

# CODE OF ORDINANCES

## CARVER COUNTY, MN

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## TITLE I: GENERAL PROVISIONS

Chapter

### 10. RULES OF CONSTRUCTION; GENERAL PENALTY

## CHAPTER 10: RULES OF CONSTRUCTION; GENERAL PENALTY

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## § 10.01 TITLE OF CODE.

(A) All ordinances of a permanent and general nature of the county, as revised, codified, rearranged, renumbered and consolidated into component codes, titles, chapters and sections, shall be known and designated as the "Carver County code," for which designation "code of ordinances," "codified ordinances" or "code" may be substituted. Code title, chapter and section headings do not constitute any part of the law as contained in the code.

(B) All references to codes, titles, chapters and sections are to the components of the code unless otherwise specified. Any component code may be referred to and cited by its name, such as the "Traffic Code." Sections may be referred to and cited by the designation "§" followed by the number, such as "§ 10.01." Headings and captions used in this code other than the title, chapter and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

## § 10.02 RULES OF INTERPRETATION.

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

(B) *Specific rules of interpretation.* The construction of all ordinances of this county shall be by the following rules, unless that construction is plainly repugnant to the intent of the legislative body or of the context of the same ordinance:

(1) **AND or OR.** Either conjunction shall include the other as if written "and/or," whenever the context requires.

(2) *Acts by assistants.* When a statute, code provisions or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, that requisition shall be satisfied by the performance of the act by an authorized agent or deputy.

(3) *Gender; singular and plural; tenses.* Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(4) *General term.* A general term following specific enumeration of terms is not to be limited to the class enumerated, unless expressly so limited.

## § 10.03 APPLICATION TO FUTURE ORDINANCES.

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

## § 10.04 CAPTIONS.

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

## § 10.05 DEFINITIONS.

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

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

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

**COUNTY.** Carver County, Minnesota.

**MAY.** The act referred to is permissive.

**MONTH.** A calendar month.

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

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

**PERSON.** Extends to and includes an individual, person, persons, firm, corporation, copartnership, trustee, lessee or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms **PERSON** or **WHOEVER** as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

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

**SHALL.** The act referred to is mandatory.

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

**STATE.** The State of Minnesota.

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

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

**YEAR.** A calendar year, unless otherwise expressed.

#### **§ 10.06 SEVERABILITY.**

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

#### **§ 10.07 REFERENCE TO OTHER SECTIONS.**

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

#### **§ 10.08 REFERENCE TO OFFICES.**

Reference to a public office or officer shall be deemed to apply to any office, officer or employee of this county exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

#### **§ 10.09 ERRORS AND OMISSIONS.**

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

(B) No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

#### **§ 10.10 OFFICIAL TIME.**

The official time, as established by applicable state and federal laws, shall be the official time within the county for the transaction of all county business.

#### **§ 10.11 REASONABLE TIME.**

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

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

#### **§ 10.12 ORDINANCES REPEALED.**

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

#### **§ 10.13 ORDINANCES UNAFFECTED.**

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect, unless herein repealed expressly or by necessary implication.

#### **§ 10.14 EFFECTIVE DATE OF ORDINANCES.**

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

#### **§ 10.15 REPEAL OR MODIFICATION OF ORDINANCE.**

(A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the publication of the ordinance

repealing or modifying it when publication is required to give effect to it, unless otherwise expressly provided.

(B) No suit, proceedings, right, fine, forfeiture or penalty instituted, created, given, secured or accrued under any ordinance previous to its repeal shall in any way be affected, released or discharged, but may be prosecuted, enjoyed and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

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

#### **§ 10.16 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.**

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

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

#### **§ 10.17 PRESERVATION OF PENALTIES, OFFENSES, RIGHTS AND LIABILITIES.**

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

#### **§ 10.18 COPIES OF CODE.**

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

#### **§ 10.19 ADOPTION OF STATUTES AND RULES BY REFERENCE.**

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

#### **§ 10.99 GENERAL PENALTY.**

(A) Any person, firm or corporation who violates any provision of this code for which another penalty is not specifically provided, shall, upon conviction, be guilty of a misdemeanor. The penalty which may be imposed for any crime which is a misdemeanor under this code, including Minnesota Statutes specifically adopted by reference, shall be a sentence of not more than 90 days or a fine of not more than \$1,000, or both.

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

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

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

## **TITLE III: ADMINISTRATION**

Chapter

**30. COMMISSIONS**

**31. ISSUANCE OF CITATIONS**

### **CHAPTER 30: COMMISSIONS**

Section

**§ 30.01 PARK COMMISSION.**

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BOARD OF COMMISSIONERS.** The County Board of Commissioners.

**CHAIRPERSON.** The Chairperson of the Park Commission, as provided hereunder.

**COMMISSION.** The County Park Commission, as created by this section.

**PLANNING COMMISSION.** The Planning Commission of the county.

**SECRETARY.** The Secretary of the Park Commission, as provided hereunder.

**VICE-CHAIRPERSON.** The Vice-Chairperson of the Park Commission, as provided hereunder.

(B) *Establishment.* The Park Commission is hereby established to be an advisory body to the Board of Commissioners and the Planning Commission which shall have the duties hereinafter set forth. The Board of Commissioners may, by resolution duly adopted, delegate to the Park Commission all or any part of those powers as authorized by M.S. § 398.36, as it may be amended from time to time.

(C) *Composition.*

(1) The Commission shall consist of seven members who shall be appointed by the Board of Commissioners. The members of the Commission shall be entitled to reimbursement for their expenses actually incurred in the performance of their duties as members of the Park Commission. They shall also be entitled to compensation, as may, from time to time, be specified by the Board of Commissioners by resolution duly adopted.

(2) The Board of Commissioners may, from time to time, designate additional persons to act as ex officio members of the Park Commission. They shall also be entitled to compensation, as may, from time to time, be specified by the Board of Commissioners, by resolution duly adopted.

(3) The Board of Commissioners may, from time to time, designate additional persons to act as ex officio members of the Park Commission. One or more additional persons may be members of the Board of Commissioners.

(D) *Terms of office.* Seven members shall be appointed to the Commission. They shall serve staggered three-year terms with no less than two nor more than three members to be appointed each year. A vacancy resulting from causes other than expiration of the term shall be filled only for the remainder of that term. Each year in office shall coincide with the calendar year.

(E) *Vacancies.* The Board of Commissioners shall fill all vacancies occurring on the Commission by appointment for the unexpired term then existing.

(F) *Removal of members.* The Board of Commissioners, by a unanimous vote of all of its members, shall have the authority to remove any member of the Commission from office whenever, in its discretion, the best interests of the county shall be served thereby.

(G) *Officers.* The members of the Commission shall meet in regular session the second month of every year and organize by electing from their members the Chairperson and Vice-Chairperson to serve for the ensuing year. They shall also appoint the Secretary. The Secretary need not be a member of the Commission.

(H) *Duties of officers.*

(1) It shall be the duty of the Chairperson to preside over all meetings of the Commission.

(2) It shall be the duty of the Vice-Chairperson to preside in the absence of the Chairperson.

(3) It shall be the duty of the Secretary to record the minutes of all meetings.

(I) *Rules and procedure.* The Commission shall adopt rules to govern its meetings and procedures. The rules may be amended from time to time, but only upon notice to all members that the proposed amendment(s) shall be acted upon at a specified meeting. A majority vote of the Commission shall be required for the approval of the proposed amendment.

(J) *Meetings.*

(1) *Regular meetings.* The Commission shall meet once a month, unless there is no business to come before the Commission, place, time and date to be decided. A schedule of the regular meetings shall be kept on file at the primary office of the Park Commission. If the Park Commission decides to hold a regular meeting at a time or place different from the time or place stated in its schedule of regular meetings, it shall give the same notice of the meeting that is provided in this section for a special meeting.

(2) *Special meetings.* The Chairperson or any two members of the Commission shall have the authority to call a special meeting of the Commission. Notification of the members of the Park Commission by telephone shall be sufficient. At least three days before the meeting, written notice shall be posted on the bulletin board of the Park Commission and shall be

mailed or otherwise delivered to each person who has filed a written request for notice of special meetings. As an alternative to mailing or otherwise delivering notice to persons who have requested notice, notice may be published once at least three days before the meeting in the official newspaper.

(3) *Open meetings.* All regular meetings of the Commission shall be open to the public, except that meetings of the Park Commission may be closed only as permitted by M.S. § 13D.05, as it may be amended from time to time.

(K) *Absence of members.* Absence from three consecutive regular meetings without the formal consent of the Commission shall be deemed to constitute a resignation of a member and the vacancy thus created shall be filled thereafter as provided in division (E) above.

(L) *Duties.* The duties of the Park Commission shall include:

(1) A survey of existing, proposed and potential parks to serve as a guide to the preservation of unique areas, the protection of water and land areas and to locate leisure time areas for outdoor recreation;

(2) The preparation and periodic updating of a county's comprehensive park plan;

(3) Recommendations to the Board of Commissioners for park land acquisition and methods of financing and maintenance;

(4) Preparation and revision of master plans for county and regional parks;

(5) Additional items as the Board of Commissioners may, from time to time, assign to the Commission for its study and report;

(6) Review and recommendations on the annual park budget and capital improvements program before presentation to the County Board;

(7) Review and make recommendations on general park operating policies;

(8) Initiate park policy recommendations to be presented to the County Board; and

(9) Review and comment on Metropolitan Parks and Open Space Commission policies.

(M) *Annual report.* The Commission shall submit annually a full report of its work to the Board of Commissioners.

(Ord. 19, passed 6-10-80)

## CHAPTER 31: ISSUANCE OF CITATIONS

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Section

31.01 Issuance of citations

### § 31.01 ISSUANCE OF CITATIONS.

The following positions and/or appointed persons of the County Sheriff's Office, while in the course and scope of the performance of their duties, may issue citations within the scope of the laws of the state, the ordinances of the county, and ordinances of the cities and townships for which the county contracts for such enforcement:

(A) Sheriff;

(B) Chief Deputy;

(C) Commander;

(D) Lieutenant;

(E) Sergeant;

(F) Corporal;

(G) Deputy;

(H) Community Service Officer;

(I) Reserve Officer; and

(J) Detention Deputy.

(Ord. 55-2005, passed 4-19-05)

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***GENERAL PROVISIONS***

**§ 50.001 PURPOSE, SCOPE AND AUTHORITY.**

(A) This chapter regulates the storage, transportation and disposal of solid waste materials in the county. If a local requirement is more restrictive than the requirement found in this chapter, the local requirement will supersede the county requirement. This chapter has been adopted by the Board of Commissioners to protect the public's health and prevent nuisance; to protect air and ground water resources; to minimize reliance upon land disposal capacity by promoting waste abatement such as recycling and composting; and to supplement and support the county's and state's controls over solid waste management activities.

(B) (1) This chapter establishes standards for the regulation of solid waste management activities and facilities in the county. This chapter requires that appropriate licenses be obtained from the county for the establishment and operation of solid waste management activities and facilities. This chapter is intended to support and promote the health, welfare and safety of the public pursuant to M.S. Chapters 115A, 145A, 375, 400 and 473, as they may be amended from time to time.

(2) This chapter incorporates and makes a part of its provisions previous amendments.

(C) These ordinances will be referenced as appropriate in this chapter.



(D) The county has the authority to adopt this chapter under M.S. § 145A.05, as it may be amended from time to time.

(Ord. 4C, passed 11-14-00)

## § 50.002 DEFINITIONS.

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

**AGENCY.** The Minnesota Pollution Control Agency or MPCA.

**APPLIANCE.** The same meaning as **MAJOR APPLIANCE**.

**BASE COUNTY.** The metropolitan county in which a hauler's office, records and vehicles are primarily located. If differing parts of the hauler's business are located in more than one metropolitan county, the **BASE COUNTY** shall be the metropolitan county in which most of the vehicles are kept as determined by the Department. The **BASE COUNTY** for haulers based in a county not participating in the regional licensing program shall be an adjacent metropolitan county, as determined by the Department.

**BASE LICENSE.** The license obtained by the hauler from the base county, as a precondition to obtaining an operating license from the county or other counties.

**BRUSH DISPOSAL FACILITY.** A site used exclusively for disposal in or on the land of trees and tree parts including stumps, branches and their attached leaves. The disposal may include open burning and burial of the resulting ash and unburned tree parts.

**CANISTER SYSTEM.** A facility, usually to serve the public, where solid waste is deposited in mechanically serviced containers as an intermediate step of congregating municipal solid waste from several properties for periodic removal of the accumulated waste by a commercial hauler.

**CLOSURE.** Action to prevent or minimize the threat to public health and the environment posed by a facility that no longer accepts the solid waste for which it operated or was permitted, including the removal of contaminated equipment, the removal of liners, applying final cover, grading and seeding final cover, installation of monitoring devices, construction of ground and surface water diversion structures and gas control systems as necessary.

**COMMERCIAL HAULER.** Any person who owns, operates or leases vehicles for the purpose of contracting to collect or transport solid waste from residential, commercial or industrial properties.

**COMPOST FACILITY.** A site used to compost or co-compost solid waste including all structures or processing equipment used to control drainage, collect and treat leachate and storage areas for the incoming waste, the final product and residuals resulting from the composting process.

**COMPOSTING.** The controlled microbial degradation of organic waste to yield a humus-like product.

**CONSTRUCTION DEBRIS.** Waste building material, packaging and rubble resulting from construction, remodeling and repair.

**COUNTIES.** One or more counties that are parties to the Regional Hauler Licensing Joint Powers Agreement.

**COUNTY.** The County of Carver, Minnesota, or any department or representative of the county who is authorized by this chapter or otherwise by the County Board to represent the county in the administration or enforcement of this chapter.

**COUNTY BOARD.** The elected officers composing the Board of Commissioners.

**DEMOLITION DEBRIS.** Solid waste resulting from the demolition of buildings, roads and other manmade structures, including but not limited to materials such as concrete, brick, bituminous concrete, untreated wood, masonry, glass, rock and plastic building parts. **DEMOLITION DEBRIS** does not include asbestos wastes.

**DEMOLITION LAND DISPOSAL FACILITY.** An area of land used for the disposal of demolition debris.

**DEPARTMENT.** The County Department of Environmental Services or a designee of the Environmental Services Department. **DEPARTMENT** shall also mean the county agency assigned the responsibility to administer the regional hauler licensing program in the county.

**DISPOSAL.** The meaning given it in M.S. § 115A.03(10), as it may be amended from time to time.

**DUMPING.** The discharge, deposit, injection, spilling, leaking or placing of any solid waste into or on any land or water so that the waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any water, including ground water.

**END MARKET.** A facility or business which utilizes source separated recyclable materials to generate new products or materials.

**FACILITY.** All contiguous land, structures, monitoring devices and other improvements on the land used for monitoring, processing, storing or disposing of solid waste, leachate or residuals from solid waste processing.

**FARM.** A parcel of land that is at least ten acres in size used for the production of livestock, dairy animals, dairy products,

poultry and poultry products, fur bearing animals, horticultural and nursery stock which is under M.S. §§ 18.44 to 18.61, as they may be amended from time to time, fruit of all kinds, vegetables, forage, grains, bees and apiary products.

**FIRE MARSHAL.** The State Fire Marshal or the Chief of the Fire Department in a municipality that has adopted the Uniform Fire Code of the state.

**FLOODPLAIN.** Any land that is subject to a 1% or greater chance of flooding in any given year from any source.

**GARBAGE.** Discarded material resulting from the handling, processing, storage, preparation, serving and consumption of food.

**GROUND WATER.** The meaning given in Minn. Rules Part 7035.0300, as it may be amended from time to time.

**HAULER.** Any person, firm, corporation, association, partnership or other entity, other than an individual resident hauling his or her household waste, who collects or transports mixed municipal solid waste that is generated in the counties.

**HAZARDOUS WASTE.**

(1) As defined in M.S. § 116.06, as it may be amended from time to time, any refuse, sludge or other waste material or combinations of refuse, sludge or other waste materials in solid, semi-solid, liquid or contained gaseous form which because of its quantity, concentration or chemical, physical or infectious characteristics may:

(a) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.

(2) Categories of hazardous waste material include, but are not limited to explosives, flammables, oxidizers, poisons, irritants and corrosives. **HAZARDOUS WASTE** does not include source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended.

**INCINERATION.** The process of burning wastes for the purpose of volume and weight reduction in facilities designed for the use.

**INDUSTRIAL SOLID WASTE.** All solid waste generated from an industrial or manufacturing process and solid waste generated from an industrial or manufacturing process and solid waste generated from non-manufacturing activities such as service and commercial establishments. **INDUSTRIAL SOLID WASTE** does not include office materials, restaurant and food preparation waste, discarded machinery, demolition debris or household refuse.

**LEACHATE.** Liquid that has percolated through solid waste and may have extracted dissolved or suspended materials from it.

**LICENSE.** Express written permission as granted by the County Board to engage in solid waste management activities.

**LICENSEE.** A person who has been issued a license by the County Board for solid waste management purposes pursuant to this chapter.

**MAJOR APPLIANCE.** Clothes washers and dryers, dishwashers, hot water heaters, residential furnaces, garbage disposals, trash compactors, conventional and microwave ovens, ranges and stoves, air conditioners, dehumidifiers, refrigerators, freezers and other devices that may be added to the definition consistent with changes in M.S. § 115A.03, as it may be amended from time to time.

**MIXED MUNICIPAL SOLID WASTE or MMSW.** Garbage, refuse and other solid waste from residential, commercial, industrial and community activities that the generator aggregates for collection, but does not include auto hulks, street sweepings, ash, construction debris, mining waste, sludges, tree and agricultural wastes, tires, lead acid batteries, used oil and other materials, collected, processed and disposed of as separate waste streams.

**MIXED MUNICIPAL SOLID WASTE LAND DISPOSAL FACILITY.** A sanitary landfill used for the disposal of mixed municipal solid waste in or on the land.

**MUNICIPALITY.** A city, village, borough, county, town, sanitary district, school district or other governmental subdivision or public corporation, or agency created by the legislature.

**NOTICE OF VIOLATION.** A formal written notice issued by the Department to notify a party that he or she is in violation of a county ordinance. This notice will inform the party of the alleged violations, the nature and extent of the violations and the required corrective actions. The **NOTICE OF VIOLATION** shall also specify additional actions that will be taken by the Department, such as the inclusion of NOV orders into a final order or consent order and/or the issuance of a citation, as well as specific timeframes in which these actions will be completed.

**NUISANCE.** A use of property or course of conduct that interferes with the legal rights of others by causing damage, annoyance or inconvenience.

**OPEN BURNING.** Burning any matter whereby the resultant combustion products are emitted directly to the open atmosphere without passing through an adequate stack, duct or chimney.

**OPERATING COUNTY.** Any of the counties, including the base county, in which the hauler collects or transports mixed

municipal solid waste.

**OPERATING LICENSE.** The license issued by an operating county to operate within each operating county, including the base county, in which the hauler collects or transports mixed municipal solid waste and which may contain specific conditions imposed by the issuing county.

**OPERATOR.** The person responsible for the overall operation of a facility.

**PERSON.** Any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association or other organization, any receiver, trustee, assignee, agent or other legal representative of any of the foregoing, or any other legal entity.

**PERSONNEL or FACILITY PERSONNEL.** All persons who work at or oversee the operation of a solid waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

**POST-CLOSURE and POST-CLOSURE CARE.** Actions taken for the care, maintenance and monitoring of a facility after closure that will prevent, mitigate or minimize the threat to public health and environment posed by the closed facility.

**PUTRESCIBLE MATERIAL.** Solid waste which is capable of being rotten or which may reach a foul state of decay or decomposition.

**RECYCLABLE MATERIALS.**

(1) Materials that are separated from mixed municipal solid waste for the purpose of recycling, including, but not limited to paper, glass, plastics, tin, aluminum, cardboard, magazines, high grade paper, metals, automobile oil and batteries.

(2) Refuse derived fuel or other material that is destroyed by incineration is not a **RECYCLABLE MATERIAL**.

**RECYCLING FACILITY.** A site used to separate, process, modify, convert or otherwise prepare solid waste so that component materials or substances may be beneficially used or reused as raw materials.

