, adult companionship establishments, adult health clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel or motel, and adult body painting studios.
- ~~8)~~ 8) Adult Use - Hotel or Motel: Adult hotel or motel means a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas".
- ~~9)~~ 9) Adult Use - Massage Parlor, Health Club: A massage parlor or a health club which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified

anatomical areas". The term Adult Use - Massage Parlor shall include any massage parlor which is both defined and required to be licensed pursuant to Winona City Code Chapter 52, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

- 8)10) Adult Use - Modeling Studio: An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in "specified sexual activities" or display "specified anatomical areas" while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.
- 9)11) Adult Use - Motion Picture Arcade: Any place to which the public is permitted or invited wherein coin or slug-operated or electronically or mechanically controlled still or motor picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas".
- 40)12) Adult Use - Motion Picture Theaters: A business premises within an enclosed building used for presenting visual media material that is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.
- 44)13) Adult Use - Novelty Business: A business that is characterized by, or places a significant emphasis on, the sale or rental of merchandise, paraphernalia, instruments or devices that are marketed or sold primarily to simulate human genitals or to provide sexual stimulation.
- 42)14) Adult Use - Sauna: A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas". The term Adult Use - Sauna shall include any sauna which is both defined, and required to be licensed, pursuant to Winona City Code Chapter 52, if such service is characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".
- 43)15) Adult Use - Specified Anatomical Areas: Anatomical areas consisting of (a) less than completely and opaquely covered human genitals, pubic region, buttock, anus, or female breast(s) below a point immediately above the top of the areola; and, (b) human male genitals in a discernable turgid state, even if completely and opaquely covered.
- 44)16) Adult Use - Specified Sexual Activities: Activities consisting of the following: (a) actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or (b) clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or (c) use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation, or other sexually-oriented contact.
- 45)17) Adult Use - Substantial or significant portion: Means at least Twenty-five (25) percent of the inventory, stock and trade, or publicly displayed merchandise, or at least Twenty-five (25)

percent of the floor area of the business (not including storerooms, stock areas, bathrooms, basement or any portion of the business not open to the public).

~~16)~~18) Agricultural Use: The use of land for the growing and/or production of field crops, livestock, and livestock products for the production of income including but not limited to the following:

- a) Field crops, including but not limited to: barley, soy beans, corn, hay, oats, potatoes, rye, sorghum, sunflowers, and wheat.
- b) Livestock, including but not limited to: dairy and beef cattle, goats, horses, sheep, hogs, poultry, game birds and other animals including dogs, ponies, rabbits, mink, buffalo, and deer.
- c) Livestock products, including but not limited to: milk, butter, cheese, eggs, meat, fur, and honey.
- d) Fruits and vegetables.

~~17)~~19) Airport: Any runway, landing area or other facility designed, used or intended to be used either publicly or privately by any persons for the landing and taking off of aircraft, including all necessary taxiways, aircraft storage and tie-down areas, hangars and other necessary buildings and open spaces.

~~18)~~20) Alley or Lane: A public or private way not more than 20 feet wide affording only secondary means of access to abutting property.

~~19)~~ Alley or Service Drive: A passage or way affording generally a secondary means of vehicular access to abutting properties and not intended for general traffic circulation

~~20)~~ Animal Hospital or Veterinary Clinic: A facility for the diagnosis, treatment, or hospitalization of animals. Boarding of animals shall be allowed as an accessory use.

~~21)~~ Animal Unit: A unit of measure used to compare differences in the production of animal manure that employs as a standard, the amount of manure produced on a regular basis by a 1,000 pound slaughter steer or heifer based upon Minn. Rules 7020:

~~21)~~22) Animal Units

Table 43-22: Animal Units

Animal	Manure Produced
One horse	1.0
One slaughter steer or heifer	1.0
One mature dairy cow	1.4
One swine over 55 pounds	0.4
One swine under 55 pounds	0.1
One sheep	0.1
One turkey	0.018
One chicken	0.01
One duck	0.02

- One horse ————— 1.0
- One slaughter steer or heifer ————— 1.0
- One mature dairy cow ————— 1.4
- One swine over 55 pounds ————— 0.4
- One swine under 55 pounds ————— 0.1

<del>One sheep</del>	<del>0.1</del>
<del>One turkey</del>	<del>0.018</del>
<del>One chicken</del>	<del>0.01</del>
<del>One duck</del>	<del>0.02</del>

- a) For animals not listed, the number of animal units shall be defined as the average weight of the animal divided by 1,000 pounds.

~~22) Apartment Efficiency: A dwelling unit in a multi-family building, consisting of not more than one habitable room, together with kitchen or kitchenette and sanitary facilities.~~

~~23) Apartment Hotel: An apartment house which furnishes services for the use of its tenants which are ordinarily furnished by hotels.~~

~~24) Apartment House: See Dwelling, multi-family.~~

~~25)23) Automotive Automobile Repair, Major: General repair, rebuilding or reconditioning of engines, motor vehicles or trailers; collision services including body, frame, or fender straightening or repair; overall painting or paint shop; vehicle steam cleaning.~~

~~26)24) Automotive Automotive Repair, Minor: Incidental body or fender work, or other minor repairs, painting and upholstering, replacement of parts and motor service to passenger cars and trucks not exceeding one and one-half tons' capacity, but not including any operation named under "Automobile Repair, Major," or any other similar thereto.~~

~~27)25) Automobile or Trailer Sales Area: An open area, other than a street, used for the display, sale or rental of new or used motor vehicles or trailers in operable condition and where no repair work is done.~~