**REFUSE.** Putrescible and non-putrescible solid wastes, including garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings and market and industrial solid wastes, and including municipal treatment wastes which do not contain free moisture.

**REGIONAL HAULER LICENSING BOARD.** The Joint Powers Board established by agreement of the counties to coordinate the Regional Hauler Licensing Program.

**REGIONAL HAULER LICENSING PROGRAM.** The cooperative hauler licensing program established by joint powers agreement by and among the counties.

**RESIDENCE.** Any building or portion thereof used as a dwelling or sleeping area for people.

**RESOURCE RECOVERY FACILITY.** A waste facility established and used primarily for the reclamation for sale, use or reuse of materials, substances, energy or other products contained within or derived from waste.

**SALVAGE YARD.** An open area where waste, stored or secondhand materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including but not limited to: scrap iron and other metals, paper, rags, rubber, tires and bottles. A **SALVAGE YARD** includes an auto wrecking yard but does not include uses established entirely within enclosed buildings.

**SANITARY LANDFILL.** A land disposal facility employing any engineering method of disposing of solid waste on land in a manner that minimizes environmental hazards by spreading the solid waste in thin layers, compacting the solid waste into the smallest practical volume and applying cover material at the end of each operating day, or at intervals as may be required by the Agency.

**SEWAGE SLUDGE.** The meaning given it in M.S. § 115A.03(29), as it may be amended from time to time.

**SLUDGE.** Any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial waste water treatment plant, water supply treatment plant or air contaminant treatment facility, or any other waste having similar characteristics and effects.

**SOLID WASTE.** Garbage, refuse, demolition debris, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semi-solid, liquid or contained gaseous form, resulting from industrial, commercial, mining and agricultural operations, and from community activities. Except where specified otherwise, it includes elements of a waste stream which have been source separated for recycling purposes. It does not include hazardous waste, animal waste used as fertilizer, earthen fill, boulders, rock, sewage sludge, solids or dissolved material in domestic sewage or dissolved materials in irrigation return flows or other common pollutants in water resources, such as silt. It does not include dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under Section 402 of the Federal Waste Pollution Control Act, as amended. It also does not include source, special nuclear or by-product materials as defined by the Atomic Energy Act of 1954, as amended.

**SOLID WASTE FACILITY.** All property real or personal, including negative and positive easements and water and air rights, which is or may be needed or useful for the processing or disposal of waste. It includes but is not limited to the storage, collection, transportation, processing and reuse, conversion or disposal of solid waste in a safe, environmentally

sound manner.

**SOLID WASTE MASTER PLAN.** The solid waste master plan for the county, as generated and implemented in accordance with M.S. § 473.803, as it may be amended from time to time.

**SOLID WASTE TRANSPORTATION.** The conveying of solid waste from one place to another, by means of vehicle, rail car, water vessel, conveyor or other means.

**SOURCE SEPARATED RECYCLABLE MATERIALS.** Those elements of a waste stream which are separated by the generator for reuse in their original form or for use in manufacturing processes.

**STATE.** The State of Minnesota.

**TIRE.** A pneumatic tire or solid tire for motor vehicles as defined in M.S. § 169.01, as it may be amended from time to time.

**TIRE PROCESSING.** Producing or manufacturing usable materials, including fuel, from waste tires including necessary incidental temporary storage activity.

**TRANSFER STATION.** A facility in which solid waste from collection vehicles is concentrated for subsequent transport. A **TRANSFER FACILITY** may be fixed or mobile.

**UNPROCESSABLE MIXED MUNICIPAL SOLID WASTE.** Mixed municipal waste which can not be processed at a given resource recovery facility as documented by the operator of the resource recovery facility.

**UNPROCESSED MIXED MUNICIPAL SOLID WASTE.** Mixed municipal solid waste which, between collection and land disposal, has not been delivered to and managed by a resource recovery facility.

**WARNING LETTER.** A written notice issued by the Department to notify a party that he or she is in violation of a county ordinance. If a **WARNING LETTER** is issued, it shall be utilized as the initial county notification of alleged violations, except in cases of imminent threat to the public health and safety or the environment. The **WARNING LETTER** will inform the party of the alleged violations, the nature and extent of the violations, and the required corrective actions.

**WASTE INCINERATOR.** A facility in which solid waste is burned for the purpose of volume and weight reduction.

**WASTE TIRE.** The meaning assigned by M.S. § 115A.90, as it may be amended from time to time.

**WASTE TIRE PROCESSING FACILITY.** A licensed waste facility used for the shredding, slicing or producing or manufacturing usable materials from waste tires, and may include temporary storage activity at the facility. Processing does not include the retreading of waste tires.

**WASTE TIRE STORAGE FACILITY.** A facility permitted by the Agency to store up to 500,000 waste passenger tires or the equivalent weight of other waste tires.

**WASTE TIRE TRANSFER FACILITY.** A facility permitted by the Agency to store up to 10,000 waste passenger tires or the equivalent weight of other waste tires.

**YARD WASTE.** The garden wastes, leaves, lawn cuttings, weeds and prunings generated at residential or commercial properties.

(Ord. 4C, passed 11-14-00; Am. Ord. 85-2018, passed 6-19-18)

### **§ 50.003 ADOPTED STANDARDS.**

Minn. Rules Parts 7035.0300 to 7035.2875, 9220.0200 to 9220.0300 and 9220.0450 to 9220.0510 inclusive, relating to solid waste and waste tire management, respectively, as they may be amended from time to time, are hereby adopted by reference and made a part of this chapter, as amended.

(Ord. 4C, passed 11-14-00)

### **§ 50.004 AMENDED STANDARDS.**

The above adopted rules are hereby amended as follows:

(A) Wherever the term "Minnesota Pollution Control Agency" or "agency" appears in these adopted rules, it shall be held to mean the "Department."

(B) Wherever the "Commissioner" appears in these adopted rules, it shall be held to mean "Department."

(C) Wherever the term "permit," "permittee" or "permitted" appears in these adopted rules, it shall mean "license," "licensee," "licensing" or "licensed."

(D) The terms "Minnesota" or "State of Minnesota" shall be held to mean "Carver County."

(E) Wherever the term "Minnesota Waste Management Board" or "Board" appears in these adopted rules, it shall be held to mean the "Department."

(F) Wherever the term "Chair" appears in these adopted rules, it shall be held to mean "Department."

(Ord. 4C, passed 11-14-00)

**§ 50.005 DEPARTMENT RIGHTS AND RESPONSIBILITIES.**

(A) The Department shall have the right to administer this chapter.

(B) The Department's rights shall include, but shall not be limited to those described in this section:

(1) Routine inspection and evaluation of solid waste management activities, sites or facilities shall be made by the Department. An applicant and the licensee shall allow free access to the Department; provided that the entrance and activity is undertaken after reasonable notice and during normal business hours as provided in M.S. § 115A.882, as it may be amended from time to time, for the purpose of making the inspections as may be necessary to determine compliance with the requirements of this chapter, or any other applicable statute, or for the purpose of making written and documented notice of any deficiencies or recommendations for their correction and the date by which corrections shall be accomplished.

(2) It will be the responsibility of Department staff to receive complaints from county residents regarding solid waste issues. Department staff shall have the right to investigate these complaints and pursue the necessary enforcement activities which may include, but are not limited to: issue orders to suspend or stop actions which constitute a violation of this chapter; recommend that legal proceedings be initiated by the county to compel compliance with the provisions of this chapter; and advise, consult and cooperate with the public, the Board of Commissioners and other governmental agencies in the furtherance of this chapter.

(3) The Department shall have the right to recommend, when necessary, to the County Attorney's Office, that legal proceedings be initiated against a certain solid waste management activity, or facility.

(4) The Department shall have the right to encourage and conduct studies, investigations and research relating to aspects of solid waste management, such as methodology, chemical and physical considerations and engineering.

(5) The Department shall have the right to advise, consult and cooperate with other governmental agencies in the furtherance of the purposes of this chapter.

(6) The Department shall have the right to prepare and negotiate agreements with responsible parties to address the closure and post-closure requirements for licensed and unlicensed solid waste facilities.

(C) It will be the responsibility of Department staff to perform solid waste planning activities. These activities will include the following: meeting Metropolitan Council and state reporting and planning requirements, working with other counties to evaluate and/or plan regional facilities and/or operations, planning and/or evaluating facilities and/or operations within the county. The primary issues to be addressed in planning activities are waste reduction, MMSW processing/disposal, source separation/recycling, yard waste composting, household hazardous waste management and waste education.

(D) (1) The Department has the right to license solid waste haulers and solid waste processing facilities, as established in M.S. § 473.811, as it may be amended from time to time. Department staff shall have the right to perform or oversee work to license solid waste haulers and solid waste facilities. Department staff shall have the right to enforce compliance with solid waste licenses issued by the county. Department staff shall have right to pursue actions required to enforce compliance with solid waste licenses issued by the county.

(2) The Department shall have the right to issue or deny solid waste licenses and to impose solid waste management activity, site or facility specific conditions on the licenses.

(E) It will be the responsibility of Department staff to administer county solid waste programs. These programs encompass the following activities: waste reduction, source separation/recycling, yard waste composting, household hazardous waste management and waste education.

(F) It will be the responsibility of Department staff to perform and/or oversee activities pertaining to the processing and/or disposal of solid waste generated within the county. These activities shall also include negotiation and execution of contracts with solid waste management facilities.

(G) It will be the responsibility of Department staff to provide recommendations to the Board regarding the following: planning issues, facility development, solid waste program development, solid waste processing/disposal, budgeting allocation, licensing and vendor selection.

(Ord. 4C, passed 11-14-00)

**§ 50.006 LICENSEE RESPONSIBILITIES.**

(A) The licensee's responsibilities shall include, but shall not be limited to those described in this section.

(B) The licensee shall be responsible for compliance with all of the provisions of this chapter and all applicable state and federal statutes and rules promulgated thereunder.

(C) The licensee shall allow the Department free access to the solid waste management activity, site or facility, provided the entrance and activity is undertaken after reasonable notice and during normal business hours, except as provided in M.S. Chapter 115A, as it may be amended from time to time. For the purpose of making inspections as may be necessary to determine compliance with the requirements of this chapter or any other applicable statute, ordinance or regulation.

(D) The licensee shall allow the Department and the County Board and their designees access to records required under M.S. § 115A.882, as it may be amended from time to time, MPCA Solid Waste Management Rules Parts 7001.3500(3)(A) and 7035 concerning the operation of a solid waste management activity or facility.

(E) (1) No licensee shall operate any solid waste management activity or facility, or dispose of, or permit to be disposed, any solid wastes in a manner as to degrade the soil, air or waters or the county.

(2) Any licensee who causes any degradation of the soil, air or waters of the county shall undertake whatever action is necessary to correct the degradation and restore the soil, air or waters to its condition prior to its degradation.

(F) The licensee shall be responsible for facilitating all environmental monitoring, including but not limited to water, soil and landfill gases, which are required by this chapter or the license conditions for the applicable solid waste management activity or facility.

(G) The licensee agrees to indemnify and save the county harmless from all losses, costs and charges that may be incurred by the county due to the negligent or intentional acts the licensee, its officers, agents or employees or the failure of the licensee to comply with the provisions of this chapter and which are not otherwise payable from the insurance and financial assurance required by this chapter.

(Ord. 4C, passed 11-14-00)

#### **§ 50.007 SERVICE FEES.**

(A) (1) The purpose of the service fees shall be to raise funds for programs and efforts which protect environmental resources and which help the county ensure compliance with state law. State law establishes recycling and processing goals and mandates other waste management programs which counties have the responsibility of meeting and implementing.

(2) This section is enacted pursuant to M.S. §§ 473.811 and 400.08, as they may be amended from time to time, which grant the county the authority to establish and determine the boundaries of solid waste management service areas in the county and to charge properties within the service area a service fee. The boundaries of the county shall constitute the boundaries of the solid waste management service area.

(B) (1) The county shall impose a service charge for solid waste management services provided to the various parcels of land in the county, and the charges shall result in an assessment payable with the real estate taxes or other manners as determined by the County Board of Commissioners. The method of billing, the amount of the charge and the system of assessing the charge to the various parcels of land in the county shall be determined and adjusted by ordinance of the County Board Commissioners.

(2) On or before October 15 in each year, the County Board shall certify to the County Auditor all unpaid outstanding service fee charges and a description of the lands against which the charges arose. It shall be the duty of the County Auditor, upon order of the County Board, to extend the assessments with interest rate provided for in M.S. § 279.03(1), as it may be amended from time to time, upon the tax rolls of the county for the taxes of the year in which the assessment was filed. For each year ending October 15, the assessment with interest shall be carried into the tax becoming due and payable in January of the following year, and shall be enforced and collected in the manner provided for the enforcement and collection of real property taxes in accordance with the provisions of the laws of the state. The charges, if not paid, shall become delinquent and be subject to the same penalties and the same rate of interest as the taxes under the general laws of the state.

(3) The County Board, by ordinance, may establish or revise the rate schedule for solid waste management services. All rates and charges shall be uniform in their application to use and service of the same character and quantity. A copy of the current rate schedule shall be kept on file in the Office of the County Auditor. If no new rate schedule for solid waste management services is adopted in any year, the rate schedule for the previous year shall remain in effect.

(4) (a) In establishing or revising the rate schedule, the Board may take into account all factors relevant to solid waste management and disposal. The factors include, but are not limited to, the character, kind and quality of service and of solid waste, the method of disposition, the number of people served at each place of collection, and all other factors that enter into the cost of providing service including, but not limited to, public education, solid waste planning, recycling programs, industrial waste management, solid waste management facilities, operating and debt service cost.

(b) The Service Fee as provided for herein shall be established in the Carver County Fee Schedule Ordinance.

(5) Unpaid charges assessed to tax exempt properties may be collected in Small Claims Court or through other means as may be approved by the County Attorney.

(6) Any property owner who believes that the service charge imposed upon his or her property is incorrect, may appeal the charge. An appeal form may be obtained from the Environmental Services Department Office and shall be filed within 30 days of mailing the service charge statement by the county.

(7) The Environmental Services Director shall, within 30 days of receipt of the appeal, review the appeal and notify the appellant by U.S. mail whether an adjustment is due and how much, or whether the appeal is denied.

(8) An appellant whose appeal has been denied or who is unsatisfied with the decision of the Environmental Services Director, may request that the Carver County Board of Commissioners further review the appeal. The request for further

review shall be submitted to the Environmental Services Department within 30 days of the notice of decision on the original appeal. A form for this request must be obtained from and filed with the Environmental Services Department.

(9) The County Board of Commissioners shall, within 30 days of receipt of the appeal, review the appeal and notify the appellant by U.S. mail of a decision on the appeal.

(C) As established in M.S. § 400.08(4)(c), as it may be amended from time to time, the county shall have the authority to impose an assessment upon waste collection fees which commercial haulers charge residents and businesses. This rate may be set by resolution by the Board and may be utilized to augment or replace the property assessment mechanism for the county.

(Ord. 4C, passed 11-14-00; Am. Ord. 4C, passed 11-23-04; Am. Fee for Service Ord. 48, passed 12-19-06)

#### **§ 50.008 SOLID WASTE STORAGE.**

(A) (1) Except as otherwise allowed by this chapter, owners and managers of every property shall be responsible for maintaining the property and any structures on the property free of improperly stored solid waste accumulations. This includes removal of: animal feces; animal carcasses; inoperable machines, appliances, fixtures; and equipment of damaged, deteriorated or obsolete condition; broken furniture, boxes, crates and other debris; any other form of solid waste.

(2) Nothing in this section is designed to restrict the commonly accepted activities of farms and salvage yard operations provided that materials and wastes are stored in a pollution and nuisance free manner and in compliance with other county ordinances and the regulations of federal, state and local governments and their regulatory agencies.

(B) (1) Every property must be supplied with adequate mixed municipal solid waste (MMSW) storage containers. These containers must be provided by the owner of the property or by contract with a commercial hauler. The owner of the property will use the containers for MMSW storage. If the property owner does not occupy the property, he or she will cause the occupant or tenant to use the containers for MMSW storage.

(2) All MMSW storage containers shall be of sound construction resistant to insect or animal entry. Containers will be constructed with rust and impact resistant materials and will be equipped with tight-fitting covers. The property owner is responsible for maintaining containers in a neat, clean, sanitary and leak-resistant condition. If the container is supplied by a commercial hauler, the commercial hauler shall ensure that the container is leak resistant.

(3) For non-farm properties, the property owner shall cause the contents of all MMSW containers to be removed for processing/disposal no less frequently than once every 15 calendar days. Non-putrescible source-separated recyclable materials may be stored in containers without collection for longer than 15 calendar days on non-farm properties.

(4) For farm properties, the property owner shall cause the contents of all MMSW containers to be removed for processing/disposal no less frequently than once every 30 calendar days for MMSW provided that the storage does not result in nuisance or pollution problems. Non-putrescible source-separated materials may be stored in containers without collection for longer than 30 calendar days on farm properties.

(C) (1) If the location of storage is different than the location of set-out for collection, containers may not be set out for collection for more than 24 hours.

(2) For a resident with collection service in a rural area who sets out containers for collection on a public road, containers must be placed on the shoulder of the roadway.

(3) These containers must be placed on the edge of the shoulder furthest from the roadway.

(D) If a commercial hauler terminates service to an account due to delinquent payment, the commercial hauler shall notify the Department of this action within one month of the termination so that the Department may determine the potential for public health or pollution problems resulting from the lack of collection services at the property.

(Ord. 4C, passed 11-14-00)

#### **§ 50.009 DISPOSAL REQUIREMENTS.**

(A) (1) No person shall use or allow land under his or her ownership and/or control to be used for solid waste disposal purposes, except at an operation for which a license for disposal has been granted by the Board.

(2) All disposal of solid waste must be in accordance with applicable county ordinances and Agency rules. No person may dispose of a waste at an area or a facility which is not licensed for accepting that waste.

(3) Consistent with M.S. § 115A.99(1), as it may be amended from time to time, a person who unlawfully places any portion of solid waste in or on public or private lands, shorelands, roadways or waters is subject to a civil penalty of not less than twice nor more than five times the amount of cost incurred by a state agency or political subdivision to remove, process and dispose of the waste. A state agency or political subdivision that incurs cost as described in this section may bring an action to recover the civil penalty, related legal, administrative and court costs, and damages for injury to or pollution of the lands, shorelands, roadways or waters where the waste was placed if owned or managed by the entity bringing the action. Civil penalties collected under this subsection must be deposited in the general fund of the jurisdiction enforcing the penalties.

(4) A private person may join an action by the state or a political subdivision to recover a civil penalty to allow the

person to recover damages for waste unlawfully placed on the person's property.

(5) A person may be subject to a civil penalty for each disposal offense. A separate offense shall be deemed committed for each day on which a violation occurs or for each day during which a violation continues.

(B) Yard waste cannot be disposed of in land disposal or MMSW processing, except composting, facilities unless that facility is specifically licensed or permitted to accept yard waste by the Agency and any local government having licensing jurisdiction. Yard waste can not be deposited at a transfer station unless there is a licensed compost area at the facility or the material will be transferred to a licensed facility.

(C) Lead acid batteries may not be disposed of in the MMSW stream. Used lead acid batteries must be accepted by retailers who sell new lead acid batteries.

(D) Dry cell batteries containing mercuric oxide, silver oxide or nickel cadmium are recyclable and may not be disposed of in the MMSW stream.

(E) Used motor oil may not be disposed of at any MMSW processing or land disposal facility.

(F) Major appliances may not be disposed of at land disposal facilities.

(G) No other waste or material banned from land disposal or MMSW processing facilities by state statute after the adoption date of this chapter may be disposed of or processed at these facilities.

(Ord. 4C, passed 11-14-00) Penalty, see § 50.999

## **HAULING REQUIREMENTS**

### **§ 50.020 OPERATING AND EQUIPMENT STANDARDS.**

(A) (1) All solid waste which is hauled must be secured in covered, leak-proof vehicles or containers such that loads will not blow free or discharge liquids from the hauling vehicle.

(2) Where spillage does occur, the material will be picked up immediately by the hauler or solid waste transporter. Spillage that cannot be immediately and completely cleaned up must be reported to the Department.

(B) All vehicles or containers which are used to haul solid waste on a regular basis must be kept clean and free of residues of the waste material so as to minimize problems associated with odors, animals and insects.

(C) No one shall collect or transport solid waste that is smoking, smoldering or burning, except in a container designed and approved by the Fire Marshal and the Department for that purpose.

(D) (1) Not including non-putrescible source-separated recyclable materials, solid waste may not be stored in any type of collection or transportation vehicle for a period of more than 48 hours. This period may be extended up to 72 hours if the waste can not be disposed of or processed due to a legal holiday being celebrated on a Friday or Monday.

(2) Non-putrescible source-separated recyclable materials may be stored in collection and/or transportation vehicles for no longer than seven calendar days.

(E) No solid waste collection or transportation vehicle which is not thoroughly cleaned and free of waste residues may be parked outdoors within 500 feet of a commercial or residential structure not owned by the owner or the operator of the vehicle for more than two hours unless the Department has been notified and has approved a longer duration.

(F) All relevant Minnesota Department of Transportation (MNDOT) and Minnesota Department of Health (MDH) requirements regarding equipment, operations and inspections and all applicable local, state and federal regulations must be met.

(Ord. 4C, passed 11-14-00)

### **§ 50.021 RECYCLABLE MATERIAL COLLECTION.**

(A) The hauler must provide a service, either directly or through written subcontract with a person or company approved by the Department as a condition to the license, to collect four broad categories of recyclable materials and yard wastes from all single-family residential, all multiple-family residential and commercial and industrial customers within incorporated areas. Paper and corrugated fiberboard must be collected from commercial, industrial and institutional customers when requested by the customer. Additional recyclable materials may be added to this by resolution of the Board after the effective date of this section. All licensed haulers shall be given 120 days' advance notice in writing of the proposed additional recyclable material and shall be notified in writing 15 calendar days in advance of the time and date of the County Board meeting at which time a decision will be rendered. Notice shall be deemed given by mail via general delivery, to the mailing address identified on the most recent license application or renewal form on file in the Department.

(B) The hauler may specify the type of container their customer must place the recyclables in. The containers must be provided by the hauler or already available to a customer at the time this chapter provision becomes effective.

(C) The hauler must specify the time and day of collection that their customers are to place their recyclables out on their property for pickup. The hauler must collect the recyclables within 12 hours of the designated time. The collection location must be on the customer's property in a location at or near the regular solid waste collection site or other location mutually



agreeable to the hauler and the customer.

(D) The hauler may specify how a customer is to place their recyclables out for collection and how the recyclables are to be prepared. The County Environmental Director reserves the right to review and modify the amount of preparation required by the hauler in consideration of local recyclable market requirements.

(E) The hauler must collect recyclables from each customer at least twice per month unless normal solid waste collection service is provided less frequently than weekly, in which case the frequency of recyclable collection shall be the same as refuse collection.

(F) The hauler is assumed to own the recyclables they have collected and may market them as they see fit. However, a hauler may not dispose of any recyclables in or on the land, nor through incineration unless given prior written approval to do so by the Environmental Director.

(G) (1) The hauler must submit an annual report to the Department, on or before January 31 of each year for the previous calendar year, identifying the weight in tons of all recyclables and all other disposable solid wastes collected from county customers. If tonnage is unavailable for disposable solid waste, cubic yards shall be reported.

(2) The annual report must identify the weight of each type of recyclable collected.

(H) The hauler must demonstrate to the Department at the time of license application and at time of annual license renewal how they will provide both an incentive to their customers to reduce the amount of waste generated and an incentive to recycle the materials designated by the County Board. Examples of compliance with this section include, but are not limited to volume based collection fees and/or credit equal to the reduction in tip fee realized through removal of the amount a customer is recycling.

(I) Municipalities or townships within the county that contract with haulers must contract only with a hauler who is licensed by the county. Contracts must also be consistent with the provisions in this section.

(J) Solid waste haulers shall not mix source-separated materials with mixed municipal solid waste or handle source-separated materials in any way that reduces the reusability or marketability of the source-separated material.

(Ord. 4C, passed 11-14-00)

#### **§ 50.022 OPPORTUNITY TO RECYCLE.**

(A) For all residential generators where the hauler contracts for services directly with the generator, the hauler shall provide to the generator the opportunity to recycle, as described in § 50.021.

(B) The owner/manager of multi-family residential units shall offer recycling services to their tenants including a convenient location to store recycled material.

(C) No mixed municipal solid waste collector shall impose a greater fee on a resident who recycles than on a resident who does not recycle.

(D) The licensed hauler shall provide for the collection of at least the following materials: newspaper; clear, brown and green glass containers; tin cans; and aluminum beverage cans, cardboard, plastics, magazines and high grade paper.

(E) The hauler must notify the customer if materials are contaminated or not sorted correctly. The notification must be in writing stating the violation and corrective measures and it must be presented at the time of collection.

(Ord. 4C, passed 11-14-00)

#### **§ 50.023 ANTI-SCAVENGING.**

(A) (1) Ownership of the separated recyclable materials set out by a customer for collection by the hauler shall be vested in the hauler servicing the person who is recycling. It shall be unlawful and an offense against this chapter for any person other than the hauler or the owner, lessee or occupant of a residential dwelling or commercial/industrial business, to pick up the separated recyclable materials set out for collection.

(2) The person shall obtain written permission from the Department and from the hauler servicing the accounts where the recyclables are set out for collection.

(B) The Board of Commissioners may establish and require that additional types of recyclable materials be collected, that multi-family, commercial and industrial generators be provided collection services, that the frequency of collection from any type of generator be increased or decreased, and that recycling services be offered to generators in the unincorporated areas of the county. These additional requirements may be established by resolution of the County Board at the beginning of each license year.

(Ord. 4C, passed 11-14-00) Penalty, see § 50.999

#### **§ 50.024 RESIDENTIAL RECYCLING; MANDATORY.**

(A) This section shall be effective upon action by the County Board.

(B) It shall be unlawful for any owner or occupant of a residential or multi-unit residential building to generate and deposit

for collection mixed municipal solid waste that contains any of the following recyclable materials:

- (1) Beverage containers;
- (2) Glass recyclables;
- (3) Newsprint; and

(4) Other materials that may be designated by the County Board unless the waste is directly delivered or collected for direct delivery to a facility that has been approved by the county for separation of recyclable material.

(Ord. 4C, passed 11-14-00) Penalty, see § 50.999

#### **§ 50.025 COMMERCIAL RECYCLING; MANDATORY.**

(A) This section shall be effective upon action by the County Board.

(B) It shall be unlawful for any owner or occupant of a commercial building to generate or deposit for collection mixed municipal solid waste that contains any of the following recyclable materials:

- (1) Beverage containers;
- (2) Glass recyclables;
- (3) Paper recyclables;

(4) Other material that may be designated by the County Board unless the waste is directly delivered or collected for direct delivery to a facility that has been approved by the county for separation of recyclable materials.

(Ord. 4C, passed 11-14-00) Penalty, see § 50.999

#### **§ 50.026 LICENSING AND REPORTING REQUIREMENTS; COLLECTION.**

(A) (1) A person that collects construction debris, industrial waste or mixed municipal solid waste for transportation to a waste facility shall disclose to each waste generator from whom waste is collected the name, location and type of, and the number of the permit issued by the agency, or its counterpart in another state, if applicable, for the processing or disposal facility, excluding a transfer station, at which the waste will be deposited. The collector shall note both the primary facility at which the collector most often deposits waste and any alternative facilities regularly used by the collector.

(2) A collector shall make the disclosure to the waste generator in writing at least quarterly or on any written contract for collection service for that year. If an additional facility becomes either a primary facility or an alternative facility during the year, the collector shall make the disclosure within 30 days.

(3) Haulers shall also supply to the Department copies of any disclosure the hauler has provided to any generator under this section. The hauler shall also provide on a monthly basis a completed copy of the load reports for each load of mixed municipal solid waste collected within the county, as described herein.

(B) A person hauling source-separated recyclable materials shall document to the county the recycling facilities or end markets to which all materials are delivered. This documentation shall be submitted on forms to be provided or approved by the Department and shall include the presentation of weigh tickets or other documentation that specifies the weight or volume of materials accepted at the appropriate recycling facilities or end markets. Completed forms shall be submitted to the Department on a monthly basis.

(C) No hauler shall collect or transport mixed municipal solid waste generated in the county, unless the hauler has a valid base license and a valid county operating license. On the expiration date of the current license, any activity for which the license is required shall cease.

(D) The hauler shall submit a completed application to the base county on forms provided by the base county. The hauler shall submit to the base county all license application information necessary to obtain a base license and all operating licenses. Information necessary to obtain base and operating licenses shall be set forth on the application forms, as determined by the Department. Applications which are not complete may be returned to the hauler. An application will be deemed incomplete if information is omitted, incomplete, inaccurate or non-compliant, or if required fees do not accompany the application.

(E) If an application for a base or operating license is not complete or otherwise does not conform to the requirements set forth in this chapter, the Department shall notify the applicant, in writing, of the reasons for non-acceptance and may request that the applicant resubmit, modify or otherwise alter the application. The notification required in this section shall be served upon the applicant by first class mail sent to the address provided on the application form.

(F) The hauler shall pay to the base county all license fees for a base license and all operating licenses issued pursuant to the regional hauler licensing program. The license fees shall be established by the Regional Hauler Licensing Board. No license fee shall be prorated for a portion of a license term and no license fee shall be refunded.

(G) Complete applications submitted after the due dates specified herein shall be subject to the following late fees:

- (1) One to seven days late: 25% late fee.

- (2) Eight to 30 days late: 50% late fee.
- (3) Thirty-one or more days late: 100% late fee.

(H) Payment of the license fee together with payment of any late payment penalty shall not bar other enforcement action by the county.

(I) Hauler license renewal applications must be submitted to the base county by April 30 of the renewal year. A hauler license renewal application received after April 30 shall be subject to a late fee.

(J) If the base county does not act on a license renewal application, which is complete and submitted by June 30, the current base license an operating licenses shall continue in force until the base county takes action on the application. A reapplication shall also be accompanied by the late fees imposed pursuant to division (H) above. If the Department fails to act within 60 days of receipt of a properly completed initial application or a renewal application that is received after the due date, the applicant may request a hearing on the application. The request for a hearing shall be governed hereby.

(K) If the Department denies a license to an applicant, the applicant shall be notified of the denial in writing. The writing shall be served personally or by certified mail upon the applicant at the address provided in the application. The writing shall state the basis for the denial and shall provide notice to the applicant that if an appeal is desired, a written request for a hearing must be received by the Department within 15 calendar, 5 county working, days following service of the denial, exclusive of the day of service. Upon receipt of a request for hearing, the Department shall set a time and place for the hearing. The hearing shall be conducted pursuant to the procedures set forth herein.

(L) All base licenses and operating licenses are nontransferable.

(M) The license term shall be two years and shall begin July 1 of the first year through June 30 of the second year as established by the Regional Hauler Licensing Board.

(N) Base and operating licenses shall be issued by the Department consistent with this chapter.

(O) All persons collecting mixed municipal solid waste in the county must maintain records regarding each load collected and/or delivered. The required information shall include but may not be limited to origin of waste, amount and type by percentage. The information shall be recorded on load report forms that are provided by the Department. The load reports shall be submitted to the Department by the seventh day of the following month.

(Ord. 4C, passed 11-14-00; Am. Ord. 85-2018, passed 6-19-18)

#### **§ 50.027 BASE LICENSE.**

(A) A hauler which collects mixed municipal solid waste generated in the county shall obtain and maintain a base license from the base county. A hauler which collects or transports mixed municipal solid waste generated in any of the counties shall obtain and maintain a base license from the county, if the county is the hauler's base county.

(B) All vehicles used by the hauler for the collection or transportation of mixed municipal solid waste generated within the counties shall be included in the hauler's base license application.

(C) Each vehicle used by a hauler for the collection or transportation of mixed municipal solid waste generated within the counties shall be identified by a license decal issued for that vehicle during the current license term. The hauler must affix the decal in a conspicuous place on the left side of the cab of the vehicle for which it was issued as directed by the Department. The hauler must maintain the license decal so that it is readily visible and legible at all times. Any vehicle not bearing the required decal shall be considered unlicensed. If a vehicle is put into service during the license year, the hauler shall submit the required information for this vehicle to the base county and shall not use the vehicle to collect or transport mixed municipal solid waste within the counties until a decal has been issued and affixed to the new vehicle.

(D) The hauler shall obtain and submit certificates of insurance issued by insurers duly licensed by the state providing the following coverage, or a self-insurance plan certified by the Department of Commerce for providing equivalent coverage.

(1) Commercial general liability/professional liability with contractual liability coverage in the amount of the counties tort liability limits set forth in M.S. § 466.04 and as amended from time to time; and

(2) Automobile liability coverage in the amount of the counties tort liability limits set forth in M.S. § 466.04 and as amended from time to time; and

(3) Workers compensation insurance in statutory amount (if applicable).

(E) (1) Nothing in this provision shall prohibit a hauler from providing insurance with limits higher than the limits provided herein.

(2) All required policies shall name the Regional Hauler Licensing Board, Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties as additional insureds. Before the license shall be issued, the licensee shall agree to hold the additional insured harmless and shall agree to defend and indemnify the additional insured, and the additional insured's employees and agents, for any claims, damages, losses, and expenses related to the work under the license. The licensee's contract of insurance shall be the primary insurance for the additional insured and the licensee or insurance company shall provide a certificate of insurance which verifies the existence of the insurance required, including provisions to hold the additional insured harmless and defend and indemnify the additional insured. All policies and certificates shall be

endorsed to require that the insurer provide at least a 60-day written notice to the county prior to the effective date of policy cancellation, non-renewal or material adverse change in coverage terms. The hauler shall maintain insurance in compliance with this paragraph throughout the term of the base license.

(Ord. 4C, passed 11-14-00; Am. Ord. 85-2018, passed 6-19-18)

#### **§ 50.028 OPERATING LICENSE.**

(A) Any hauler which collects or transports mixed municipal solid waste in the county must obtain and maintain an operating license from the county. A hauler shall obtain and maintain a base license from the base county in order to be eligible for an operating license. Suspension or revocation of a hauler's base license by the base county shall result in the summary suspension of the hauler's operating license issued by the county. Revocation or suspension of the base license shall constitute sufficient basis for summary suspension of the county operating license in accordance herewith.

(B) All vehicles used by the hauler for the collection or transportation of mixed municipal solid waste within the county shall be included in the hauler's base license application to the base county. The hauler shall affix a decal as required by the base county in a conspicuous place on the left side of the cab of the vehicle for which it was issued as directly by the base county. The hauler must maintain the license decal so that it is readily visible and legible at all times. Any vehicle not bearing the required decal shall be considered unlicensed.

(C) The business name and telephone number of the hauler shall be printed or painted in legible characters on both sides of all vehicles or containers used by the hauler to store, collect or transport mixed municipal solid waste in the county. The characters shall be at least four inches in height for all vehicles and at least two inches in height for all containers. This provision shall not apply to containers owned and maintained by a solid waste generator.

(D) The issuance of an operating license shall be subject to the provision of county ordinances and any other conditions set forth in this chapter or established by the Board of Commissioners.

(Ord. 4C, passed 11-14-00)

#### **§ 50.029 DELIVERY REQUIREMENTS.**

As established in M.S. § 473.848, as it may be amended from time to time, a person may not dispose of unprocessed MMSW at land disposal facilities in the metropolitan area unless:

- (A) The waste has been certified as unprocessable by the county;
- (B) The waste has been transferred to the disposal facility from a resource recovery facility;
- (C) No resource recovery facility is capable of processing the waste; or
- (D) The receiving resource recovery facility certifies the waste as unprocessable.

(Ord. 4C, passed 11-14-00)

#### **§ 50.030 COLLECTION AND TRANSPORTATION FEES.**

(A) A commercial hauler shall submit proposed residential rates for Board approval at the time of his or her license issuance or annual re-issuance. Rates and charges shall be volume-based for all customers including residential customers. These rates must accurately reflect volume or weight based cost differentials to haulers for their tip fee costs at disposal or processing facilities.

(B) Commercial haulers must not impose greater charges on residents who recycle than on those who do not recycle.

(Ord. 4C, passed 11-14-00)

#### **§ 50.031 ILLICIT COLLECTION.**

No person other than the licensed hauler authorized to collect and haul source separated recyclable materials from a given property shall collect any materials from the property. The owner or resident of the property is exempt from this restriction.

(Ord. 4C, passed 11-14-00)

#### **§ 50.032 LICENSING AND REPORTING REQUIREMENTS; CONSTRUCTION.**

(A) Licensed haulers must comply with applicable local, state and federal regulations along with all relevant MNDOT and MDH requirements regarding equipment, operations and inspections.

(B) No hauler shall collect or transport construction/demolition waste generated in the county unless the hauler has a valid county construction/demolition operating license. On the expiration date of the current license, any activity for which the license is required shall cease.

(C) (1) The hauler shall submit to the county all license application information necessary to obtain a construction/demolition operating license. Information necessary to obtain a construction/demolition operating license shall be set forth on the application form as determined by the Department.

(2) Applications which are not complete may be returned to the hauler. An application will be deemed incomplete if information is omitted, incomplete, inaccurate or noncompliant, or if required fees do not accompany the application.

(D) If an application for a construction/demolition operating license is not complete or otherwise does not conform to the requirements set forth in this chapter, the Department shall notify the applicant, in writing, of the reasons for non-acceptance and may request that the applicant resubmit, modify or otherwise alter the application. The notification required in this section shall be served upon the applicant by first class mail sent to the address provided on the application form.

(E) The hauler shall pay to the county all license fees for a construction/demolition operating licenses. License fees will not be required for those trucks licensed under the regional mixed municipal solid waste collection and transportation program. No license fee shall be prorated for a portion of a year and no license fee shall be refunded.

(F) Payment of the license fee together with payment of any late payment penalty shall not bar other enforcement action by the county.

(G) Hauler license renewal applications must be submitted to the county by April 30 each year. A hauler license renewal application received after April 30 shall be subject to a late fee.

(H) If the county does not act on a license renewal application, which is complete and submitted by April 30, the current construction/demolition operating license shall continue in force until the county takes action on the application. A license renewal shall also be accompanied by the late fees imposed pursuant hereto. If the Department fails to act within 60 days of receipt of a properly completed initial application or a renewal application that is received after the due date, the applicant may request a hearing on the application. The request for a hearing shall be governed hereby.

(I) If the county denies a license to an applicant, the applicant shall be notified of the denial in writing. The writing shall be served personally or by certified mail upon the applicant at the address provided in the application. The writing shall state the basis for the denial and shall provide notice to the applicant that if an appeal is desired, a written request for a hearing must be received by the Department within 15 calendar days following service of the denial, exclusive of the day of service. Upon receipt of a request for hearing, the Department shall set a time and place for the hearing. The hearing shall be conducted pursuant to the procedures set forth herein.

(J) All construction/demolition operating licenses are nontransferable.

(K) The license year shall be July 1 through June 30.

(L) Construction/demolition operating licenses shall be issued by the Department consistent with this chapter.

(M) All persons collecting construction or demolition debris in the county must maintain records regarding each load collected and/or delivered. The required information shall include but may not be limited to origin of waste, amount and type by percentage. The information shall be recorded on load report forms that are provided by the Department. The load reports shall be submitted to the Department by the seventh day of the following month.

(Ord. 4C, passed 11-14-00)

### **§ 50.033 CONSTRUCTION/DEMOLITION DEBRIS LICENSE.**

(A) A hauler which collects construction or demolition debris generated in the county shall obtain and maintain a construction/demolition license.

(B) All vehicles used by the hauler for the collection or transportation of construction or demolition waste generated within the county shall be included in the hauler's mixed municipal waste base license application or the construction/demolition license.