~~28)26) Automobile Service Station or Filling Station: A place where gasoline, kerosene or any other motor fuel or lubricating oil or grease for operating motor vehicles is offered for sale to the public and deliveries are made directly into motor vehicles, including greasing and oiling on the premises.~~

~~29)27) Automobile Wrecking: The dismantling or disassembling of used motor vehicles or trailers, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.~~

~~30)28) Basement: A story whose floor line is below grade at any entrance or exit and whose ceiling is not more than 5 feet above grade at any such entrance or exit.~~

~~31)29) Bed and Breakfast: A building or part thereof, other than a hotel or motel, where lodging and breakfast are provided to transient guests by a resident family for compensation.~~

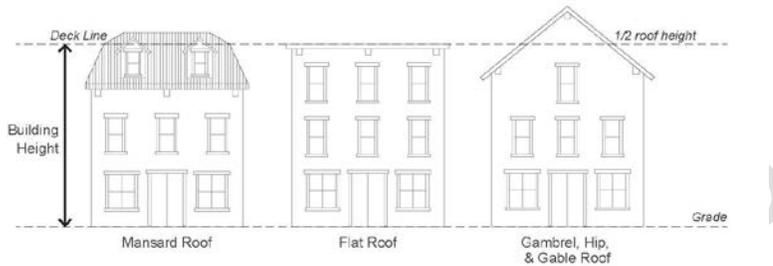
~~32)30) Beginning of Construction: The incorporation of labor and material within the walls of the building or buildings.~~

~~31) Block: The enclosed areas within the perimeter of streets; watercourses; railroad rights-of-way; and City boundaries.~~

~~33)32) Blockfront: A blockfront is that portion of a block consisting of all of the zoning lots fronting on a single street.~~

~~34)33) Bluff Face: That area between United States Geological Survey Contour intervals of 1180 and 800 feet.~~

- ~~35)~~34) Bluff Slope: The average slope between United States Geological Survey Contour intervals of 800 and 1180 mean sea level.
- ~~36)~~35) Board: The board of adjustment of the city.
- ~~37)~~36) Brewery. A facility which produces malt liquor for sale.
- ~~38)~~37) Brewery, Large. A brewery that produces more than 60,000 barrels of malt liquor annually for sale and wholesale distribution purposes. Such uses shall be licensed and conducted in accordance with all applicable federal, state, and local laws.
- ~~39)~~38) Brewery, Small. A brewery that produces no more than 60,000 barrels of malt liquor annually for sale and/or wholesale distribution purposes. Such uses shall be licensed and conducted in accordance with all applicable federal, state and local laws, and exclude brewpubs and brew on premises stores as defined herein.
- ~~40)~~39) Brew on Premises Store. A facility that provides the ingredients and equipment for a customer to use to brew malt liquor at the facility for personal use. Such uses shall comply with all applicable federal, state, and local laws.
- ~~41)~~40) Brewpub. A bar, restaurant, or similar retail establishment, in which no more than 3500 barrels of malt liquor are brewed annually for retail on and off sale purposes. Such facilities shall be licensed in accordance with provisions of City Code Chapter 55 and Minnesota Statutes 340A.301 subd.6 while their use and operation must comply with these and all other applicable federal, state, and local laws.
- 41) Building: Any structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals or property. When such a structure is divided into separate parts by one or more unpierced walls extending from the ground up, each part is deemed a separate building, except as regards minimum side yard requirements, as hereinafter provided.
- 42) Building Cornice Line: The line which marks the horizontal edge at the top of the principal front wall plane of a structure.
- 43) Building Façade: The exterior elevation of a building or structure extending from the ground to the top of the wall, cornice, parapet, or eaves and the entire width of the building elevation.
- 44) Building Façade Articulation: A recess or projection in the building façade that gives texture to the building surface, creates the impression that one building is two or more buildings, incorporates a unique building element, and improves the building's overall composition and aesthetic. Minimum requirements for a building break are a depth of two (2) feet and a width of four (4) feet.
- ~~42)~~45) Building, Height of: The vertical distance from the average contact ground level at the front wall of the building to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the mean height level between the eaves and ridge for gable, hip or gambrel roofs.



46) Building Parapet: A low wall or protective barrier that extends vertically above the roof line of a building.

47) Building Roof Ridge Line: The line which marks the highest point of a pitched roof.

48) Building Stepback: A setback of a building's upper floor(s) in order to reduce the building's bulk, articulate the base of the building, ensure a more comfortable street environment, and provide light and air at street level

43)49) Building Street Frontage: The proportion of a lot's frontage on a public street that is occupied by a building as measured at the required maximum front yard setback. Corner lots must meet maximum front yard setback requirements for both public street frontages.

50) Building Transparency: Openings in the street-facing façade of a building that are transparent, including windows and doors, which enable increased physical and/or visual interaction between street/sidewalk/plaza activities and a building's interior uses and activities.

44)51) Cellar: That portion of a building between floor and ceiling underground, but having half or more than half of its clear height below the adjoining finished grade.

45)52) Cemetery: Land used or intended to be used for the burial of the human dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries if operated in connection with and within the boundaries of such cemetery.

~~46) Central Business District Core: An area defined as follows: Beginning at the intersection of Fourth and Johnson Streets; north to the center line of the alley between Levee Park and Second Street; east to the center line of Lafayette street; south to the center line of the alley between Second and Third Streets; east to the center line of Market Street; south to the center line of the alley between Third Street and Fourth Street; west to the center line of Lafayette Street; south to the center line of Fourth Street; west to the point of beginning.~~

47)53) Change of Use: Altering the character of the existing use of land, a building, or a structure.