(C) Each vehicle used by a hauler for the collection or transportation of construction/demolition debris within the counties shall be identified by a license decal issued for that vehicle during the current license year. The hauler must affix the decal in a conspicuous place on the left side of the cab of the vehicle for which it was issued as directed by the Department. The hauler must maintain the license decal so that it is readily visible and legible at all times. Any vehicle not bearing the required decal shall be considered unlicensed. If a vehicle is put into service during the license year, the hauler shall submit the required information for this vehicle to the county and shall not use the vehicle to collect or transport construction/demolition debris within the county until a decal has been issued and affixed to the vehicle.

(D) The hauler shall obtain and submit certificates of insurance issued by insurers duly licensed by the state providing the following coverage, or a self-insurance plan certified by the State Commissioner of Commerce for providing equivalent coverage:

(1) General liability coverage in the amount of \$1,000,000 for bodily injury per occurrence, \$300,000 for property damage per occurrence, or \$1,000,000 combined single limit;

(2) Automobile liability coverage in the amounts of \$1,000,000 for property damage, \$300,000 for bodily injury per person and \$1,000,000 for bodily injury per accident, or \$1,000,000 combined single limit; and

(3) Workers compensation insurance, in accordance with M.S. Chapter 176, as it may be amended from time to time.

(E) Nothing in this provision shall prohibit a hauler from providing insurance with limits higher than the limits provided herein. The county shall be listed as additional insured. Before the license shall be issued, the licensee shall agree to hold

the additional insured harmless and shall agree to defend and indemnify the additional insured, and the additional insured's employees and agents, for any claims, damages, losses, and expenses related to the work under the license. The licensee's contract of insurance shall be the primary insurance for the additional insured and the licensee or insurance company shall provide a certificate of insurance which verifies the existence of the insurance required, including provisions to hold the additional insured harmless and defend and indemnify the additional insured. All policies and certificates shall be endorsed to require that the insurer provide at least a 60-day written notice to the county prior to the effective date of policy cancellation, non-renewal or material adverse change in coverage terms. The hauler shall maintain insurance in compliance with this division throughout the term of the construction/demolition license.

(F) The issuance of an operating license shall be subject to the provision of county ordinances and any other conditions set forth in this chapter or established by the Board of Commissioners.

(Ord. 4C, passed 11-14-00)

## **SOLID WASTE FACILITIES**

### **§ 50.045 FACILITIES COVERED.**

(A) No person may operate one or more of the following types of facilities, except as licensed by the county:

- (1) Land disposal facilities:
  - (a) Mixed municipal solid waste;
  - (b) Demolition debris; and
  - (c) Industrial solid waste.
- (2) MMSW processing and resource recovery facilities:
  - (a) Waste incinerators;
  - (b) Compost facilities; and
  - (c) Refuse derived fuel facilities.
- (3) Transfer stations and canister systems;
- (4) Recycling facilities;
- (5) Household hazardous waste temporary storage facilities;
- (6) Waste tire transfer and storage facilities;
- (7) Waste tire processing facilities; and
- (8) Yard waste composting sites.

(B) Land application sites for sludge or liquid wastes from industrial processes, water supply treatment facilities or air treatment facilities shall be licensed by the county. The county licensing procedures and operating requirements for these types of sites are established herein.

(C) Solid waste management facilities not otherwise provided for in this chapter must be licensed by the Board of Commissioners. Application and license requirements shall be established by resolution of the Board of Commissioners.

(Ord. 4C, passed 11-14-00) Penalty, see § 50.999

### **§ 50.046 EXEMPTIONS.**

(A) *Publicly owned facilities.* The Board may, by resolution, waive any of the license requirements established in this chapter for publicly-owned facilities.

(B) *Farm generated concrete and reinforcing bar.* The license requirements established in this chapter do not apply to the burial of concrete and reinforcing bar generated from the demolition of a building or structure located on land used for farming, provided the requirements of § 50.071 are met.

(Ord. 4C, passed 11-14-00; Am. Ord. 74-2012, passed 6-19-12)

### **§ 50.047 LICENSING REQUIREMENTS.**

(A) The required sequence for a person wishing to attain a solid waste facility license from the Board is:

- (1) Local zoning approval;
- (2) Preliminary county approval through the procedure established in §50.048;
- (3) Agency approval; and
- (4) All agency technical standards will apply for the county licensing review and approval, except where requirements

in this chapter are more restrictive.

(B) Issuance or renewal of any license pursuant to the provisions of this chapter shall be contingent upon the applicant furnishing to the county a bond in an amount to be set by the Board. This bond shall name the county as obligee with sufficient sureties duly licensed and authorized to transact business in the state as sureties. The condition of the bond shall be that, if the licensee fails to comply with any requirements or fails to perform any of the acts required of a facility or ceases to operate a facility, any monies or expend any labor or material to restore the operation or facility to a condition in compliance with this chapter, the bond holder and the sureties on its bond shall reimburse the county for any and all expenses incurred by the county to remedy failure of the licensee to comply with the terms of this chapter, and the bond holder and its sureties shall indemnify and save the county harmless from all losses, costs and charges that may occur to the bond holder or its sureties because of any default of the licensee under the terms of the bond terms to operate in compliance with the terms of the ordinances of the county.

(C) Issuance or renewal of any license pursuant to the provisions of this chapter shall be contingent upon the applicant securing insurance, and furnishing to the county a copy of a certificate therefor, the following types of insurance issued to the licensee by insurers duly licensed within the state and in amounts to be set by the Board: general liability including, but not limited to, bodily injury, property damage, motor vehicle or other insurance such as workers compensation, required by state or county law. Before the license shall be issued, the licensee shall agree to hold the additional insured harmless and shall agree to defend and indemnify the additional insured, and the additional insured's employees and agents, for any claims, damages, losses and expenses related to the work under the license. The licensee's contract of insurance shall be the primary insurance for the additional insured and the licensee of insurance company shall provide a certificate of insurance which verifies the existence of the insurance required, including provisions to hold the additional insured harmless and defend and indemnify the additional insured. The general liability insurance shall be in at least the amount of \$300,000 per claim with a maximum amount of at least \$1,000,000 for any number of claims in a single occurrence.

(D) Issuance or renewal of any license pursuant to the provisions of this chapter shall be contingent upon the applicant paying the annual renewal fee for that license in the amount set by the Board by resolution.

(E) Renewal of any license pursuant to the provisions of this chapter shall be contingent upon the applicant submitting any information required in the license application that has changed since the previous submittal or additional information as may be required by the Department.

(F) Any license granted by the Board under the provisions of this chapter may be suspended or revoked by the Board at any time for noncompliance with the provisions of the license, this chapter or applicable state laws or rules, as provided hereby.

(G) Routine inspection and evaluation of an operation shall be made by the Department at a frequency as to ensure consistent compliance by the licensee with the provisions of this chapter. The licensee shall be provided with a written inspection report containing a precise description of any deficiencies, recommendations for the correction thereof and the date when the corrections shall be accomplished. Copies of the report shall be furnished to the agency. The licensee shall allow to

authorized representatives of the county or the agency access to the facility at any time for purpose of making inspections as may be necessary to determine compliance with the requirements of this chapter, and any other applicable statute, ordinance or rule.

(Ord. 4C, passed 11-14-00)

#### **§ 50.048 PRELIMINARY APPLICATION.**

(A) Any person wishing to submit an application for license of an MMSW facility in the county must first submit the following information as a preliminary application:

- (1) Name and address of the project proposer and site selected for the proposed project;
- (2) Geographic area and population to be served by the proposed project;
- (3) A description of the process and expected life of the facility;
- (4) The anticipated type, quantity and source of materials to be handled in the proposed facility;
- (5) A description of the residues or waste discharges from the proposed facility and the environmental safeguards which will be incorporated into the project;
- (6) The anticipated hours of operation of the proposed facility and the resulting truck traffic;
- (7) A description of the adequacy of existing roadways to support the proposed facility;
- (8) A description of the availability or lack thereof of similar facilities in the county or region and how the proposed facility will be compatible with the county solid waste master plan; and
- (9) Additional information as may be required by the Department.

(B) After receipt of a preliminary application, Department staff will review the information and give a non-binding recommendation to the Board concerning whether a final application should be made.

(C) If a negative determination is made, the applicant shall be notified in writing of the reasons by the Board denied approval of the preliminary application. A denial shall be without prejudice to the applicant's right to an appearance before the Board or to the applicant's right to file a further preliminary application after revisions are made to satisfy objections specified as reasons for the denial.

(Ord. 4C, passed 11-14-00)

#### **§ 50.049 FINAL APPLICATION.**

(A) Once a proposed project has received preliminary approval through the preliminary application process described herein and has received approval from the agency, the applicant for licensure of a solid waste facility must submit three copies of the solid waste facility permit application documents prepared for the agency permit or permit by rule process to the Department.

(B) Along with the agency permit application, the proposer must submit the following items to the Department:

- (1) An operating schedule;
- (2) A schedule of fees to be charged at the facility;
- (3) A notarized affidavit, signed by the proposer, stating that the applicable local governments have been given at least 30 days' notice of the application for the facility license;
- (4) A certificate from the county zoning or relevant City Administrator that the proposed facility land use is in accordance with the established county or city zoning ordinance;
- (5) Sufficient documentation to enable the Board to determine whether the applicant is financially and operationally capable to properly process the projected waste types and amounts in the proposed facility;
- (6) Monthly reports, provided by the county, shall be submitted to the Department by the fifteenth day of the following month; and (The reports shall include but may not be limited to the following information: total yards of solid waste received, the tons of each solid waste component requiring disposal, the name and type of each disposal or processing facility receiving waste and the tons of recyclable materials collected and delivered to markets or other recycling facilities.)
- (7) Additional information as may be required by the Department.

(Ord. 4C, passed 11-14-00)

#### **§ 50.050 LAND DISPOSAL FACILITIES.**

All agency design and operating requirements as established in the applicable Minnesota Rules must be met for county licensing approval.

(Ord. 4C, passed 11-14-00)

#### **§ 50.051 WASTE COMBUSTORS.**

All agency design and operating requirements as established in the applicable Minnesota Rules must be met for county licensing approval.

(Ord. 4C, passed 11-14-00)

#### **§ 50.052 MMSW COMPOST FACILITIES.**

All agency design and operating requirements as established in the applicable Minnesota Rules must be met for county licensing approval.

(Ord. 4C, passed 11-14-00)

#### **§ 50.053 REFUSE DERIVED FUEL (RDF) FACILITIES.**

All agency design and operating requirements as established in the applicable Minnesota Rules must be met for county licensing approval.

(Ord. 4C, passed 11-14-00)

#### **§ 50.054 TRANSFER STATIONS AND CANISTER SYSTEMS.**

(A) The following information must be part of the documents submitted with the final application for a transfer station facility:

- (1) Facility design and layout, including equipment configuration;
- (2) Storage capacity of the facility;
- (3) Final disposal point of waste managed at the facility;
- (4) On-site traffic patterns;



- (5) Operating plan; and
- (6) Recycling and composting areas and operations, if any.

(B) Transfer station and canister systems design and operations must comply with agency requirements, as established in Minn. Rules Part 7035.2865, as it may be amended from time to time.

(Ord. 4C, passed 11-14-00)

#### **§ 50.055 RECYCLING FACILITIES.**

(A) All agency design and operating requirements as established in Minn. Rules Part 7035.2845, as it may be amended from time to time, must be met for county licensing approval.

(B) It will be a license requirement that the owner of a recycling facility submit monthly documentation of the tonnage of materials processed and marketed as part of that facility's operations. The owner of a recycling facility shall also submit the MPCA annual report for that facility to the Department within 30 calendar days of submittal to the MPCA.

(Ord. 4C, passed 11-14-00)

#### **§ 50.056 HOUSEHOLD HAZARDOUS WASTE TEMPORARY STORAGE FACILITIES.**

All household hazardous waste collection, storage and management activities must be in accordance with applicable agency rule requirements.

(Ord. 4C, passed 11-14-00)

#### **§ 50.057 WASTE TIRE TRANSFER AND STORAGE FACILITIES.**

(A) All applicable design and operating requirements as established in Minn. Rules Parts 9220.0440 through 9220.0510, as they may be amended from time to time, for waste tire transfer and storage facilities must be met for county licensing approval and renewal.

(B) Proposers of waste tire transfer and storage facilities must submit documentation which indicates the ultimate disposal points intended for the accumulated tires.

(Ord. 4C, passed 11-14-00)

#### **§ 50.058 WASTE TIRE PROCESSING FACILITIES.**

(A) All applicable design and operating requirements as established in Minn. Rules Parts 9220.0440 through 9220.0510, as they may be amended from time to time, for waste tire processing facilities must be met for county licensing approval and renewal.

(B) Proposers of waste tire processing facilities must submit documentation which indicates how the facility process product will be marketed and/or utilized.

(Ord. 4C, passed 11-14-00)

#### **§ 50.059 YARD WASTE COMPOSTING FACILITIES.**

(A) The following information must be part of the documents submitted with the final application for a yard waste composting facility:

- (1) Site location map indicating surrounding land use and contours;
- (2) Site layout, including compost areas, traffic patterns, storage areas and drainage;
- (3) Operations plan;
- (4) Compost product marketing plan; and
- (5) Operating hours and anticipated fees.

(B) All agency design and operating requirements must be met for licensing approval. Additional requirements are as follows:

- (1) The compost site must have controlled access which will be closed during nonoperating hours.
- (2) The site must be regularly managed in a manner as to minimize nuisance and odor problems.

(Ord. 4C, passed 11-14-00)

#### **§ 50.060 FINAL APPLICATION REVIEW PROCESS.**

(A) After receipt of a final application, the Department shall review the information and give their recommendation to the Board concerning whether a license should be issued.

(B) (1) A public hearing before the Board is required prior to the issuance of a license for a solid waste facility, and that proceeding is governed hereby.

(2) Notice of the time, place and proposed project shall be given by publication in the official newspaper of the county at least ten days before the hearing. Written notice shall be sent to property owners of record within ¼-mile of the project site, or to the ten properties nearest to the project site, whichever would provide notice to the greatest number of property owners.

(3) Written notice shall also be given to the board of town supervisors where the site is located, and the council of any municipality and/or town of supervisors of another township within two miles of the proposed project site.

(C) The Board shall refuse to issue a license for any facility which does not comply with county ordinance, state laws and rules and the county's solid waste master plan, as provided for in state statutes. If a license application is denied, the applicant shall be notified in writing of the reasons for a determination. A denial shall be without prejudice to the applicant's right to an appearance before the Board or to the applicant's right to file a further final application after revisions are made to satisfy objections specified as reasons for the denial.

(D) The Board shall either approve or deny a license application within 60 calendar days of receipt of the complete final license application.

(Ord. 4C, passed 11-14-00)

## **SPECIAL WASTES**

### **§ 50.070 YARD WASTES.**

(A) Yard waste may not be disposed of at a MMSW disposal or processing facility, unless that facility has a designated yard waste compost area which has been licensed by the county or has received an exemption from this requirement from the agency and the county.

(B) License and operating requirements for yard waste composting sites are established herein.

(C) Yard waste composting sites maintained by individual residents or businesses for wastes generated solely from the residence or business occupying the property the composting site is located on do not have to be licensed by the county. However, the following requirements must be met:

(1) Compost sites must be maintained in an orderly and nuisance-free manner.

(2) A compost pile may not be located less than five feet from a property line of the property upon which the compost pile is operated. A compost pile may not be located closer to the primary residential structure a neighboring property than to the primary residential structure of the property upon which the compost pile is operated.

(Ord. 4C, passed 11-14-00)

### **§ 50.071 DEMOLITION DEBRIS.**

Licensing, design and operating requirements for demolition debris land disposal facilities are established herein, except that a person may bury concrete and reinforcing bar generated from the demolition of a building or structure located on land used for farming provided that the following requirements are met:

(A) A complete application and all applicable fees as per the county fee schedule must be received and approved by the Department prior to burial of concrete and reinforcing bar:

(B) The concrete and reinforcing bar must originate from a building or structure located on land used for farming and shall not include concrete and reinforcing bar from residential or commercial structures or activities;

(C) No other solid waste or other material governed by this chapter or Minnesota Statutes may be buried;

(D) The application shall include an accurate description of the burial site, the estimated amount of concrete and reinforcing bar to be buried, the dimensions of the excavation including cover, a site restoration plan, and any other information requested by the Department needed to review the application due to site specific conditions;

(E) The burial site must be located on property classified as agricultural land by the County Assessor's Office and on the same parcel of property as the structure or building that the concrete and reinforcing bar was generated from;

(F) The burial site location must not be located within the boundaries of any municipality, in any Transition Area, or Shoreland Impact Zone and shall not be located within 50 feet of any wetland, floodplain, bluff, public right-of-way or property line;

(G) At least three feet of cover must be placed over the concrete and reinforcing bar and the site must be graded and restored to prevent erosion and settling;

(H) The owner of the property must provide 48 hour notice to the Department prior to the burial of the concrete and reinforcing bar and must allow the Department access to the property to inspect the burial site prior to covering;

(I) Pursuant to this chapter and M.S. § 17.135, within 90 days of completion of the burial an affidavit containing a legal

description of the property and a map drawn from available information showing the boundary of the property and the location of concrete and reinforcing bar buried on the property shall be recorded with the County Recorder. The County Recorder will record the affidavit required under this paragraph in a manner that ensures its disclosure in the ordinary course of a title search of the subject property.

(Ord. 4C, passed 11-14-00; Am. Ord. 74-2012, passed 6-19-12)

#### **§ 50.072 WASTE TIRES.**

(A) All storage, transportation and processing of waste tires in the county must comply with agency requirements. License requirements for waste tire transfer and storage facilities are found herein. License requirements for tire processing facilities are found herein.

(B) Tires may not be disposed of in land disposal facilities.

(C) Retailers generating more than 100 waste tires per year must keep logs of amounts of tires generated and method used to dispose of those tires. Logs must be periodically submitted to the agency for review.

(D) All properties being used to store more than ten used passenger tires or the equivalent weight of other used tires must be permitted by the agency with the following exemptions:

- (1) Tire retail businesses which store no more than 500 waste tires on the business' premises;
- (2) Retreading businesses which store no more than 3,000 waste tires on the business' premises;
- (3) Businesses which routinely remove tires which store no more than 500 tires on the business' premises; and
- (4) Agency-permitted sanitary land disposal or transfer stations at which no more than 10,000 waste tires are stored.

(E) (1) A person using waste tires on an agricultural site for legitimate agricultural purposes may accumulate more than 10 used tires provided that specific approval is obtained from the county and that nuisance and pollution problems do not occur or threaten to occur as a result of the accumulation of these tires. Accumulation of more than 50 used tires shall require approval by the Board of Commissioners. A person requesting approval shall submit to the Department the reason for the accumulation, a description of agricultural practice the tires are needed for, the number of tires needed for the practice, a detailed description of the method and location that will be used to store the tires to prevent nuisance and pollution problems from occurring, and a plan for the proper management of the tires should the practice be discontinued.

(2) Any tires stored as part of an agricultural operation must be sliced to prevent collection of water or be stored in an enclosed structure.

(F) Any person who transports waste tires for hire is required to, have an agency waste tire identification number which authorizes him or her to perform this service. A transporter must submit quarterly reports to the agency documenting quantity, source and disposal point of all tire loads. The following are exempt from the requirement to have an agency identification number and submit quarterly reports:

- (1) A MMSW and/or source-separated recyclable materials hauler transporting incidental quantities of waste tires;
- (2) A person transporting ten or fewer waste tires;
- (3) A person transporting tire-derived products to a market;
- (4) A person transporting waste tires for agricultural purposes; and/or
- (5) A business that generates and transports its own waste tires.

(G) No more than ten waste tires may be stored on a non-farm residential lot. These tires must be stored in an enclosed structure.

(H) A business not directly related to tire sales or tire retreading may not store more than 100 waste tires on the business premises.

(I) The owner of a property which is in violation of the terms of this section must bring the property into compliance within one year of the effective date of this chapter.

(Ord. 4C, passed 11-14-00)

#### **§ 50.073 HOUSEHOLD HAZARDOUS WASTES.**

(A) License requirements for household hazardous waste temporary storage facilities are found herein.

(B) (1) In accordance with M.S. § 116.07(4)(k), as it may be amended from time to time, the owner of an MMSW disposal or processing facility must generate a management plan for the separation of household hazardous waste from MMSW prior to disposal or processing and for the proper disposal of the waste.

(2) The agency will not grant or renew a permit for a facility which has not submitted a household hazardous waste management plan.

(3) This plan must include:

- (a) Participation in public education activities on household hazardous waste entering the facility;
- (b) A strategy for reduction of household hazardous waste entering the facility; and
- (c) A plan for the storage and disposal of separated household hazardous waste.

(Ord. 4C, passed 11-14-00)

#### **§ 50.074 MAJOR APPLIANCES.**

(A) All handling, management and processing of major appliances must be in accordance with agency rules and other provisions of this chapter.

(B) A person may not place major appliances in mixed municipal waste or dispose of them in a MMSW processing or disposal facility.

(C) The following are required to remove and recycle, destroy or properly dispose of chlorofluorocarbons or CFC's:

- (1) Processors of scrap refrigerators, central air conditioning units and freezers; and
- (2) Servicers of in-use refrigerators, central air conditioning units and freezers.

(D) A person who removes, stores or transports capacitors is considered a PCB generator and must obtain an EPA hazardous waste generator identification number.

(E) A person processing major appliances must be either be:

- (1) A salvage yard operator licensed under Chapter 151 of this code; and/or
- (2) A major appliance retailer and/or wholesaler.

(F) (1) No more than 50 scrap major appliances may be stockpiled per parcel of land for persons who process major appliances as a business operation. These stockpiles may not be visible from the nearest roadway.

(2) No more than five major appliances may be stockpiled per parcel of land for persons who do not process major appliances as a business operation. These stockpiles may not be visible from the nearest roadway and may not create public health or nuisance problems.

(Ord. 4C, passed 11-14-00)

#### **§ 50.075 INFECTIOUS WASTES.**

(A) All storage and handling of infectious waste materials must be in accordance with state requirements, as established in M.S. §§ 116.75 to 116.83 and Minn. Rules Parts 7035.9100 to 7035.9150, as they may be amended from time to time.

(B) Infectious waste generators must separate infectious waste from the rest of the waste stream and ensure that this infectious waste is properly containerized. Infectious waste generators must prepare infectious waste management plans to be submitted to the State Department of Health.

(C) Commercial haulers of infectious wastes must be licensed with MNDOT and the MDH. Commercial haulers of infectious waste must prepare infectious waste management plans to be submitted to the MDH.

(Ord. 4C, passed 11-14-00)

#### **§ 50.076 INDUSTRIAL WASTES.**

As is required in Minn. Rules Part 7001.3300, as it may be amended from time to time, all MMSW processing, disposal and transfer facilities must have industrial waste management plans.

(Ord. 4C, passed 11-14-00)

#### **§ 50.077 BATTERIES.**

(A) All storage, handling and disposal of batteries must be in accordance with state rules and statutes.

(B) (1) Lead acid batteries may not be disposed of in mixed municipal solid waste. Violation is a misdemeanor.

(2) Dry cell batteries containing mercuric oxide, silver oxide or nickel cadmium are recyclable and may not be disposed of in municipal solid waste.

(C) A retail establishment which sells lead acid batteries must accept used lead acid batteries from consumers at no charge. Consumers may not deliver more than five lead acid batteries to an establishment at one time.

(D) A consumer purchasing a lead acid battery without a used lead acid battery to return at the point of sale must pay a surcharge of \$5 as part of the purchase. This surcharge will be refunded to the consumer should the consumer return a used lead acid battery within 30 days of the initial purchase.

(E) A lead acid batteries retailer must recycle batteries collected from consumers. Any outlet failing to recycle these batteries is guilty of a misdemeanor.

(Ord. 4C, passed 11-14-00)

## **ADMINISTRATION AND ENFORCEMENT**

### **§ 50.090 MODIFICATIONS.**

(A) The Board may waive or modify the strict application of the provisions of this chapter by reducing or waiving certain requirements when the requirements are unnecessary or impractical, or by imposing additional requirements when the requirements necessary to reduce risk of harm to persons, property or the environment.

(B) No modification or waiver may be granted if it would result in noncompliance with Minn. Rules applicable to the operation of the facility or activity, unless the modification or waiver has been approved or granted by the agency.

(Ord. 4C, passed 11-14-00)

### **§ 50.091 CITATION AUTHORITY.**

(A) A notice of violation or a warning letter, as defined, may be issued to a person alleged to have committed a violation hereof, prior to issuance of a citation.

(B) An authorized representative of the Department shall have the power to issue citations for violations of this chapter, but shall not be permitted to physically arrest or take into custody any violator, except on a warrant duly issued.

(1) Citations shall be issued to the person alleged to have committed the violation either by personal delivery or by registered or certified mail. In case of public, private or municipal corporation, the citation shall be issue to any officer or agent, expressly or impliedly authorized to accept the issuance.

(2) Citations shall be made out in quadruplicate. One copy shall be issued to the person alleged to have committed the violation; one copy shall be filed with the Department; one copy shall be filled with the County Attorney's Office; one copy shall be filed with the District Court, First Judicial District.

(3) Citations shall be on forms as approved by the Department and shall contain at least the following:

(a) The name and address of the person alleged to have committed the violation and, when known, the owner or person in charge of the premises at which the violation occurs;

(b) The date and place of violation;

(c) A short description of the violation followed by reference to the section of this chapter violated;

(d) The name of person issuing the citation;

(e) The date and place at which the person receiving the citation shall appear and a notice that if the person does not respond, a warrant may be issued for the person's arrest;

(f) Other information, as the court may specify.

(4) The person charged with the violation shall appear at the place and on the date specified in the citation and either:

(a) Pay the fine assigned to the violation; or

(b) Schedule a court date for a hearing on the citation.

(5) If the person charged with the violation fails to appear as required by the citation, the citation shall be referred to the County Attorney's Office.

(Ord. 4C, passed 11-14-00)

### **§ 50.092 SUSPENSION.**

(A) Any license required under this chapter may be suspended by the Board for violation of any provision of this chapter. Upon written notice to the licensee the license may be suspended by the Board for a period not longer than 60 days or until the violation is corrected.

(B) The suspension shall not occur earlier than ten county working days after written notice of suspension has been served on the licensee or, if a hearing is requested, until written notice of the Board action has been served on the licensee. Notice to the licensee shall be served personally or by registered or certified mail at the address designated in the license application. The written notice of suspension shall contain the effective date of the suspension, the nature of the violation or violations constituting the basis for the suspension, the facts which support the conclusion that a violation or violations has occurred, and a statement that if a licensee desires to appeal, he or she must, within ten county working days exclusive of the day of service, file a request for a hearing. The hearing request shall be in writing stating the grounds for appeal and served personally or by registered or certified mail on the Department by midnight of the tenth county working day following service. Following receipt of a request for a hearing, the Department shall set a time and place for the hearing.

(C) If the suspension is upheld and the licensee has not demonstrated within the 60-day period that the provisions of the chapter have been complied with, the Board may serve notice of continued suspension for up to 60 days or initiate revocation procedures.

(Ord. 4C, passed 11-14-00)

#### **§ 50.093 SUMMARY SUSPENSION.**

(A) (1) If the Department finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered by the Department upon notification of the County Attorney's Office and the Board, subject to Board ratification at its next meeting. Written notice of the summary suspension shall be served personally or by registered or certified mail to the licensee at the address designated in the license application.

(2) In addition, the Department may post copies of the notice of summary suspension of the license on the licensed facility or property being used for the licensed activity. The posting shall constitute the notice required under this section.

(B) The written notice in such cases shall state the effective date of the suspension, the nature of the violation or violations requiring emergency action, the facts which support the conclusion that a violation or violations has occurred and a statement that if the licensee desires a hearing that he or she must, within ten county working days exclusive of the day of service, file a request for a hearing. The hearing request shall be in writing stating the grounds for appeal and served personally or by registered or certified mail on the Department by midnight of the tenth county working day following service. Following receipt of a request for an appeal, the Department shall set a time and a place for the hearing.

(C) The summary suspension shall not be stayed pending an appeal or informal review by the department head, but shall be subject to dismissal on a favorable reinspection by the Department.

(Ord. 4C, passed 11-14-00)

#### **§ 50.094 SUSPENSION REINSPECTION.**

(A) Upon written notification from the licensee that all the violations for which a suspension or summary suspension was invoked have been corrected, the Department shall reinspect the facility or activity within a reasonable length of time, but in no case more than three county working days after receipt of the notice from the licensee.

(B) If the Department finds upon reinspection that the violations constituting the grounds for the suspension have been corrected, the Department shall immediately dismiss the suspension, subject to Board ratification at its next meeting, by written notice to the licensee, served personally or by registered or certified mail at the address designated in the license application.

(Ord. 4C, passed 11-14-00)

#### **§ 50.095 REVOCATION.**

(A) Any license granted pursuant to this chapter may be revoked by the Board for violation of any provision of this chapter.

(B) (1) Revocation shall not occur earlier than ten county working days from the time that written notice of the revocation is served on the licensee or, if a hearing is requested, until written notice of the Board action has been served on the licensee. Notice to the licensee shall be served personally or by registered or certified mail at the address designated in the license application. The written notice of revocation shall contain the effective date of the revocation the nature of the violation or violations constituting the basis for the revocation, the facts which support the conclusion that a violation or violations has occurred, and a statement that if the licensee desires to appeal, he or she must within ten working days, exclusive of the day of service, file a request for a hearing.

(2) The hearing request shall be in writing stating the grounds for appeal and served personally or by registered or certified mail on the Department by midnight of the tenth county working day following service. Following receipt of a request for a hearing, the Department shall set a time and a place for the hearing.

(Ord. 4C, passed 11-14-00)

#### **§ 50.096 HEARINGS.**

(A) If any applicant or licensee properly requests a hearing on a denial, suspension or revocation of license, or denial of a variance, the hearing shall be held before the Board, or a hearing examiner as provided below, and shall be open to the public.

(B) Unless an extension of time is requested by the appellant in writing directed to the chair of the Board and is granted, the hearing will be held no later than 45 calendar days after the date of service of request for a hearing, exclusive of the date of the service. In any event, the hearing shall be held no later than 90 calendar days after the date of service of request for a hearing, exclusive of the date of the service.

(C) The Board shall mail the notice of the hearing to the appellant and to the Department at least 15 working days prior to the hearing. The notice shall include:

- (1) A statement of time, place and nature of the hearing;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held; and

(3) A reference to the particular section of the ordinance and rules involved.

(D) The Board may by resolution appoint an individual, to be known as the hearing examiner, to conduct the hearing and to make findings of fact, conclusions and recommendations to the Board. The hearing examiner shall submit the findings of fact, conclusions and recommendations to the Board in a written report, and the Board may adopt, modify or reject the report.

(E) The applicant or licensee may be represented by counsel. The Department, the licensee or applicant, and additional parties, as determined by the county Board or hearing examiner, in that order, shall present evidence. All testimony shall be sworn under oath. All parties shall have full opportunity to respond to and present evidence, cross examine witnesses and present argument. The Board or hearing examiner may also examine witnesses.

(F) The Department shall have the burden of proving its position by preponderance of the evidence, unless a different burden is provided by substantive law, and all findings of fact, conclusions and decisions by the Board shall be based on evidence presented and matters officially noticed.

(G) All evidence which possesses probative value, including hearsay, may be admitted if it is the type of evidence on which prudent persons are accustomed to rely in the conduct of their serious affairs. Evidence which is incompetent, irrelevant, immaterial or unduly repetitious may be excluded. The hearing shall be confined to matters raised in the Department's written notice of suspension, summary of suspension or termination or in the appellants written request for a hearing.

(H) At the written request of any party, or upon motion of the Board or hearing examiner, a pre-hearing conference shall be held. The prehearing conference shall be conducted by the hearing examiner, if the Board has chosen to use one, or by a designated representative of the Board. The pre-hearing conference shall be held no later than five county working days before the hearing. The purpose of the pre-hearing conference is to:

(1) Clarify the issues to be determined at the hearing;

(2) Provide an opportunity for discovery of all relevant documentary, photographic or other demonstrative evidence in the possession of each party; and (The hearing examiner or Board's representative may require each party to supply a reasonable number of copies of relevant evidence capable of reproduction.)

(3) Provide an opportunity for discovery of the full name and address of all witnesses who will be called at the hearing and a brief description of the facts and opinions to which each is expected to testify. If the names and addresses are not known, the party shall describe them thoroughly by job duties and involvement with the facts in issue.

(I) If a pre-hearing conference is held, evidence not divulged as provided above shall be excluded at the hearing unless the party advancing the evidence took all reasonable steps to divulge it to the adverse party prior to the hearing and:

(1) The evidence was not known to the party at the time of the pre-hearing conference; or

(2) The evidence is in rebuttal to matters raised for the first time at or subsequent to the pre-hearing conference.

(J) If the applicant or licensee fails to appear at the hearing, he or she shall forfeit any right to a public hearing before the Board or hearing examiner.

(Ord. 4C, passed 11-14-00)

#### **§ 50.999 PENALTY.**

(A) Except as where separately provided for in this chapter or state statutes, any person who fails to comply with the provisions of this chapter is guilty of a misdemeanor. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

(B) In the event of a violation or a threat of violation of this chapter, the county may institute appropriate actions or proceedings, including injunctive relief to prevent, restrain, correct or abate the violations or threatened violations. The county may recover costs incurred for corrective action in a civil action in any court of competent jurisdiction or, at the discretion of the County Board, the costs may be certified to the County Auditor as a special tax against the real property.

(Ord. 4C, passed 11-14-00)

## **CHAPTER 51: HAZARDOUS WASTE MANAGEMENT**

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### **GENERAL PROVISIONS**

#### **§ 51.01 PURPOSE.**

It is the purpose and intent of this chapter to establish rules, regulations and standards for hazardous waste management in the county for the identification, labeling and classification of hazardous wastes; the handling, collection, transportation and storage of hazardous waste; the treatment, processing and/or disposal of hazardous waste; the requirement of licensing of hazardous waste generators and hazardous waste facilities; the payment of license fees; the penalties for failure to comply with the provisions of this chapter; the issuing, denying, modifying, imposing conditions upon, suspending, revoking licenses and other matters as determined to be necessary for the health, welfare and safety of the public. Further, this chapter shall be liberally construed so as to protect the natural environment from hazardous waste contamination.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.02 AUTHORITY.**

This chapter is adopted pursuant to M.S. Chapters 145A and 473, as they may be amended from time to time.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)



### § 51.03 DEFINITIONS.

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

**AGENCY.** The Minnesota Pollution Control Agency or MPCA.

**CIRCUIT BOARDS.** Electrical panels consisting of fiberglass, a paper and epoxy blend, or other inert material and electrical conductors, traces or foils. **CIRCUIT BOARDS** shall include circuit board trimmings.

**CIRCUIT BOARD TRIMMINGS.** The pieces, including dust particles, that are trimmed off of circuit boards during the routing or punching process in order to make the boards the proper size for use.

**COUNTY BOARD.** The Carver County Board of Commissioners.

**DEPARTMENT.** The Carver County Environmental Services Department.

**ELECTRONIC COMPONENT.** Subassemblies or other parts derived from the disassembly of electronic devices, which exhibit the toxicity characteristic of Minn. Rules 7045.0131. **ELECTRONIC COMPONENT** shall include circuit boards.

**ELECTRONIC DEVICE.** Electronic component that contains one or more electronic circuit boards, cathode ray tubes, or other circuitry or parts that exhibit the toxicity characteristic under Minn. Rules 7045.0131.

**ELECTRONICS.** Electronic components and electronic devices.

**EMBARGO.** An order by the Department prohibiting the movement, removal, transport, use, treatment or disposal of a material which is, or is suspected to be, a hazardous waste and which is being mismanaged, or which the Department has reason to suspect is being, or will be managed in violation of this chapter.

**FACILITY.** The meaning in Minn. Rules Part 7045.0020, subpart 24 and shall also include transfer facilities and facilities that collect for treatment, storage or disposal special hazardous waste, universal waste, appliances, recyclable fuel, used oil or waste contaminated with used oil.

**GENERATOR.** The meaning in Minn. Rules Part 7045.0020, subpart 31 and shall include any person, by site, whose act or process produces a universal waste or special hazardous waste or whose act first causes a universal waste or special hazardous waste to become subject to regulation.

**HAZARDOUS BUILDING COMPONENTS.** Materials and articles containing cadmium, lead, mercury, oil, polychlorinated biphenyls (PCBs), or refrigerants; asbestos containing materials; or other items posing risk to humans or the environment including, but not limited to, fluorescent and high intensity discharge lamps; neon lighting; lighting ballasts (both PCB and non-PCB containing ballasts); electrical capacitors; batteries, circuit boards; appliances; components of heating, ventilation and air conditioning (HVAC) systems that contain the above referenced materials; and thermometers, gauges, switches and relays containing mercury. Wastes included in this definition that are regulated by Minn. Rules Chapters 7000 through 7150 and C.F.R. Title 40 shall be regulated by those rules, as applicable.

**HAZARDOUS WASTE.** Any refuse, sludge or other waste material or combinations of refuse, sludge or other waste materials in solid, semisolid, liquid or contained gaseous form which, because of its quantity, concentration or chemical, physical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Categories of **HAZARDOUS WASTE** materials include, but are not limited to, explosives, flammables, oxidizers, poisons, irritants and corrosives. **HAZARDOUS WASTE** does not include source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended.

**MINIMAL GENERATOR.** Any very small quantity generator who generates one or more of only the following wastes:

(1) Ten gallons or less per year of hazardous waste that is not acutely toxic, as defined by Minn. Rules Part 7045.0020(3)(a), as it may be amended from time to time;

(2) Any amount of used oil, waste contaminated with used oil, used oil filters or petroleum fuel filters;

(3) Any amount of lead acid batteries managed under Minn. Rules Part 7045.0685;

(4) Universal waste and special hazardous wastes as defined by this chapter;

(5) Any amount of photographic fixer solution which is shipped off-site for recycling;

(6) Any amount of photographic fixer solution if treated to remove 80% of the hazardous constituents; or

(7) Any amount of fuel/water mixtures and fuel tank filters that are not stored or accumulated on site.

**NOTICE OF VIOLATION.** A formal written notice issued by the Department to notify a party that he or she is in violation of a county chapter. This notice will inform the party of the alleged violations, the nature and extent of the violations, and the required corrective actions. The **NOTICE OF VIOLATION** shall also specify additional actions that will be taken by the Department, such as the inclusion of NOV orders into a final order or consent order and/or the issuance of a citation, as well as specific time frames in which these actions will be completed.

**PERSON.** Any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association or other organization, any receiver, trustee, assignee, agent or other legal representative of any of the foregoing, or any other legal entity.

**SPECIAL HAZARDOUS WASTE.** Shall include the following hazardous wastes:

(1) Photographic and x-ray negatives and paper which exhibit the toxicity characteristic under Minn. Rules Part 7045.0131;

(2) Electronics as defined by this chapter.

**WARNING LETTER.** A written notice issued by the Department to notify a party that he or she is in violation of a county chapter. If a **WARNING LETTER** is issued, it shall be utilized as the initial county notification of alleged violations, except in cases of imminent threat to the public health and safety of the environment. The **WARNING LETTER** will inform the party of the alleged violations, the nature and extent of the violations, and the required corrective actions.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.04 COMPLIANCE.**

No person shall cause or permit the generation, transportation, disposal or processing of hazardous waste or the construction or operation of hazardous waste facilities, except in full compliance with the provisions of this chapter, including, but not limited to all provisions requiring full disclosure of information regarding the generation, transportation, disposal or processing.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.05 GENERAL CONDITIONS.**

(A) The Department may impose conditions on any license, permit or variance as deemed reasonably necessary to monitor the operation and ensure the public health and safety and to protect the environment.

(B) Violation of any condition imposed by the county on a license, permit or variance shall be deemed a violation of this chapter.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.06 FALSE INFORMATION.**

Omission of any information or submission of false information may be deemed a violation of this chapter or may be deemed a violation of state or federal law.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.07 WASTE CLASSIFICATION.**

In the event the agency modifies the lists of wastes by listing or delisting, or classifies a waste as hazardous, the Board may, by resolution, amend the lists of wastes set forth in this chapter, or classify certain wastes as hazardous, to incorporate agency action.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.08 RIGHT OF ENTRY.**

(A) Whenever necessary to perform an inspection, to enforce any of the provisions of this chapter, or whenever the Department has reasonable cause to believe that hazardous waste exists in any building or upon any premises, the Department or its authorized agent may enter the building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Department by this chapter, provided that if the building or premises be occupied, the authorized agent shall first present proper credentials and demand entry; and if the building or premises be unoccupied, the Department shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry.