48)54) City Engineer: The city engineer of the City of Winona.

- 49)55) Clinic: A place used for the care, diagnosis and treatment of sick, ailing, infirm and injured persons and those who are in need of medical or surgical attention, but who are not provided with board or room nor kept overnight on the premises.
- 50)56) Club: A nonprofit association of persons who are bona fide members, paying regular dues, and are organized for some common purpose, but not including a group organized solely or primarily to render a service customarily carried on as a commercial enterprise.
- 57) Commercial Recreation Facilities (Indoor): Facilities operated as a business and which are open to the public for a fee that shall include, but is not limited to, billiard parlors, skating rinks, indoor swimming pools, bowling alleys, movie theaters, arcades, tennis courts, and other similar businesses. Such businesses may also provide a snack bar, restaurant, retails sales of related items, and other support facilities.
- 58) Commercial Recreation Facilities (Outdoor): Land or facilities operated as a business and which are open to the general public for a fee that shall include, but is not limited to, golf courses, outdoor swimming pools, amusement parks, and other similar businesses. Such facility may also provide a snack bar, restaurant, retail sales of related items, and other support facilities.
- 59) Commission: The city planning commission.
- 60) Construction Site Home: A home for the temporary occupancy and/or office use of watchmen, supervisory, or other special personnel for a construction site.
- 51)61) Construction Contractor Yard: A lot or portion of a lot or parcel used to store and maintain construction equipment and other materials customarily required in the building trades by a construction contractor. This definition includes architects, engineers, surveyors, real estate sign placement services, showrooms and shops for the display and sale of electrical, plumbing, heating, air conditioning, sheet metal and other materials in connection with contracting services.
- 52)62) Council: The city council.
- 53)63) County Engineer: The County engineer of Winona County.
- ~~— Court: An open unoccupied and unobstructed space, other than a yard, on the same lot with a building or group of buildings.~~
- 54)64) Detached Heating System: A detached heating system shall include any system for the production of heat for any residential or other structure used for human habitation, whether fueled by the burning of wood or other approved natural or processed materials, which is located outside of the structure for which the heat is generated. Such shall include but not be limited to outdoor wood-burning furnaces, wood-burning boilers and other detached energy systems, whether the same be free-standing or encompassed within a separate building or structure not intended as the primary beneficiary of the heat produced thereby, and regardless of the method of heat exchange.
- 55)65) District: A portion of the territory of the city within which certain uniform regulations and requirements or various combinations thereof apply under the provisions of this chapter. The term "R-district" shall mean any R-S, R-1, R-1.5, R-2 or R-3 district, the term "B-district" shall mean any B-1, B-2 or B-3 district, the term "MU-District" shall mean any MU-DC, MU-F, and MU-N district, and the term "I-district" shall mean any I-1, I-2, or I-A district.

- ~~56)~~66) Dormitory: A structure specifically designed for a long-term stay by students of a college, university, or nonprofit organization. Such structures contain facilities for living, sleeping, and sanitation; and may include separate group facilities for cooking and eating.
- ~~57)~~67) Driveway: A private road, the use of which is limited to persons residing or working on the site and their invitees, licensees, and business visitors, and which provides access to off-street parking or loading facilities.
- ~~58)~~68) Driveway Approach: An area of the public right-of-way located between the roadway and property adjacent to the public right-of-way that is intended to provide access for vehicles from the roadway to the adjacent property. On roadways with curbs, this includes a lowered curb level.
- ~~59)~~69) Dwelling: Any building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons, but not including a tent, cabin, trailer or trailer coach, boardinghouse or rooming house.
- ~~60)~~70) Dwelling, Single Family: A building designed for or used exclusively for residence purposes by one family.
- 71) Dwelling, Two to Four Family: A building designed for or used exclusively for residence purposes by two to four families.
- ~~64)~~72) Dwelling, Attached Townhouse or Rowhouse: A building designed for or used exclusively for five or more families or dwelling units, which are attached horizontally by at least one common wall extending from the foundation to the roof, and providing separate entrances from the outside for each unit.
- 73) Dwelling, Multi-Family Apartment: A building or portion thereof designed for or used by three five or more families or housekeeping dwelling units and sharing a joint entrance from the outside.
- ~~62)~~74) Dwelling, Apartment Mixed Use: A building designed for or used by one or more families or dwelling units as well as non-residential uses that are permitted in the zoning district to be located on the ground story, with all dwelling units sharing a joint entrance from the outside.
- ~~63)~~75) Dwelling Unit: A unit containing a habitable room or suite of rooms forming a single housekeeping unit for one or more persons and containing complete, independent facilities for living, sleeping, cooking, eating and sanitation, and containing only one kitchen or kitchenette.
- ~~64)~~ Dwelling Group: A group of two or more detached dwellings located on a parcel of land in one ownership and having any yard or court in common.
- ~~65)~~76) Essential Services: The erection, construction, alteration or maintenance, by public utilities or municipal or other governmental agencies, of underground or overhead gas, electrical, steam or water transmission or distribution systems, collection, communication, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith; reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare, but not including buildings.
- ~~66)~~77) Extraction Pits: Any artificial excavation of the earth which is intended to remove more than 1,500 cubic yards of organic or inorganic material from the property on which the

excavation activity is being conducted. An extraction pit shall not include any such excavation, which is:

- a) Incidental to any activity with an active building permit, provided that the building or installation shall be completed immediately following such excavation.
- b) Incidental to the construction of any subdivision for which a grading management plan has been submitted and approved by the Planning Commission and City Council.
- c) Incidental to the creation of water impoundments for agricultural purposes.

~~67~~78) Family: Persons living together on the premises in a single dwelling unit under one of the following conditions:

- a) One person living alone.
- b) Any number of persons related by blood, marriage or adoption, including foster children.
- c) Three (3) or fewer unrelated persons.
- d) Any number of persons related by blood, marriage or adoption, including foster children and up to two (2) unrelated persons.
- e) Exempt from this definition shall be any state-licensed residential facilities.

79) Flood Plain Management: See definitions contained in Section 43.02.33.

~~68~~80) Fraternity or Sorority: A residential building which is occupied only by a group of university or college students and support staff who are associated together in a fraternity or sorority, which is officially recognized by a college or university offering an accredited course of study, and who receive from the fraternity or sorority lodging or meals on the premises for compensation. Building shall be owned by a non-profit or housing corporation which transfers all assets to non-profit upon dissolution.

~~69~~81) Frontage: All the property abutting on one side of a street between intersecting or intercepting streets, or between a street and a right of way, waterway, end of a dead-end street, or city boundary measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts.

~~70~~82) Garage, Private: A detached accessory building or a portion of the principal building used only for the storage of self-propelled passenger vehicles or trailers by the families resident upon the premises.

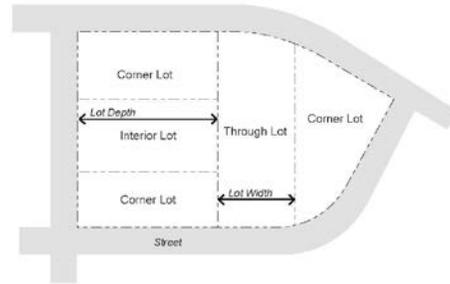
~~71~~83) Garage, Public: A structure or portion thereof, other than a private garage, used for the storage, sale, hire, care, repair or refinishing of self-propelled vehicles or trailers; except that a structure or part thereof used only for storage or display of self-propelled passenger vehicles, but not for transients, and at which automobile fuels and oils are not sold and motor-driven vehicles are not equipped, repaired or hired, shall not be deemed to be a public garage.

~~72~~84) Grading Management Plan: A document which fully describes the location, method, timing, and erosion control measures of any grading activity, which is incidental to the development of a subdivision or other site.

~~73~~85) Heavy Commercial Vehicle: Any vehicle with a gross vehicle weight rating over 33,000 pounds.

~~74) Highways, Thoroughfares and Parkways: The highways, thoroughfares, or so designated on the Thoroughfare Plan.~~

- 75)86) Home Occupation: Any occupation which is customarily incident to the principal use of the premises and is conducted by a resident occupant.
- 76)87) Horizontal Plane: A plane tangent to a level surface.
- 77)88) Hospital: A building or portion thereof used for the accommodation of sick, injured, or infirm persons, including sanitaria, sanatoria.
- 78)89) Hotel: Any building or portion thereof operated as a commercial establishment containing 5 or more guest rooms or suites that are accessed through an inside lobby or office and are offered to the general public for transient lodging accommodations, where no provision for cooking is made in any individual guest room or suite, except hospitals and jails.
- 79)90) Improvement Area: A land area to be prepared for construction upon it, including the area for utilities, driveways, sidewalks, structures, accessories and other activities customarily associated with development.
- 80)91) Industry: Storage, repair, manufacture, preparation or treatment of any article, substance or commodity.
- 81)92) Junk Yard: A place where waste, discarded or salvaged materials are bought, sold, exchanged, baled, packed, disassembled or handled, including auto wrecking yards, house wrecking yards, used lumber yards and places or yards for storage of salvaged house wrecking and structural steel materials and equipment; but not including such places where such uses are conducted entirely within a completely enclosed building, and not including pawnshops and establishments for the sale, purchase or storage of used furniture and household equipment, used cars in operable condition, or salvaged materials incidental to manufacturing operations.
- 82)93) Kennel: Any structure or premises on which 3 or more dogs or cats over 6 months of age are temporarily or permanently boarded, including animal day care/spa facilities, kept.
- 83)94) Kitchen: Any room in a building or dwelling unit which is used for cooking or the preparation of food.
- 84)95) Land Alteration: The excavation, grading or filling of land involving the moving of earthen materials, when none of the materials will be removed from the property on which the land alteration is to take place.
- 85)96) Land Use Plan: The long-range plan for the desirable use of land in the city as officially adopted and as amended from time to time by the city planning commission; the purpose of such plan being, among other things, to serve as a guide in the zoning and progressive changes in the zoning of land to meet the changing needs in the subdividing and use of undeveloped land, and in the acquisition of rights of way or sites for public purposes such as streets, parks, schools and public buildings.
- 86)97) Loading Space: An off-street space or berth on the same lot with a building or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley or other appropriate means of access.
- 87)98) Lot: A piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory buildings, or utilized for a principal use and uses accessory thereto, together with such open spaces as required by this chapter, and having frontage on a public street.