(B) If the entry is refused, the Department shall have recourse to every remedy provided by law to secure entry including administrative search warrants. If the owner or other person having control of the premises has threatened an authorized agent of the Department with refusal to allow the Department entry at any future date, the Department shall document said refusal and may obtain an administrative search warrant without demanding entry on the future date.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.09 STANDARDS FOR PRESERVATION.**

(A) Minn. Rules Chapter 7045, except for Minn. Rules Parts 7045.1000 through 7045.1030 inclusive, as it may be amended from time to time, relating to hazardous waste, are hereby adopted by reference and made a part of this chapter. Adoption of the state rules into this chapter does not relieve regulated parties from full compliance with requirements as they also apply to the state or federal entities specified in the state rules. Regulated parties must obtain required approvals and

submit necessary information to the appropriate state or federal authorities as well as to the county.

(B) Any amendments, modifications or deletions are hereby adopted by reference and incorporated as if set in full herein.

(C) *Standards amended.* The above adopted rules are hereby amended as follows:

(1) Wherever the term **MINNESOTA POLLUTION CONTROL AGENCY, POLLUTION CONTROL AGENCY** or **AGENCY** appears in these adopted rules it shall mean the **DEPARTMENT**, except in Minn. Rules Parts 7045.0020 subparts 4, 9c and 73h; 7045.0070; 7045.0075; 7045.0080; 7045.0090 when referenced by 7045.0545, 7045.0546, 7045.0547 and 7045.0548; 7045.0125, subpart 9, item D; 7045.0129; 7045.0133; 7045.0135, subpart 1, paragraph 3; 7045.0139; 7045.0218; 7045.0243, subpart 3, item D; 7045.0261, subpart 5, item B and subpart 6; 7045.0275, subpart 2; 7045.0302; 7045.0361; 7045.0395; 7045.0397; 7045.0450, subpart 1; 7045.0452, subpart 2; 7045.0468, subpart 2; 7045.0498 through 7045.0524; 7045.0546; 7045.0552, subpart 3 item A; 7045.0554; 7045.0556, subpart 2; 7045.0574, subpart 2; 7045.0608 through 7045.0624; 7045.0655, subpart 1; and where used with **ENVIRONMENTAL PROTECTION AGENCY**, or **FEDERAL OR STATE AGENCY**, where they shall remain unchanged.

(2) Wherever the term **COMMISSIONER** appears in these adopted rules, it shall mean **DEPARTMENT** except in Minn. Rules Parts 7045.0020, subpart 6a, item B, subparts 9c, 13a, 43.b, 73h, and 85a; 7045.0075; 7045.0080; 7045.0090 when referenced by 7045.0545, 7045.0546, 7045.0547 and 7045.0548; 7045.0125, subpart 4, item N and subpart 9, item D; 7045.0129; 7045.0131, subparts 1 and 7; 7045.0218; 7045.0261, subpart 9; 7045.0265; 7045.0294, subpart 1a, item B; 7045.0302; 7045.0310, subpart 3, items B, C and D, and subpart 5, item C; 7045.0320, subparts 9 and 10; 7045.0474; 7045.0476, subpart 3, item A; 7045.0498 through 7045.0524; 7045.0528, subpart 4, item D(4) and subpart 8, item D(1); 7045.0545, subparts 1 through 7; 7045.0546; 7045.0580; 7045.0582, subpart 3, item A; 7045.0608 through 7045.0624; 7045.0628, subpart 4, item D(4); 7045.0652, subpart 2, item B; 7045.0686; 7045.0875, subpart 8, item B; 7045.0990; 7045.1309; 7045.1315, subpart 2, item G; 7045.1360, where it shall remain unchanged.

(3) Wherever the term **PERMIT, PERMITEE, PERMITTING** or **PERMITTED** appears in these adopted rules, it shall mean **LICENSE, LICENSEE, LICENSING** or **LICENSED** except in Minn. Rules Parts 7045.0020, subpart 10b, subpart 15, item A(4), subpart 23a, subpart 24, item B, and subpart 58a; 7045.0121, subpart 2, item D; 7045.0208, subpart 2, item C; 7045.0210; 7045.0261, subparts 2, 5, and 6; 7045.0310, subpart 3, item D and subpart 6, item D; 7045.0320, subpart 9, item C; 7045.0397; 7045.0450, subpart 1; 7045.0498 through 7045.0524; 7045.0545, subparts 5 and 7; 7045.0546; 7045.0552, subpart 2; 7045.0554, subpart 1; 7045.0608 through 7045.0624; 7045.0790, subpart 7; 7045.1380, subpart 1, item A; and where used with **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT, NPDES PERMIT, STATE DISPOSAL SYSTEM PERMIT, EMISSION FACILITY OPERATING PERMIT, PERMIT-BY-RULE**, or **AIR QUALITY PERMIT**, where they shall remain unchanged.

(4) The terms **MINNESOTA** or **STATE OF MINNESOTA** shall mean **COUNTY OF CARVER** in Minn. Rules Parts 7045.0210; 7045.0212; 7045.0214; 7045.0240; 7045.0261, subpart 5 and subpart 6 (except the phrases **SPECIFIC MINNESOTA** and **IN MINNESOTA** which shall remain unchanged); 7045.0302, subpart 1; 7045.0351, subpart 1; 7045.0355 and 7045.0361.

(5) Minn. Rules Part 7045.0020, subpart 66 is deleted in its entirety.

(6) Minn. Rules Part 7045.0060 is amended to read as follows:

"No variance may be granted if granting the variance would result in noncompliance with Environmental Protection Agency (EPA) regulations and Minnesota Pollution Control Agency (MPCA) rules for the generation, storage, processing, treatment, transportation or disposal of hazardous waste or the operation of hazardous waste facilities."

(7) Minn. Rules Part 7045.0225, subpart 1 is amended by deleting the last two sentences in their entirety.

(8) The first paragraph of Minn. Rules Part 7045.0230, subpart 1 is amended to read:

"Information required. An application must be on a form provided by the Department and must include the following information".

(9) Minn. Rules Part 7045.0230, subpart 1a is deleted in its entirety.

(10) Minn. Rules Part 7045.0240 is amended by the deletion of the second sentence in subpart 3.

(11) Minn. Rules Part 7045.0243 is amended by the deletion of subpart 1 and subpart 3, item C.

(12) The first paragraph of Minn. Rules Part 7045.0248, subpart 1 is amended to read as follows:

"A licensed generator must submit a license renewal application to the Department on forms provided by the Department. A generator must submit the application and report by the January 31 preceding the expiration of the generator license. The application must contain the following information for each hazardous waste produced during the preceding calendar year:"

(13) Minn. Rules Part 7045.0248, subpart 1, item B is deleted in its entirety.

(14) Minn. Rules Part 7045.0250 is deleted in its entirety.

(15) Minn. Rules Part 7045.0261, subpart 5 is amended to read as follows:

"Subpart 5. Permitted facilities. The facilities shall be licensed or permitted by:

- A. the department if the hazardous waste facility is located within Carver County in Minnesota; or
- B. the state agency with a hazardous waste program authorized by the EPA pursuant to Code of Federal Regulations, title 40, part 271 (1983); or
- C. the EPA; or
- D. having interim status."

(16) Minn. Rules Part 7045.0261 subpart 9 is amended to read as follows:

"Subpart 9. Number of copies. The manifest must consist of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records, another copy to be returned to the generator by the facility, and the required copies to be returned to the commissioner or to the Hazardous Waste Manifest Program, pursuant to parts 7045.0265, 7045.0474, subpart 2, item D; and 7045.0580, subpart 2, item D, and any additional copies required by the generator's or designated facility's state, if other than Minnesota. Copies to be returned to the commissioner shall be sent to: Minnesota Pollution Control Agency, Hazardous Waste Division, 520 Lafayette Road, Saint Paul, Minnesota 55155, Attention: HWIMS. Copies to be returned to the Hazardous Waste Manifest Program shall be sent to: Hazardous Waste Manifest Program, Mail Code L609, 300 S 6th Street, Minneapolis, Minnesota 55487."

(17) Minn. Rules Part 7045.0265 subpart 1D is amended to read as follows:

"D. send one copy to the commissioner within five working days of the initial transporter's acceptance of the hazardous waste shipment if the generator is a large quantity or small quantity generator. Send one copy to the Hazardous Waste Manifest Program if the generator is a very small quantity generator."

(18) Minn. Rules Part 7045.0265 subpart 2B is amended to read as follows:

"B. send one copy to the commissioner within five working days of the initial transporter's acceptance of the hazardous waste shipment if the generator is a large quantity or small quantity generator. Send one copy to the Hazardous Waste Manifest Program if the generator is a very small quantity generator."

(19) Minn. Rules Part 7045.0265 subpart 3B is amended to read as follows:

"B. send one copy to the commissioner within five working days of the initial transporter's acceptance of the hazardous waste shipment if the generator is a large quantity or small quantity generator. Send one copy to the Hazardous Waste Manifest Program if the generator is a very small quantity generator."

(20) Minn. Rules Part 7045.0265 subpart 4A is amended to read as follows:

"A. the copy of the hazardous waste manifest signed by the facility operator is sent to the commissioner within 40 days of the acceptance of the hazardous waste by the hazardous waste facility if the generator is a large quantity or small quantity generator. The copy of the hazardous waste manifest signed by the facility operator is sent to the Hazardous Waste Manifest Program within 40 days of the acceptance of the hazardous waste by the hazardous waste facility if the generator is a very small quantity generator; and"

(21) In Minn. Rules Part 7045.0292, subparts 1, 5, 6 and 8, the phrase "without a permit" is amended to read "without a facility permit". The word "permit" in these references remains unchanged.

(22) The first paragraph of Minn. Rules Part 7045.0302, subpart 2 is amended to read as follows:

"Subpart 2. Notification. When shipping hazardous waste outside the state of Minnesota to a foreign country, the primary exporter must notify the Commissioner, the Department and the EPA of an intended export before the waste is scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a 12-month or lesser period. The notification must be in writing, signed by the primary exporter and include the following information:"

(23) Minn. Rules Part 7045.0460, subpart 1, item A is amended to read as follows:

"A. Procedures are in effect which will cause the waste to be removed safely before floodwaters can reach the facility to a location where the wastes will not be vulnerable to floodwaters. The location to which wastes are moved must be a facility which is either licensed by this Department, or permitted by the Environmental Protection Agency, or by a state with a hazardous waste management program authorized by the Environmental Protection Agency, or which has interim status."

(24) The term "in Chapter 7001" is deleted wherever it appears.

(25) The phrase "under chapter 7046" is deleted wherever it appears.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

## **§ 51.10 MINIMAL GENERATORS.**

(A) (1) Minimal generators must manage their hazardous waste according to all applicable rules and regulations of the EPA, the state and county.

(2) (a) Minimal generators who fail to comply with the waste management requirements of this chapter may, at the

discretion of the Department, lose their minimal generator status.

(b) The Department will notify the minimal generator of the status change.

(3) Minimal generators whose rate of generation exceeds that defined herein shall lose their minimal generator status.

(4) Minimal generators that exceed 55 gallons of accumulated hazardous waste lose minimal generator status. The generation of used oil, used oil contaminated absorbents, used oil filters, spent lead acid batteries, universal waste, special hazardous waste, feedstock, or by-product waste is not counted towards this accumulation limit.

(Ord. 60-2007, passed 8-14-07)

#### **§ 51.11 SPECIAL HAZARDOUS WASTE.**

(A) Special hazardous wastes that are managed in compliance with the management requirements specified in this ordinance are not subject to the hazardous waste management requirements in Minn. Rules Parts 7045.0205 to 7045.0990 and 7045.1300 to 7045.1380, except for those provisions specified by reference in this chapter. Special hazardous wastes that are not managed in compliance with the requirements specified in this chapter must be managed in accordance with all applicable hazardous waste management requirements in Minn. Rules Parts 7045.0205 to 7045.0990 and 7045.1300 to 7045.1380. The provisions of this section apply to all generators and facilities.

(B) A person who collects special hazardous waste generated by households or commingles special hazardous waste generated by households with any special hazardous waste defined in this chapter shall manage the collected special hazardous waste or commingled special hazardous waste under the requirements of this chapter. Facilities that are operated by or under contract, license or formal agreement with a local unit of government to collect special hazardous waste from households do not need to obtain a hazardous waste generator or facility license to operate, however, such facilities must abide by all other applicable provisions of this chapter.

(C) *Storage.* A generator shall store special hazardous waste in containers or in a manner that:

- (1) Prevents damage to or breakage of special hazardous waste during normal handling conditions;
- (2) Are compatible with the waste being stored in the container;
- (3) Will not leak or break open during normal handling conditions;
- (4) Protects handlers and all other persons from physical injury caused by contact with special hazardous waste; and
- (5) Prevents releases of special hazardous waste, including components or residues of special hazardous waste.

(D) *Storage areas.*

- (1) Storage of special hazardous waste indoors or outdoors must be on a surface impermeable to the hazardous waste.
- (2) Outdoor storage areas must prevent release to soil or water.
- (3) Storage areas for special hazardous wastes must have protection from damage including vehicular accidents and vandalism.
- (4) Special hazardous waste containers must have adequate aisle space to allow unobstructed movement of personnel and equipment in an emergency.

(E) *Storage time limit.* A generator may accumulate special hazardous waste up to 10,000 pounds for no longer than one year from the date the special hazardous waste is generated. A generator of special hazardous waste may accumulate over 10,000 pounds and one year if such activity is solely for the purpose of accumulation of such quantities of special hazardous waste as necessary to facilitate proper recovery, treatment, or disposal. However, the generator bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of special hazardous waste as necessary to facilitate proper recovery, treatment, or disposal. A generator of special hazardous waste who accumulates special hazardous waste must be able to demonstrate the length of time that the special hazardous waste has been accumulated from the date it becomes a waste. The generator may make this demonstration by:

- (1) Placing the special hazardous waste in a container and marking or labeling the container with the earliest date that any special hazardous waste in the container became a waste; or
- (2) Marking or labeling each individual item of special hazardous waste (e.g., each battery or thermostat) with the date it became a waste; or
- (3) Maintaining an inventory system on-site that identifies the date each special hazardous waste became a waste; or
- (4) Maintaining an inventory system on-site that identifies the earliest date that any special hazardous waste in a group of special hazardous waste items or a group of containers of special hazardous waste became a waste; or
- (5) Placing the special hazardous waste in a specific accumulation area and identifying the earliest date that any special hazardous waste in the area became a waste; or
- (6) Any other method which clearly demonstrates the length of time that the special hazardous waste has been accumulated from the date it becomes a waste.

(F) *Labeling of containers.* Generators and facilities shall label each waste container with, as applicable:

- (1) The words "used" or "waste" followed by a brief description of the waste in the container;
- (2) A brief description of the waste in the container followed by the words "for recycling."

(G) *Response to releases or detection of inadequate container.* Generators and facilities shall conduct the activities set out in divisions (1) through (4) below upon detection of storage that no longer meets the standards in division (C) above or upon a release of a special hazardous waste, including components or residues of a special hazardous waste.

(1) Immediately stop and contain any release of a special hazardous waste, including all components or residues of a special hazardous waste.

(2) If a container storing a special hazardous waste begins to leak or does not otherwise meet the container standards in division (C) above, transfer all waste remaining in the leaking or inadequate container to a container that meets the requirements of division (C) above.

(3) Prior to returning to service any leaking or otherwise damaged container, repair the container so that it meets the container standards of division (C) above.

(4) If a release may cause pollution of the environment, immediately notify the Minnesota Duty Officer by calling (651) 649-5451.

(H) *Treatment.* A generator is prohibited from conducting any treatment of special hazardous waste, except for activities associated with:

- (1) Responding to a release as set out in division (G) above;
- (2) Transferring a type of special hazardous waste from one storage container into another storage container containing the same type of special hazardous waste;
- (3) Shredding or cutting up circuit boards, hard drives or photographic and X-ray negatives and paper.

(I) *Transportation.* All special hazardous waste must be shipped to a collector, a licensed processing/storage facility, a recycler, or a permitted hazardous waste facility. Shipments must be accompanied by a shipping paper, bill of lading, or manifest. The shipping documents must include the name of shipper, the date of shipment, the amount of waste, and the destination facility's name, address and phone number.

(J) *Recordkeeping.* Records shall be kept for all shipments of special hazardous waste. Each copy shall be maintained on site for a period of three years from the date the shipment was initiated by the generator.

(Ord. 60-2007, passed 8-14-07)

## § 51.12 UNIVERSAL WASTE.

(A) Generators and facilities utilizing the universal waste exemption must manage their universal waste in accordance with Minn. Rules part 7045.1400 et seq. and this chapter.

(B) A person who collects universal waste generated by households or commingles universal waste generated by households with any universal waste shall manage the collected universal waste or commingled universal waste under the requirements of this chapter. Facilities that are operated by or under contract, license or formal agreement with a local unit of government to collect universal waste from households do not need to obtain a hazardous waste generator or facility license to operate, however, such facilities must abide by all other applicable provisions of this chapter.

(C) *Applicability.* The term **HANDLER** adopted in Minn. Rules Part 7045.1400, shall mean the following:

- (1) *Generator.* When the universal waste activity meets the definition of **GENERATOR** in this chapter.
- (2) *Facility.* When the universal waste activity meets the definition of **FACILITY** in this chapter.

(D) *Recordkeeping.* Records shall be kept for all shipments of universal waste. Each record shall be maintained on site for a period of three years from the date the shipment was initiated. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent must include the following information:

- (a) The name, address and telephone number of the destination to whom the universal waste was sent;
- (b) The quantity of each type of universal waste sent (e.g., batteries, pesticides, thermostats);
- (c) The date the shipment of universal waste left the generator site.

(E) *Additional standards for mercury containing equipment.* Mercury containing equipment must be stored in a container. The container must be closed, structurally sound, compatible with the contents, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(Ord. 60-2007, passed 8-14-07)

## **LICENSING REQUIREMENTS**

### **§ 51.20 LICENSE REQUIRED.**

Unless otherwise provided by this chapter, no person shall, within the county, make or allow property under his, her or its control to be used for any activity which generates wastes regulated under this chapter, except at an individual generation site for which a hazardous waste generator license has been granted by the Department. Unless otherwise provided by this chapter, no person shall, within the county, store, deposit, keep, accumulate, process, treat, reclaim, dispose of or otherwise handle, process or cause to be transported, wastes generated under this chapter except at a site or facility for which a license has been granted by the Department. Unless otherwise provided by this chapter, no person shall operate a used oil collection site, a used oil filter collection site or a spent battery collection site, except at an individual site for which a hazardous waste license has been granted by the Department. On a case by case basis, the Department may allow a person that does not possess a facility license to accept used oil, used oil filters, recyclable fuel waste, universal waste and/or special hazardous waste if the facility possesses a generator license, using the following criteria as a guide: the site takes these wastes only from generators owned or operated by the owner or operator of the receiving site, is receiving used oil pursuant to M.S. § 325E.11, is operated in compliance with Minn. Rules Part 7045.0310, or the volumes of the wastes received or number of generators shipping waste to the receiving site are not deemed to present a hazard requiring management standards over and above what normally would be applied to that generator license.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

### **§ 51.21 LICENSING NOT EXCLUSIVE.**

Obtaining a hazardous waste license shall not be deemed to exclude the necessity of obtaining other appropriate licenses or permits, except as expressly provided herein. Compliance with the provisions of this chapter shall not relieve any person of the need to comply with any and all other applicable rules, regulations and laws.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

### **§ 51.22 FEES.**

(A) The Board may, by ordinance, establish fees, including fees for the initial and renewal of licenses for generators and for the initial application, initial license, and renewal of licenses for facilities.