- ~~88)~~99) Lot, Area: The computed area contained within the lot lines.
- ~~89)~~100) Lot, Corner: A lot abutting upon 2 or more streets at their intersection or upon 2 parts of the same street, such streets or parts of the same street forming an interior angle of less than 135 degrees. The point of intersection of the street lines is the "corner."
- ~~90)~~101) Lot, Depth: The mean horizontal distance between the front and the rear lot lines. Lot, Interior: A lot other than a corner lot.
- ~~91)~~102) Lot Lines: The property lines bounding the lot.
- ~~92)~~103) Lot Line, Front: The line separating the lot from a street.
- ~~93)~~104) Lot Line, Rear: The lot line opposite and most distant from the front lot line.
- ~~94)~~105) Lot Line, Side: Any lot line other than a front or rear lot line. A side lot line separating a lot from a street is called a side street lot line. A side lot line separating a lot from another lot or lots is called an interior side lot line.
- ~~95)~~106) Lot Line, Street or Alley: A lot line separating the lot from a street or alley.
- ~~96)~~107) Lot of Record: Any part of a subdivision, the plat of which has been duly recorded in the office of the County Recorder, or a parcel of land, the deed to which was recorded in the office of said recorder, prior to adoption of this Chapter or any amendment thereto.
- ~~97)~~108) Lot, Through: A lot having frontage on 2 parallel or approximately parallel streets. Lot, Width: The mean width of the lot measured at right angles to its depth.
- ~~98)~~109) Malt Liquor. Any beer, ale, or other beverage made from malt by fermentation and containing not less than one-half of one percent alcohol by volume.
- 110) Manufactured Home: "Manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. Also, this term includes any structure which meets all the requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary and complies with the standards established under this chapter.

- 111) Manufactured Home Park: "Manufactured home park" means any site, lot, field, or tract of land upon which two or more occupied manufactured homes are located, either free of charge or for compensation, and includes any building, structure, tent, vehicle, or enclosure used or intended for use as part of the equipment of the manufactured home park.
- 112) Manufacturing, Heavy: An establishment or use of land that manufactures, assembles, or fabricates using processes that generally create odor, noise, vibration, illumination or particulates that may impact surrounding properties. This category shall also include any use of land that needs large unscreened outdoor structures or storage that cannot be incorporated into the building. Examples include, but are not limited to the following: large-scale food and bottling operations; lumber, milling and planing facilities; grain milling; aggregate, concrete, and asphalt plants; foundries, forge shops, and other intensive metal fabrication; and chemical manufacturing.
- ~~99)~~113) Manufacturing, Light: An establishment or use of land for the assembly or processing of previously processed components or manufactured parts using processes that do not create significant amounts of noise, vibration, illumination, or particulates that may impact surrounding properties. Odors produced on-site shall not negatively affect other businesses or properties in the area. Examples include, but are not limited to the following: food; pharmaceuticals; clothes; furniture (where wood is milled off-site); hardware; toys; light sheet metal products; mechanical components; printing; small vehicle assembly; and computer software.
- 114) Microwave Receiving Dish: Any conical or dish-shaped device or structure used for receiving television or other telecommunication signals transmitted from satellites or earth based transmitters.
- ~~100)–~~
- ~~101) Mobile Home: The words "mobile home" shall mean a transportable, single family dwelling unit suitable for year-round occupancy and containing the same water supply, waste disposal and electrical conveniences as immobile housing and subject to tax or registration, as such, under the provisions of Minnesota Statutes, Chapters 168 or 273 and having no foundation other than wheels, jacks or skirting.~~
- ~~102) Mobile Home Park: The words "mobile home park" shall mean any site, lot, field or tract of land upon which two or more occupied mobile homes are harbored, either free of charge or for revenue purposes, and shall include any building, structure, tent, vehicle or enclosure used or intended for use as part of the equipment of such mobile home park.—~~
- ~~103)~~115) Motel or Motor Hotel: A series of attached, semi-attached or detached sleeping or living units, for the accommodation of automobile transient guests, said units having convenient access to off-street parking spaces, for the exclusive use of the guest or occupants.
- ~~104)~~116) Natural Slope: That slope established by U.S.G.S. topographic map and existing prior to grading of any kind.
- ~~105)~~117) Nonconformity: Any land use, structure, lot, or site characteristic, which existed lawfully at the effective date of a zoning ordinance or subdivision ordinance, has been continued since that time, but which would not have been permitted to become established under the terms of the City Code as now written.
- ~~106)~~118) Nonconforming use: A use that was legally conforming at the time it was established but which does not comply with the current City Code.

- ~~407)~~119) Nonconforming structure: A structure that was legally conforming at the time it was constructed but which does not comply with the current City Code.
- ~~408)~~120) Nonconforming lot: A lot lawfully established prior to the effective date of the City Code, or subsequent amendments to it, which fails to meet requirements for lot area, and/or width, depth, lot frontage, or other requirement of the existing City Code.
- ~~409)~~121) Nonconforming site characteristic: A site characteristic lawfully established prior to the effective date of the City Code, or subsequent amendments to it, which fails to meet requirements of the existing City Code. For the purposes of nonconformities, "site characteristics" are physical improvements to the site beyond structures, and may include but are not limited to: impervious surface coverage, storm water facilities, parking and parking lots, driveway surfaces, screening, fences, landscaping, sidewalks, patios, man-made water features such as ponds or swimming pools, and similar features.
- ~~410)~~122) Nonconformity Agreement. A recordable agreement between the City and the property owner of a nonconformity, which imposes reasonable regulations or conditions upon nonconformities to prevent and abate nuisances and to protect the public health, safety, or welfare. Such agreement may only be approved by the City Council.
- ~~411)~~123) Nonconformity, legal: A nonconformity that was legally conforming at the time it was established and received all required approvals.
- ~~412)~~124) Nonconformity, illegal: A nonconformity that was not legal at the time it was established or did not receive all required approvals.
- ~~413) Park and Playground Plan: The plan of parks, playgrounds or other open public grounds adopted by the city planning commission.~~
- ~~414)~~125) Parking Area, Private: An open area for the same uses as private garage.
- ~~415)~~126) Parking Area, Public: An publicly owned open area, other than a street or other public way, used for the parking of automobiles and available to the public whether for a fee, or free, or as an accommodation for clients or customers.
- 127) Parking Space: A permanently surfaced area of not less than 160 square feet, either within a structure or in the open, exclusive of driveways or access drives, for the parking of a motor vehicle.
- ~~416)~~128) Personal service and repair business: An establishment that is engaged in the provision of personal improvement, personal care, and similar services. Examples include, but are not limited to, salons, tailors, and optical and optician services.
- ~~417)~~129) Recreational Vehicle: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motor power or is mounted on or drawn by another vehicle. The term "recreational vehicle" includes the following:
- a) Camper Trailer: A folding or collapsible vehicular structure, without its own power designed as a temporary living quarters for travel, camping, recreation, and vacation uses; and eligible to be licensed or registered and insured for highway use.
  - b) Travel Trailer: A rigid vehicular structure without its own motive power, designed as a temporary dwelling for travel, camping, recreation and vacation use; eligible to be licensed or registered and insured for highway use; and which when equipped for the road, has a body width of not more than eight (8) feet.