(B) The Board may, by ordinance, establish other fees as may be necessary for the administration of this chapter.

(C) Fees for new licenses are due 30 days after the billing date. Fees for renewal of licenses are due 30 days prior to the expiration of the current license. Hazardous waste generators whose production of hazardous waste (volume and/or types) exceeds that set forth in their license renewal application, and said excess production places them in a higher license category, shall be invoiced for the additional fee. The additional fee due for the current license year must be paid within 30 days of the invoice date, or before the renewal of their license for the coming year, whichever comes first. As used herein, fees may include license fees, Agency statewide program fees, application fees, late penalty fees and other fees as may be prescribed by the Board.

(D) Fees for license renewal shall be based on the past year's rate of generation and the highest generator size exhibited during the year. If the license is for new waste generation, the fee shall be based on an estimated rate of generation, which is acceptable to the Department.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

### **§ 51.23 MINIMAL GENERATORS.**

Minimal generators shall comply with the following registration requirements in place of the license and fee requirements of §§ 51.20 and 51.22:

(A) Minimal generators shall register with the Department within 75 days of first generating hazardous waste.

(B) All currently licensed generators that meet the definition of a minimal generator will be converted by the county to registered status.

(C) Registration will be effective as long as the generator meets the minimal generator definition.

(D) Minimal generators shall notify the Department within 30 days before or after whenever any of the following events occurs:

(1) The business closes;

(2) The business is sold or otherwise changes ownership;

(3) The business moves to a new location;

(4) The business assumes a new name; or

(5) The generator's rate of generation no longer meets the minimal generator definition listed herein.

(E) Any generator who loses minimal generator status, pursuant to §51.09(C) shall be subject to the full generator

licensing standards of this chapter. The generator will not be eligible to regain minimal generator status for a period of two license years.

(F) To regain minimal generator status, the generator must be in compliance with the minimal standards defined in this chapter. An inspection by the Department may be required to confirm compliance with these standards.

(G) Any minimal generator may, by making written request to the Department, remain regulated as a very small quantity generator in lieu of the minimal generator requirements.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.24 LICENSE TERM.**

(A) Unless otherwise provided by the County Board, each license granted pursuant to the provisions of this chapter shall be nontransferable and shall be for a period of not more than one year, except that initial licenses may be issued for a period of up to 15 months, unless earlier suspended or revoked.

(B) The license year for hazardous waste facilities shall be from July 1 through June 30. The license year for hazardous waste generators shall be from April 1 through March 31.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.25 LICENSE APPLICATION.**

(A) (1) Applications for license or license renewal shall be submitted to the Department on forms provided by the Department. Applicants shall provide information as may be needed for the administration of this chapter.

(2) *Generators.* Generators shall submit to the Department a license application. The license application shall include, but not necessarily be limited to, the information specified in Minn. Rules Parts 7045.0230 to 7045.0248 as applicable. Applications for a generator license received more than 75 days after commencement of operation, or applications for license renewal received after January 31, shall be considered late and subject to a late application penalty. Applications for license modification shall be deemed late, and subject to a late application penalty, if received later than as set forth in Minn. Rules Part 7045.0243(3)(G), as it may be amended from time to time. The date of receipt is the postmark date if mailed or the Department date of receipt if hand delivered.

(3) *Facilities interim operating approval.* Unless interim operating approval has been granted hereunder, applicants for a facility license shall not commence any construction or operation until the license application has been approved by the Department, nor shall they commence any operation until a license is issued. A facility license shall not be issued until the facility construction has been completed in compliance with this chapter and the approved plans, and has been approved by the Department.

(B) (1) If an application for a generator license or license renewal is not complete or otherwise does not conform with the requirements set forth in this chapter, the Department shall advise the applicant within 60 days of application receipt, in writing, of the reasons for non-acceptance and may request that the applicant resubmit, modify or otherwise alter the application. The applicant shall comply with the requests within the time specified by the Department.

(2) If an application for a facility license or license renewal is not complete or otherwise does not conform with the requirements set forth in this chapter, the Department shall advise the applicant within 120 days of application receipt, in writing, of the reasons for non-acceptance and may request that the applicant resubmit, modify or otherwise alter the application. The applicant shall comply with the requests within the time specified by the Department.

(C) (1) Generator applications for license renewal shall be received by the Department no later than January 31. Applications for license renewal must be accompanied by a statement of any change in information submitted in the last approved license or in the license renewal application. If there are no changes, it shall be so stated in the license renewal application. If the Department does not act on a generator license renewal application, which is complete and submitted on time, the current license shall continue in force until action is taken.

(2) Facility applications for license renewal shall be received by the Department no later than February 28. Applications for license renewal must be accompanied by a statement of any change in information submitted in the last approved license or in the license renewal application. If there are no changes, it shall be so stated in the license renewal application. If the Department or County Board does not approve or deny a facility license renewal application, which is complete and submitted on time, the current license shall continue in force until action is taken.

(D) (1) Failure by the Department to approve or deny an initial generator license application within 60 days from the date of receipt of a completed application shall constitute grounds for the applicant to request a hearing. The request for a hearing shall be governed hereby. Failure to act shall be construed as denial without prejudice.

(2) Except as provided herein, failure by the Department or County Board to approve or deny an initial facility license application within 120 days from the date of receipt of a completed application, shall constitute grounds for the applicant to request a hearing. The request for a hearing shall be governed hereby. Failure to act shall be construed as denial without prejudice.

(E) For licensing purposes, the Department may consider on-site treatment by the generator, of on-site generated hazardous waste, as part of the generator's licensure and may exempt such on-site treatment from facility licensing



requirements. The exemption shall be limited to the following types of treatment: the specific treatment activities allowed in Minn. Rules Parts 7045.0450(3)(K); 7045.0652; and 7045.0855(3), as they may be amended from time to time; and/or recovery of reusable solvents by distillation. The treatment must be described in the generator license application and approved by the Department. The Department may require generators, who do on-site treatment as identified above, to comply with the requirements of Minn. Rules Parts 7045.0558; 7045.0562(1) and (2); and 7045.0566 through 7045.0576, as they may be amended from time to time, or may impose license conditions as may be deemed necessary to monitor the treatment operation and ensure public health and safety.

(F) Use of household hazardous waste collection site. Delivery of waste governed under this chapter to a household hazardous waste collection site is prohibited unless the site is authorized by the Agency to accept such hazardous waste and the operator granted permission to accept the waste knowing it was not household hazardous waste.

(G) (1) Unless otherwise provided by the County Board and/or Department, issuance of a hazardous waste transfer, storage, resource recovery, disposal, treatment or other handling or processing site or facility license, pursuant to the provisions of this chapter, shall be contingent upon the applicant furnishing to the Department a bond or letter of credit acceptable to the Department naming the county as the obligee with sufficient sureties duly licensed and authorized to transact corporate surety business in the State of Minnesota as sureties. The amount of the bond or letter of credit shall be set by the Department according to the following formula: estimated cost, submitted by the applicant and approved by the Department, for a third party contractor, unrelated to the applicant or to Carver County, to dispose of the maximum inventory of hazardous wastes that will be on site at any one time, and to decontaminate the facility and all equipment in the facility, or dispose of any equipment that cannot be decontaminated, and to perform any other activities necessary to ensure that the facility does not pose a threat to human health or the environment; plus an additional 30% to cover unanticipated costs and administrative costs that the county might incur. The condition of the bond or letter of credit shall be that if the principal fails to obey any of the requirements or do any of the acts required by this chapter an order or notice issued by the Department or conditions of the license in the operation of the site or facility, or if, for any reason, the applicant ceases to operate or abandons the site or facility, and the county determines that chemical analysis and/or testing and remediation are required to restore the site or facility to the condition and requirements as provided by the chapter, notice, order, or license, the principal and the sureties on its bond shall pay for any and all expenses required for chemical testing and to remedy the failure of the principal to comply with this chapter, orders or notices of the Department, or conditions of the license and that the principal and its sureties will indemnify and save the county harmless from all losses, costs and charges that may occur to the county because of any default of the principal under terms of his or her license to operate and this chapter of the county. In the event the county is required to expend monies or expend any labor or material to restore the site or facility to the condition or requirements as provided by this chapter, order or notice by the Department, or license, the principal and the sureties shall reimburse the county for any and all expenses incurred to remedy the failure of the principal to comply with the terms of this chapter, orders or notices of the Department or conditions of the license. The applicant may satisfy the requirements of this section by demonstrating that they pass a financial test, the terms of which will be set on a case by case basis by the Department. For facilities permitted by the Agency or having interim status, or otherwise required by the Agency to establish financial assurance for closure or corrective action, the license applicant, in lieu of the above, shall submit to the Department for review satisfactory evidence of compliance with the Agency's financial assurance requirements.

(2) Unless otherwise provided by the Department, issuance of a hazardous waste transfer, storage, resource recovery, disposal, treatment or other handling or processing site or facility license which requires an agency permit or is operating under interim status pursuant to Minn. Rules Parts 7045.0552 through 7045.0648, as they may be amended from time to time, pursuant to the provisions of this chapter, shall be contingent upon the applicant furnishing to the Department satisfactory evidence of compliance with Minn. Rules Parts 7045.0518 and 7045.0620, as they may be amended from time to time. The Department shall be notified 30 days prior to the effective date of a cancellation or change of insurance. Under interim operating approval, the required insurance shall be specified by the county.

(a) Unless otherwise provided by the Department, issuance of a license to a facility not required by the Agency to meet the liability requirements of Minn. Rules Parts 7045.0518 or 7045.0620, pursuant to the provisions of this chapter, shall be contingent upon the applicant furnishing to the county a certificate of insurance showing that the applicant maintains the following minimum coverage:

1. A commercial general liability insurance policy covering all premises and operations with limits of not less than \$1,000,000 for personal injuries arising from one occurrence, \$1,000,000 for damages arising from death and/ or total bodily injuries arising from one occurrence, and \$1,000,000 for property damage arising from one occurrence, or a combined single limit thereof, with a \$2,000,000 annual aggregate.

2. An automobile liability insurance policy, if applicable, with limits of \$1,000,000 per accident for death or bodily injury and/or damages to any one person, \$1,000,000 for total bodily injuries and/or damages arising from any one accident and with limits of not less than \$1,000,000 per accident for property damage.

3. Workers compensation coverage at the statutory limits (or written confirmation that the applicant is a qualified self insured or is otherwise exempt under M.S. §176.041).

(b) A financial test for liability coverage may be substituted for the certificate of insurance upon the approval of the Department. The county shall be notified 30 days prior to the effective date of a cancellation or change of insurance.

(c) Hazardous waste facilities shall not be required to submit a bond, letter of credit, or

financial test, specified herein, and proof of adequate insurance specified herein, if the applicant can demonstrate to the Department that financial assurance is not required by the Agency, and the closure cost estimate approved by the

Department is \$10,000.00 or less.

(3) No change shall be made in the operation of a hazardous waste facility, unless the change is first approved by the Department.

(4) In order to operate a hazardous waste site or facility during interim period prior to license approval by the Department, a person must obtain interim operating approval from the Department and comply with conditions set by the Department. Interim operating approval shall require said person to operate the hazardous waste site or facility in conformance with Minn. Rules Parts 7045.0552 through 7045.0606 and 7045.0626 through 7045.0642, as it may be amended from time to time, if operating as a treatment, storage or disposal facility, or in conformance with Minn. Rules Part 7045.0365, as it may be amended from time to time, if operating as a transfer facility or in conformance with Minn. Rules Parts 7045.0125 and/or 7045.0675, as it may be amended from time to time, if operating as a recycling facility. Additionally, the Department may impose conditions as deemed necessary to monitor the operation and ensure public health and safety, and will require compliance with the insurance requirements specified herein. The requirements under interim operating approval shall remain in force until the Department acts to grant or deny the license. If the Department finds that the hazardous waste site or facility is not being operated in compliance with the requirements of interim operating approval, the approval shall be terminated. Any person operating in full compliance with this paragraph shall be considered to be in compliance herewith until the Department acts to grant or deny the license. Any person who, on an interim basis, in compliance with this section, owns or operates a hazardous waste transfer, storage, disposal, resource recovery, treatment or other handling or processing facility shall apply for a hazardous waste facility license within 120 days of commencement of operation.

(5) Nothing in this item is intended to allow facilities to operate without permits, licenses or compliance agreements required by the agency.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.26 TERMINATION OF OPERATION.**

Any person who, for any reason, terminates operations at a regulated site, must remove all hazardous waste and materials contaminated with hazardous waste prior to termination of operations. Termination of operations may include the sale of an operation to a new entity, or the simple shutdown of a business or site, which is then not operated, the relinquishing of lease or rental rights to a property, or a change in operation such that hazardous waste is no longer generated. Removal of the waste from the site must be completed in a timely manner as determined by the Department and accomplished in full compliance with this chapter and Minn. Rules Chapter 7045. Materials remaining on the site of a terminated operation shall be considered waste materials. The continued storage of hazardous wastes on the site of a terminated operation shall be done in compliance with the hazardous waste storage facility rules in Minn. Rules Chapters 7045 and 7001 and this chapter.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

### **ADMINISTRATION AND ENFORCEMENT**

#### **§ 51.40 MODIFICATIONS.**

(A) The County Board may waive or modify the strict application of the provisions of this chapter by reducing or waiving certain requirements when the requirements are unnecessary or impractical, or by imposing additional requirements necessary to reduce risk of harm to persons, property or the environment.

(B) No modification or waiver may be granted if it would result in noncompliance with Minn. Rules Chapter 7045, as it may be amended from time to time, unless the modification or waiver has been approved or granted by the agency.

(C) For facilities permitted or granted interim status by the agency, amendments to the facility closure/post-closure plans and extensions to the closure/post-closure period shall be granted by the Department only where the amendments or extensions have been approved by the agency.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.41 AUTHORITIES OF THE DEPARTMENT.**

The Department is authorized to administer and enforce this chapter. The Department's authority includes but is not limited to the following:

(A) Receive and review generator and facility license or license renewal applications, issue hazardous waste generator and facility licenses, and approve or disapprove interim operations of facilities pursuant to this chapter;

(B) Inspect hazardous waste facilities and generators, as provided in this chapter, and investigate complaints of violations of this chapter;

(C) Recommend that legal proceedings be initiated by the county to compel compliance with the provisions of this chapter; and

(D) Advise, consult and cooperate with other governmental agencies in the furtherance of this chapter.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

## **§ 51.42 INSPECTION.**

(A) Inspection and evaluation of hazardous waste facilities, including transfer, short-term storage, transportation, storage, disposal, resource recovery, treatment or other handling or processing sites or facilities, or generators may be made by the Department to insure compliance with the provisions of this chapter. The facility owner and/or operator or generator shall be provided with written notice of any deficiencies, recommendations for their correction, and the date by which the corrections shall be accomplished.

(B) The facility owner and/or operator or generator shall allow the county's authorized agents access for the purposes of making inspections as may be necessary to determine compliance with the requirements of this chapter. At the Department's election, the owner and/or operator shall provide free of charge or shall allow the Department or its agents to collect samples of waste, soils, surface waters, ground waters, air, raw materials, sewage discharges or other materials or residues present at or emanating from the site for testing. The owner and/or operator shall allow free access at all reasonable times to inspect and copy, at a reasonable cost, all business records related to an owner's and/or operator's generation, collection, processing and transportation of waste. All records required to be kept under this chapter shall be kept at the licensed site and shall be easily available for review during the inspection.

(C) The owner and/or operator shall allow the Department to record and document its findings in any reasonable and appropriate manner including, but not limited to notes, photographs, photocopies, readouts from analytical instruments, videotapes, audio recordings and computer storage systems or other electronic media. When requested by the Department, photocopies of records shall be provided at a reasonable cost.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

## **§ 51.43 ORDERS AND NOTICES.**

Whenever the Department or its authorized representatives shall find in any building or on any premises, hazardous waste whether at a site or facility for which a license has been granted by the county or where no license has been issued, the Department shall issue orders as may be necessary for the enforcement of this chapter governing and safeguarding the health, welfare and safety of the public.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

## **§ 51.44 COMPLIANCE.**

(A) Any person within the county who shall generate, store, deposit, keep, accumulate, process, treat, reclaim, dispose of or otherwise handle, process or cause to be transported hazardous waste, in violation of this chapter, or who shall permit the hazardous waste to exist on the premises under his or her control or who shall fail to take immediate action to abate the existence of the hazardous waste when ordered or notified to do so by the Department shall be guilty of a misdemeanor.

(B) Any order or notice issued or served by the Department shall be complied with by the owner, operator, occupant or other person deemed by the Department to be responsible for the condition or violation to which the order or notice pertains. Every order or notice shall set forth a time limit for compliance depending upon the nature of the hazardous waste and the danger created by the violation. In cases of extreme danger to the health, welfare and safety of the public, immediate compliance shall be required. If the building or other premises is owned by one person and occupied by another, under lease or otherwise, and the order or notice requires immediate compliance for the health, welfare and safety of the public, the order or notice shall be complied with by the owner, unless the owner and occupant have otherwise agreed between themselves, in which event the occupant shall comply.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

## **§ 51.45 CITATION AUTHORITY.**

Upon approval by resolution, the County Board may issue citation authority to the Department.

(A) A notice of violation or a warning letter, as defined, may be issued to a person alleged to have committed a violation of this chapter, prior to issuance of a citation.

(B) An authorized representative of the Department shall have the power to issue citations for violations of this chapter, but shall not be permitted to physically arrest or take into custody any violator, except on a warrant duly issued.

(1) Citations shall be issued to the person alleged to have committed the violation either by personal delivery or by registered or certified mail. In case of public, private or municipal corporation, the citation shall be issued to any officer or agent, expressly or impliedly authorized to accept the issuance.

(2) Citations shall be made out in quadruplicate. One copy shall be issued to the person alleged to have committed the violation; one copy shall be filed with the Department; one copy shall be filed with the County Attorney's Office; one copy shall be filed with the District Court, First Judicial District.

(3) Citations shall be on forms as approved by the Department and shall contain at least the following:

(a) The name and address of the person alleged to have committed the violation and, when known, the owner or person in charge of the premises at which the violation occurs;

- (b) The date and place of violation;
  - (c) A short description of the violation followed by reference to the section of this chapter violated;
  - (d) The name of person issuing the citation;
  - (e) The date and place at which the person receiving the citation shall appear and a notice that if the person does not respond, a warrant may be issued for the person's arrest; and
  - (f) Other information as the Court may specify.
- (4) The person charged with the violation shall appear at the place and on the date specified in the citation and either:
- (a) Pay the fine assigned to the violation; or
  - (b) Schedule a court date for a hearing on the citation.
- (5) If the person charged with the violation fails to appear as required by the citation, the citation shall be referred to the County Attorney's Office.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.46 SUSPENSION OF LICENSE.**

(A) Any license required under this chapter may be suspended by the Department or the County Board for violation of any provision of this chapter. Upon written notice to the licensee the license may be suspended for a period not longer than 60 days.

(B) (1) The suspension shall not occur earlier than ten county working days after written notice of suspension has been served on the licensee. Notice to the licensee shall be served personally or by registered or certified mail at the address designated in the license application.

(2) The written notice of suspension shall contain the effective date of the suspension, the nature of the violation or violations constituting the basis for the suspension, the facts which support the conclusion that a violation or violations has occurred, and a statement that if a licensee desires a hearing, he or she must within ten county working days, exclusive of the day of service, file a request for a hearing with the Department. If the licensee fails to request a hearing, he shall forfeit any opportunity to a hearing. If a hearing is requested, the suspension shall be stayed pending outcome of the hearing.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.47 SUMMARY SUSPENSION.**

(A) If the Department finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered by the Department upon notification of the County Attorney's Office and the County Board. Written notice of the summary suspension shall be served personally or by registered or certified mail to the licensee at the address designated in the license application.

(B) The written notice in such cases shall state the effective date of the suspension, the nature of the violation or violations requiring emergency action, the facts which support the conclusion that a violation or violations has occurred and a statement that if the licensee desires a hearing that he must, within ten county working days, exclusive of the day of service, file a request for a hearing with the Department. If the licensee fails to request a hearing, he shall forfeit any opportunity to a hearing. Any such suspension shall be reviewed by the Department upon a written request of the licensee.