- c) Truck Camper: A portable structure, without its own motive power designed to be transported on a power vehicle as a temporary dwelling for travel, camping, recreation and vacation use; and which in combination with the carrying vehicle is eligible to be licensed or registered and insured for highway use.
- d) Motor Home: A vehicular unit built on or as a part of a self-propelled motor vehicle chassis, primarily designed to provide temporary living quarters for travel, camping, recreation, and vacation use; and which is eligible to be licensed or registered and insured for highway use.
- e) Boat and/or Utility Trailer: A vehicular structure without its own motive power designed or used for the transportation of all manner of motor vehicles and boats, goods, materials and eligible to be licensed or registered and insured for highway use.

~~118~~130) Resident Family: A resident family is a family that resides in an owner-occupied home.

131) Residential care facility: A building that houses persons, on a 24 hour basis, who because of age, mental disability, or other reasons live in a supervised residential environment who provide personal care services. This classification shall include, but not be limited to residential board and care facilities, halfway houses, group homes, congregate facilities, social rehabilitation facilities, and alcohol and drug abuse centers.

~~119~~132) Residential Retreat Center: A dwelling unit with living and sleeping and living quarters including cooking facilities, that is wholly rented to one (1) common party for the purpose of overnight lodging for one (1) night or longer, but less than one (1) week. A single family detached residential structure/property with sleeping and living quarters, including cooking facilities, that is wholly rented to one (1) common party for the purpose of overnight lodging for one (1) night or longer, but less than one (1) week. Retreat Centers shall not be rented to more than one (1) common party at a time, the premises shall not be the primary residence of the owner, the owner or a representative of the owner shall not occupy the premises during the rental period, no meals shall be catered, and the number of guests shall be limited to a maximum of twelve (12) guests at any one time.

~~120~~133) Ridgeline: The uppermost boundary of the conservancy district, which is represented by the contour line of 1,180 feet, as shown on a United States Geological Survey Topographic Map, 1972.

~~124~~134) Road Use Agreement: An agreement between a developer or property owner and a road authority identifying the road improvements, road impacts, and impact mitigation and remediation measures necessary to preserve the condition of road infrastructure and to make such improvements as may be necessary to handle the volume, weight, size, turning radius, and other attributes of the truck traffic generated by a land use.

~~122~~135) Roadside Stand: A temporary structure designed or used for the display or sale of agricultural products produced on the premises upon which such a stand is located.

~~123~~136) Roominghouse: A single family dwelling occupied by a resident family in which one or more rooming units are occupied, or intended to be occupied, by one or more persons who are not husband or wife, son or daughter, mother or father, or sister or brother of the occupying owner or operator; or a single family dwelling occupied by persons other than a family; or a dwelling containing 2 or more dwelling units, one or more of which is occupied by other than a family as defined herein; or a portion of a dwelling housing one or more rooming units independent of a dwelling unit.

- ~~124)~~137) Rooming Unit: A unit containing one or more habitable rooms located in an operator-occupied dwelling or dwelling unit and so arranged as to provide a private habitable unit used, or intended to be used, for living and sleeping but not for cooking purposes, along with private or shared sanitation facilities; or a dwelling unit in a rooming house containing more than one dwelling unit and occupied by other than a family.
- ~~125)~~138) School: A school is defined in Minnesota Statutes Section 120A.05 or a school, nonpublic school, or nonsectarian nonpublic school as defined in Minnesota Statutes Section 123B.41.
- ~~126)~~139) Sign, Abandoned Sign. A sign that is left behind after a business or corporation departs from a building.
- ~~127)~~140) Sign, Area of: The total exterior surface computed in square feet of a sign having but one exposed exterior surface; one-half the total of the exposed exterior surface computed in square feet of a sign having more than one such surface.
- ~~128)~~141) Sign, Awning, Canopy, Marquee. A sign that is painted on or attached to an awning, canopy, or marquee.
- ~~129)~~142) Sign, Banners. Any sign of lightweight fabric or similar material that is mounted to a pole, rope, or building at one or more edges. National, State, or Municipal flags flown in accordance with protocol established by the United States Congress shall not be considered banners.
- ~~130)~~143) Sign, Billboard. See Off Premise Sign.
- ~~131)~~144) Sign, Display: A structure that is arranged, intended, designed or used as an advertisement, announcement or direction, including a sign, billboard and advertising device of any kind.
- ~~132)~~145) Sign, Dynamic Displays. Any characteristics of a sign that appear to have 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. This includes a display that incorporates a technology or method allowing the sign face to change the image without having to physically or mechanically replace the sign face or its components. This also includes any rotating, revolving, moving, flashing, blinking, or animated display and any display that incorporates rotating panels, LED lights manipulated through digital input, "digital ink" or any other method or technology that allows the sign face to present a series of images or displays. Time and temperature and gas pricer signs are not considered dynamic displays.
- ~~133)~~146) Sign, Ground Sign. A sign which is supported by one or more uprights, poles, or braces in or upon the ground and not attached to any building.
- ~~134)~~147) Sign, Height. The distance measured from a sign's uppermost feature to the finished grade located directly below the sign.
- ~~135)~~148) Sign, Industrial Park. A sign which identifies a group of offices, warehouses or manufacturing plants that are two or more in number.
- ~~136)~~149) Sign, Mobile. Signs on wheels, trailers, or legs that are capable of being moved from place to place.
- ~~137)~~150) Sign, Multi-Faced. A spherical or other sign with more than one face.
- ~~138)~~151) Sign, Non-conforming. A sign which does not meet the requirements of this section or which failed to receive a sign permit under previous sign ordinances.

- ~~439)~~152 Sign, Off-Premise (Billboard). A sign which directs attention to a business, profession, activity, commodity, service, or entertainment offered or existing elsewhere than upon the same lot where such sign is displayed.
- ~~440)~~153 Sign, On-Premise. A sign which directs attention to a business, profession, activity, commodity, service, or entertainment, offered or existing on the same lot where such sign is displayed; provided, an on-site sign may also display a non-commercial message.
- ~~441)~~154 Sign, Painted Wall. A sign painted directly on an exterior wall of a building or structure.
- ~~442)~~155 Sign, Park. A sign or symbol identifying public park lands or directions to said land and activities available within said lands.
- ~~443)~~156 Side, Political. A sign urging voters to vote for or support specific issues or candidates.
- ~~444)~~157 Sign, Projecting. A sign which is attached to a building wall or sign structure and which extends more than 12 inches from the face of such wall or sign structure.
- ~~445)~~158 Sign, Real Estate. A sign offering property (land and/or buildings) for sale, lease or rent. Such signs shall contain no commercial messages, other than the logo and contact information of the listing agent and shall be located upon the same lot as the property which is being offered for sale, lease, or rent. Such signs shall be accessory only to the immediate sale, lease or rental of property upon which they are located and shall be removed from the property once it is sold, leased or rented.
- ~~446)~~159 Sign, Roof. A sign erected upon or above a roof or parapet of a building.
- ~~447)~~160 Sign, Shopping Center. A business sign which identifies a group of shops or offices that number four or more.
- ~~448)~~161 Sign, Sidewalk. A non-mobile temporary sign, which may be an A-frame or sandwich board type sign, placed on the sidewalk or boulevard area within the public right-of-way and associated with the abutting commercial establishment in compliance with these standards.
- ~~449)~~162 Sign, Face. The surface of the sign including letters and background upon, against or through which the message is displayed or illustrated.
- ~~450)~~163 Sign, Area. The entire area within a continuous perimeter enclosing the extreme limits of the sign message and background. However, such perimeter shall not include any structural elements lying outside of such sign and not forming an integral part or border of the sign.
- ~~451)~~164 Sign, Structure. The supports, uprights, braces and framework of the sign.
- ~~452)~~165 Sign, Temporary or Seasonal. A sign placed on a lot or parcel of land without a permit pursuant to the provisions of Section 43.05.13(C).
- ~~453)~~166 Sign, Wall. A sign which is attached to the wall of a building, with the face in a plane parallel to such wall and not extending more than 12 inches from the face of such wall.
- ~~454)~~167 Sign, Window. Any sign, picture, symbol, or combination thereof designed to communicate information about an activity, business, commodity, event or service that is attached to a window, and is visible from the exterior of the window.
- ~~455)~~168 Silica Sand: naturally existing well-rounded, high compressive strength, high quartz (silicon dioxide) level sand having a composition of nearly pure quartz (few impurities from other minerals) and a grain-size distribution required for industrial applications, including the hydraulic

fracturing of shale rock to obtain oil and natural gas. Silica sand does not include common rock, stone, aggregate, gravel, or sand with a low quartz level.

- 456)169) Stable, Commercial: A stable for horses, mules or ponies which are let, hired, used or boarded on a commercial basis and for compensation.
- 457)170) Stable, Private: An accessory building for the keeping of horses, mules, or ponies owned by the occupant of the premises and not kept for remuneration, hire or sale.
- 458)171) Standard, Equipment: A criterion for the control of type and placing of industrial equipment.
- 459)172) Standard, Performance: A criterion established in the interest of protecting the public health and safety for the control of noise, odor, smoke, noxious gases and other objectionable or dangerous elements generated by and inherent in or incidental to land uses.
- 460)173) Story: That portion of a building, included between the surface of any floor and the surface of the floor next above it, or, if there be no floor above it, then the space between the floor and the ceiling next above it.
- 461)174) Story, First: The lowest story or the ground story of any building the floor of which is not more than 12 inches below the average contact surface ground level at the exterior walls of the building.
- 462)175) Story, Half: A partial story under a gable, hip or gambrel roof, the wall plates of which on at least 2 opposite exterior walls are not more than 4 feet above the floor of such story; provided, however, that any partial story used for residence purposes shall be deemed a full story.
- 463)176) Story, Mezzanine: A story which covers one-third or less of the area of the story directly underneath it. A mezzanine story shall be deemed a full story in case it covers more than one-third of the area of the story directly underneath such mezzanine story.
- 464)177) Street: A public right of way, 60 feet or more in width, which provides a public means of access to abutting property or any such right of way more than 30 feet and less than 60 feet in width; provided, that it existed prior to the original enactment of the regulations of this chapter. The term street shall include avenue, drive, circle, road, parkway, boulevard, thoroughfare or any other similar terms.
- 465)178) Street, Local or collector: A street intended to serve and to provide access to neighborhoods or sub neighborhoods.
- 466)179) Street, Minor: Any street not a highway, primary or secondary thoroughfare, parkway, or local or collector street, and intended to serve and to provide access exclusively to the properties abutting thereon.
- 467)180) Structural Alteration: Any change in the structural members of a building, such as walls, columns, beams or girders.
- 468)181) Subdivision: means the separation of an area, parcel, or tract of land under single ownership into two or more parcels, tracts, lots, or long term leasehold interests where the creation of the leasehold interest necessitates the creation of streets, roads, or alleys, for residential, commercial, industrial, or other use or any combination thereof, except those separations:

- a) Where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for agricultural and residential zoning districts, and five acres or larger in size, and 300 feet in width, for commercial and industrial zoning districts;
- b) Creating cemetery lots;
- c) Resulting from court orders;
- d) Involving the sale, or exchange, of land between adjoining land owners provided that additional parcels, or lots, are not created and resulting lots meet dimensional, area, and structural yard requirements of underlying zoning.

182) Structure: Anything constructed, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground.

183) Swimming Pool, Private: A private swimming pool is any pool or tub designed to be used for recreational purposes such as swimming or bathing, not located within a completely enclosed building, and containing or normally capable of containing water to a depth at any point 24 inches or greater.

~~169)~~ 184) Swimming Pool, Temporary: A temporary swimming pool is any inflatable or portable pool intended for the sole non-commercial use of the occupants of the property on which it is located and their guests, which has a water depth of at least 24 inches.

~~170)~~ 185) Theme House: A university/college sanctioned structure of a residential nature, housing students with a common academic interest. Such a structure resembles single-family houses in the vicinity and contains full-kitchen facilities. Theme houses shall only be established within a campus overlay.

~~Thoroughfare, Primary or Secondary:~~ ~~An officially designated federal or state numbered highway or county or other road or street designated as a primary thoroughfare on the official thoroughfare plan of the city or a county or other road or street designated as a secondary thoroughfare on such plan, respectively.~~

~~171) Thoroughfare Plan:~~ ~~The official plan of highways, primary and secondary thoroughfares, and parkways.~~

~~172) Thoroughfare, Plan:~~ ~~The official thoroughfare plan of, and as adopted by the city planning commission of the city, establishing the location and official right-of-way width of principal highways and streets in the city, on file in the office of the city engineer and the city planning commission, dated August 17, 1959, together with all amendments subsequently adopted.~~

~~173)~~ 186) Tourist Home: A building or part thereof, other than a hotel or motel, where lodging is provided to transient guests by a residence family for compensation.

~~Trailer Park or Camp:~~ ~~Any lot or part thereof, or any parcel of land, which is used or offered as a location for 2 or more trailers or mobile homes.~~

187) Usable Floor Area: Wall to wall occupied space in a structure. Usable floor area does not include common areas of a building such as lobbies, restrooms, stairwells, storage rooms, and shared hallways. An increase in usable floor area shall not include conversion of an existing attic or basement into living or sleeping areas. However, an increase in usable floor area shall include the conversion of balconies, porches or patios into enclosed living or sleeping areas.

- ~~174)~~188) Use: The purpose for which land or a building or a structure is arranged, designed or intended, or for which either land or a building or structure is, or may be, occupied or maintained.
- ~~175)~~189) Use, First Permitted in "X" District: A use which in the sequence is successively less restricted districts occurs as a permitted use for the first time in the "X" district.
- ~~176)~~190) Used: The word "used" shall include arranged, designed, constructed, altered, converted, rented, leased or intended to be used.
- ~~177)~~191) Yard: An open space other than a court, on a lot, unoccupied and unobstructed from the ground upward except as otherwise provided in this chapter.
- ~~178)~~192) Yard, Front: A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto on the lot.
- ~~179)~~193) Yard, Front, How Measured: Such depth shall be measured, from the right-of-way line of the existing street on which the lot fronts (the front lot line); provided, however, that if the proposed location of the right-of-way line of such street as established on the thoroughfare plan or on the official map of the city differs from that of the existing street, then the required front yard least depth shall be measured from the right-of-way line of such street as designated on the thoroughfare plan or official map.
- ~~180)~~194) Yard, Rear: A yard extending across the full width of the lot, the depth of which is the minimum distance between the rear lot line and a line parallel thereto on the lot.
- ~~181)~~195) Yard, Side: A yard between the side lot line and a line parallel thereto on the lot and extending from the front yard, or the front lot line if no front yard exists, to the rear yard, or the rear lot line if no rear yard exists.
- ~~182) Side Yard, Least Width, How Measured: Such width shall be measured from the nearest side lot line and, in case the nearest side lot line is a side street lot line from the right-of-way line of the existing street; provided, however, that if the proposed location of the right-of-way line of such street as established on the thoroughfare plan or on the official map of the city differs from that of the existing street, then the required side yard least width shall be measured from the right-of-way of such street as designated on the thoroughfare plan or official map.~~
- ~~183)~~196) Zoning Map: The zoning map of the city, dated August 17, 1959, together with all amendments subsequently adopted.
- ~~184)~~197) Zoning Certificate: A document issued by the zoning or building inspector authorizing building, structures or uses consistent with the terms of this chapter and for the purpose of carrying out and enforcing its provisions.