(C) If a hearing is requested, the summary suspension shall not be stayed pending the outcome of the hearing.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.48 SUSPENSION REINSPECTIONS.**

Upon written notification from the licensee that all the violations for which a suspension or summary suspension was revoked have been corrected, the Department shall reinspect the facility or activity within a reasonable length of time, but in no case more than three county working days after receipt of the notice from the licensee. If the Department finds upon the reinspection that the violations constituting the grounds for the suspension have been corrected, the Department shall immediately dismiss the suspension by written notice to the licensee and the County Board.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.49 REVOCATION OF LICENSE.**

(A) Any license issued pursuant to this chapter by the Department or County Board may be revoked by the issuer for violation of any provision of this chapter.

(B) Revocation shall not occur earlier than ten county working days from the time that written notice of the revocation is served on the licensee. Notice to the licensee shall be served personally or by registered or certified mail at the address designated in the license application. The written notice of revocation shall contain the effective date of the revocation, the nature of the violation or violations constituting the basis for the revocation, the facts which support the conclusion that a

violation or violations has occurred and a statement that if the licensee desires a hearing, he or she must within ten county working days, exclusive of the day of service, file a request for a hearing with the Department. If the licensee fails to request a hearing, he shall forfeit any opportunity for a hearing. If a hearing is requested, the revocation shall be stayed pending the outcome of the hearing.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.50 HEARINGS.**

Whenever a hearing is requested in regard to an application, renewal, suspension or revocation of a license, the procedure shall be governed by the following:

(A) *Hearing officer.* The hearing shall be before an impartial hearing officer who shall conduct the hearing on behalf of the County Board. The Department shall prescribe the duties of the hearing officer or contract with the Office of Administrative Hearings. The Department shall ascertain the availability and timeliness of scheduling the hearing through the Office of Administrative Hearings. If it is determined that a prompt hearing is not readily available through the Office of Administrative Hearings, the Department may appoint an individual learned in the law to act as the hearing officer.

(B) *Prehearing and hearing notice.* The Department shall schedule and provide notice of the date, time and place of the prehearing conference and hearing. The prehearing conference shall be held at least three weeks prior to the hearing. The hearing shall be held no later than 45 calendar days after receipt of the request for hearing or by mutual agreement of the parties, subject to scheduling by the Office of Administrative Hearings.

(C) *Procedure.* The prehearing conference and hearing shall be conducted in the following manner:

(1) The prehearing conference shall define the issues, schedule the exchange of witness lists and documentary evidence, seek agreement on the authenticity of documents and relevant testimonial evidence, determine whether intended evidence is cumulative and repetitive, and consider all other matters that will assist in a fair and expeditious hearing.

(2) Each party shall exchange all relevant information and documentary evidence at least one week prior to the hearing date. Such information shall include all evidence intended for introduction at the hearing and includes but is not limited to the following: exhibits; statements; reports; witness lists including a description of the facts and opinions to which each is expected to testify; photographs; slides; demonstrative evidence. Evidence not exchanged in accordance with this provision will not be considered in the hearing unless good cause is shown to the hearing officer.

(3) The hearing shall be public and shall be tape recorded or upon agreement of the parties may be recorded by a court reporter.

(4) All witnesses shall testify under oath or affirmation.

(5) Hearings shall be informal and the rules of evidence as applied in the courts shall not apply. Irrelevant, immaterial and repetitious evidence shall be excluded.

(6) The Department shall have the burden of proof through clear and convincing evidence.

(7) The Department, licensee or applicant, and additional parties as determined by the hearing officer, shall present evidence in that order. Each party shall have the opportunity to cross-examine the witnesses of the other party. The hearing officer may examine witnesses.

(8) Failure of an applicant or licensee to appear at the hearing shall result in a waiver of the right to a hearing.

(9) The hearing officer shall issue a report containing written findings of fact and conclusions based upon the evidence presented at the hearing and shall submit the same to the County Board.

(10) Each party may submit written arguments to the County Board.

(11) The County Board shall consider the report of the hearing officer at the next possible board meeting and may adopt or modify the report and take action, reject the report of the hearing officer, or remand for further hearing. The parties shall be notified of the action of the County Board within 30 calendar days following its determination.

(12) Issuing, denying, suspending, modifying, imposing conditions upon or revoking a license shall be subject to review by the Agency. The Agency shall after written notification have 15 days to review, affirm, suspend, modify or reverse the action of the County Board. After this period the action of the County Board shall be final subject to appeal to the District Court.

(13) Appeal of a decision by the County Board shall be made to the District Court within 30 calendar days following the review by the Agency. The scope of review of the District Court shall be governed by M.S. § 14.69. Filing an appeal does not stay enforcement of the County Board decision.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

#### **§ 51.99 PENALTY.**

(A) Any person who willfully or negligently fails to comply with the provisions of this chapter is guilty of a misdemeanor. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

(B) In the event of a violation or a threat of violation of this chapter, the county may institute appropriate civil actions or proceedings, including requesting injunctive relief to prevent, restrain, correct or abate violations or threatened violations.

(C) If a person fails to comply with the provisions of this chapter, the county may recover costs incurred for corrective action in a civil action in any court of competent jurisdiction and such costs may be certified by court order to the County Auditor as a special tax against the real property.

(D) The penalty for late initial license application, late license renewal application or late license fee payment shall be established by ordinance by the County Board.

(E) The Department may embargo and forbid the movement, removal, transport, disposal, treatment, sale or use of any material which is or is suspected of being a hazardous waste or material contaminated with hazardous waste and which is being mismanaged, or which the Department has reason to suspect is being or will be managed in violation of this chapter. The Department shall place a tag to indicate the embargo on the suspect material. No person shall remove the tag or remove, transport, dispose, treat or use embargoed material, except as authorized by the Department. The action by the Department shall not be considered to impute ownership or management responsibility upon the county.

(Ord. 28F, passed 10-31-00; Am. Ord. 60-2007, passed 8-14-07)

## **CHAPTER 52: SUBSURFACE SEWAGE TREATMENT SYSTEMS**

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## ***GENERAL PROVISIONS***

### **§ 52.001 PURPOSE.**

The purpose of this chapter is to establish minimum requirements for regulation of subsurface sewage treatment systems (hereinafter "SSTS") for the treatment and dispersal of sewage within the applicable jurisdiction of the Department to protect public health and safety, groundwater quality and prevent or eliminate the development of public nuisances. It is intended to serve the best interests of the County's citizens by protecting its health, safety, general welfare, and natural resources.

(Ord. 67-2010, passed 5-17-11)

### **§ 52.002 INTENT.**

It is intended by the Carver County Environmental Services Department that this Chapter will promote the following.

(A) The protection of lakes, rivers and streams, wetlands, and groundwater in Carver County essential to the promotion of public health, safety, welfare, socioeconomic growth, and development of the County.

(B) The regulation of proper SSTS construction, reconstruction, repair, and maintenance to prevent the entry and migration of contaminants, thereby protecting surface water and groundwater from degradation.

(C) The establishment of minimum standards for SSTS placement, design, construction, reconstruction, repair, and maintenance to prevent contamination and, if contamination is discovered, the identification and control of its consequences and the abatement of its source and migration.



(D) The appropriate utilization of privy vaults and other non-water carried sewage collection and storage facilities.

(E) The provision of SSTS technical assistance and education, plan review, inspections, surveys, and complaint investigations to prevent and control water-borne diseases, lake degradation, groundwater related hazards, and public nuisance conditions.

(Ord. 67-2010, passed 5-17-11)

### **§ 52.003 AUTHORITY.**

This chapter is enacted pursuant to M.S. §§ 115.55 and 115.56; M.S. § 145A.01 through 145A.08; M.S. § 375.51; or successor statutes and Minn. Rules, Chapter 7080, Chapter 7081, Chapter 7082, and Chapter 7083; or successor rules as they may be amended from time to time.

(Ord. 67-2010, passed 5-17-11)

### **§ 52.004 DEFINITIONS.**

The following words and phrases shall have the meanings ascribed to them in this section. If not specifically defined in this section, terms used in this chapter shall have the same meaning as provided in the standards adopted by reference in § 52.020. Words or phrases that are not defined here or in the standards adopted by reference shall have common usage meaning. For purposes of this chapter, the words “must” and “shall” are mandatory, and the words “may” and “should” are permissive.

**BOARD OF ADJUSTMENT.** A board established by Carver County Zoning Code, Chapter 152 with the authority to order the issuance of variances, hear and decide appeals from a member of the affected public, and review any order, requirement, decision, or determination made by any administrative official charged with enforcing any chapter adopted pursuant to the provision of M.S. §§ 394.21 to 394.37, order the issuance of permits for buildings in areas designated for future public use on an official map and perform such other duties as required by the official controls.

**CLASS V INJECTION WELL.** A shallow well used to place a variety of fluids directly below the land surface, which includes a domestic SSTS serving more than 20 people. The US Environmental Protection Agency and delegated state groundwater programs permit these wells to inject wastes below the ground surface provided they meet certain requirements and do not endanger underground sources of drinking water. Class V motor vehicle waste disposal wells and large-capacity cesspools are specifically prohibited (see 40 C.F.R. §§ 144 and 146).

**CLUSTER SYSTEM.** An SSTS under some form of common ownership that collects wastewater from two or more dwellings or structures and conveys it to a soil treatment and dispersal system located on an acceptable site near the dwellings or structures.

**COUNTY.** Carver County, Minnesota.

**COUNTY BOARD.** The Carver County Board of Commissioners.

**DEPARTMENT.** The Carver County Environmental Services Department.

**MPCA.** The Minnesota Pollution Control Agency.

**QUALIFIED EMPLOYEE.** An employee of the state or a local unit of government, who performs site evaluations or designs, installs, maintains, pumps, or inspects SSTS as part of the individual's employment duties and is a certified SSTS professional with specialty area endorsements applicable to the work being conducted.

**STATE.** The State of Minnesota.

**SUBSURFACE SEWAGE TREATMENT SYSTEM or “SSTS”.** A subsurface sewage treatment system includes individual subsurface sewage treatment systems and midsized subsurface sewage treatment systems

**TREATMENT LEVEL.** Treatment system performance levels defined in Minn. Rules Chapter 7083.4030 and Table III for testing of proprietary treatment products. Minnesota Rules Chapter 7083.4030 is hereby incorporated by reference as amended from time to time.

(Ord. 67-2010, passed 5-17-11; Am. Ord. 90-2018, passed 12-18-18)

### **§ 52.005 SCOPE.**

This chapter regulates the siting, design, installation, alterations, operation, maintenance, monitoring, and management of all SSTS within the Department's applicable jurisdiction including, but not limited to individual SSTS and cluster or community SSTS, privy vaults, and other non-water carried SSTS. All sewage generated in unsewered areas of the county must be treated and dispersed by an approved SSTS that is sited, designed, installed, operated, and maintained in accordance with the provisions of this chapter or by an SSTS that has been permitted by the MPCA.

(Ord. 67-2010, passed 5-17-11)

### **§ 52.006 JURISDICTION.**

The jurisdiction of this chapter shall include all lands of the county except for incorporated areas that administer an SSTS

program by ordinance within their incorporated jurisdiction, which is at least as strict as this chapter.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.007 ABROGATION AND GREATER RESTRICTIONS.**

It is not intended by this chapter to repeal, abrogate, or impair any other existing Carver County chapters, easements, covenants, or deed restrictions. Whenever any provision of this chapter is found to be in direct conflict with the provisions of any other Carver County chapter, the chapter containing the more restrictive requirements shall govern.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.008 COUNTY ADMINISTRATION.**

The County Environmental Services Department is authorized to administer the SSTS program and all provisions of this chapter. At appropriate times, the Department may review and request revisions to update this chapter as necessary. The Department may employ or retain under contract, qualified, and appropriately certified and/or licensed SSTS professional(s) to administer and operate the SSTS program.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.009 STATE DISPOSAL SYSTEM PERMIT.**

(A) The owner or owners of a single SSTS or a group of SSTS under common ownership must obtain a state disposal system permit from the MPCA, when all or part of proposed or existing soil dispersal components are within one-half mile of each other and the combined flow from all proposed and existing SSTS is greater than 10,000 gallons per day.

(B) SSTS serving establishments or facilities licensed or otherwise regulated by the state must conform to the requirements of this chapter.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.010 SSTS OPERATION AND EFFECTIVENESS.**

Neither the issuance of SSTS permits or certificates of compliance shall be construed to represent a guarantee or warranty of the SSTS operation or effectiveness.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.011 VALIDITY.**

The validity of any part of this chapter shall not be affected by the invalidity of any other parts of this chapter where the part can be given effect, irrespective of any invalid part or parts.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.012 LIABILITY.**

No liability or responsibility shall be imposed upon the Department or any of its officials, employees, contractors, agents, or servants thereof, for damage resulting from a defective design, construction, operation, abandonment, or misplacement of any onsite or cluster SSTS regulated under this rule by reason of standards, requirements, or inspections authorized hereunder.

(Ord. 67-2010, passed 5-17-11)

### **SSTS STANDARDS**

#### **§ 52.020 STANDARDS ADOPTED BY REFERENCE.**

Minnesota Rules Chapters 7080, 7081, 7082, and 7083, as they may be amended from time to time, relating to SSTS are hereby adopted by reference and made part of this chapter as if fully set forth herein, except as modified by or inconsistent with provisions of this chapter. This adoption does not supersede the county's right or ability to adopt local standards that are in compliance with M.S. § 115.55.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.021 AMENDMENTS TO THE ADOPTED STANDARDS**

(A) Minnesota Rules Chapter 7080.1500, subpart 6, is amended to include: An SSTS design that proposes to reuse an existing tank(s) for a replacement SSTS must include the Tank Integrity portion of the MPCA Compliance form, which includes a verification that all tank and riser joints, riser connections, and pipe connections are watertight according to Minn. Rules Chapter 7080.2010, subpart 1, item A.

(B) Minnesota Rules Chapter 7080.1730, item B, is amended as follows: Dates of preliminary and field evaluations must be dated within 12 months of the date of the SSTS construction permit application and within 24 months of the SSTS installation.

(C) Minnesota Rules Chapter 7080.1730, item F, is amended to include: the Department must be notified of any technical requirements of this chapter, Minn. Rules Chapter 7080, or Chapter 7081, that cannot be met before the design is completed.

(D) Minnesota Rules Chapter 7080.1930, subpart 1, Table V “Septic Tank Liquid Minimum Capacities (Gallons)”, is amended as follows:

<b>Number of Bedrooms</b>	<b>Tank Size</b>		<b>Pump Tank</b>
	<b>With Multiple Compartments or Multiple Tanks in Series</b>	<b>With Garbage Disposal and/or Lift in the Basement</b>	
2 or less	1500	2250	1000
3 or 4	2000	3000	1000
5 or 6	2250	3375	1500
7, 8, or 9	3000	4500	1500

SSTS with a valid certificate of compliance may not be required to meet the above sizing chart if the tank capacity and soil treatment and dispersal system meet the current minimum state requirements for the anticipated additional gallons per day.

(E) Minnesota Rules Chapter 7080.2000, item C, is amended as follows: The top of sewage tanks must not be buried deeper than four feet from final grade. Exceptions may be made on a case by case basis for existing uses with extenuating circumstances preventing a shallow burial, not to exceed the tank manufacturer’s maximum designed depth for the tank. The minimum depth of soil cover over the insulation on the top of the tank is six inches.

(F) Minnesota Rules Chapter 7080.2100, subpart 2, item B, is amended to include: The pump discharge line must be sleeved with a four-inch PVC pipe from the edge of the tank or maintenance hole to undisturbed ground.

(G) Minnesota Rules Chapter 7080.2150, subpart 2, Table VII, is amended to include: Setbacks from the soil treatment and dispersal area for above grade systems, including but not limited to: mound and at grade systems, will be measured from the toe of the slope to any property line(s) and/or road right-of-way(s). Setback of ten feet from the SSTS to a swimming pool. Setback of 20 feet from the SSTS to slopes greater than 20%. Setback of 50 feet from the SSTS to a bluff. Setback of ten feet (20 feet in shoreland areas) to an interceptor drain.

(H) Minnesota Rules Chapter 7080.2220, subpart 2, item B, is amended to include: Setbacks from the soil treatment and dispersal area for above grade systems, including but not limited to: mound and at grade systems, will be measured from the toe of the slope to any property line(s) and/or road right-of-way(s). Setback of ten feet from the SSTS to a swimming pool. Setback of 20 feet from the SSTS to slopes greater than 20%. Setback of 50 feet from the SSTS to a bluff. Setback of ten feet (20 feet in shoreland areas) to an interceptor drain.

(I) Minnesota Rules Chapter 7080.2220, subpart 3, item J, is amended as follows: The entire area that will receive materials for a mound must be roughened by approved methods.

(J) Minnesota Rules Chapter 7080.2230, subpart 2, item C, is amended to include: Setbacks from the soil treatment and dispersal area for above grade systems, including but not limited to: mound and at grade systems, will be measured from the toe of the slope to any property line(s) and/or road right-of-way(s). Setback of ten feet from the SSTS to a swimming pool. Setback of 20 feet from the SSTS to slopes greater than 20%. Setback of 50 feet from the SSTS to a bluff. Setback of ten feet (20 feet in shoreland areas) to an interceptor drain.

(K) Minnesota Rules Chapter 7080.2290, item D, is amended as follows: For a dwelling, the minimum holding tank size is 1,500 gallons or 400 gallons times the number of bedrooms, whichever is greater. For other establishments, the minimum holding tank size is 1,500 gallons or at least five times the design flow, whichever is greater. The required capacity of holding tank(s) in flood plain areas must be calculated according to Minn. Rules Chapter 7080.2270, subpart 10.

(L) Minnesota Rules Chapter 7080.2350 is amended as follows: Type IV Systems may be allowed, with the exception of those that would reduce the required three-foot separation to the periodically saturated soil or to downsize the required soil treatment and dispersal system. Type IV Systems installed prior to June 1, 2011 are exempt from this prohibition. When an advanced treatment device is added to an SSTS (new or existing), pressure distribution must be provided in the soil treatment and dispersal system.

(M) Minnesota Rules Chapter 7080.2400, is amended as follows: Type V Systems are prohibited. Type V Systems installed prior to June 1, 2011 are exempt from this prohibition.

(N) Minnesota Rules Chapter 7082.0100, subpart 1, item A, is amended as follows: An SSTS that fails to protect groundwater, as described in Minn. Rules Chapter 7080.1500, subpart 4, item B, must be brought into compliance within 36 months of the date of the notice of noncompliance, discovery by the Department, or within ten months from the date of the property transfer, whichever is the earlier date.

(O) Minnesota Rules Chapter 7082.0700, subpart 2, item A1, is amended to include: Compliance inspections of existing

SSTS are required:

(1) Before any permit or variance is issued for a property with an SSTS located in a shoreland area (1,000 feet of a lake, pond, or flowage; or 300 feet of a river or stream, or the landward extent of a floodplain), subject to the exceptions in Carver County Zoning Code § 152.122.

(2) When there is a change in the use of the property or structure(s) that would affect water use, including but not limited to: a permit or variance to expand a structure for the purpose of a bedroom, home business, contractor's yard, or daycare. The certificate of compliance must also certify that all components are sized to current State minimum requirements for the additional bedroom or the change in use.

(3) When an SSTS construction permit is required to repair, modify, or upgrade an existing SSTS.

(4) At the time of property sale or transfer, in accordance with §52.199. Any evaluation, investigation, inspection, recommendation, or other process used to prepare a disclosure statement, if conducted by a party who is not the SSTS owner, constitutes a compliance inspection, and must be conducted in accordance with Minn. Rules Chapter 7080.1500.

(5) When there is a division of land pursuant to Carver County Zoning Code §152.035(D).

(6) During systematic lake or area wide SSTS surveys by the Department as described in §52.043.

(7) Any time that a building permit is applied for and no record of a soil treatment and dispersal system exists.

(P) Minnesota Rules Chapter 7083.0700, item B, is repealed.

(Q) Minnesota Rules Chapter 7083.0700, item F, is amended as follows: An owner may abandon an SSTS, on property they own, if a final inspection is conducted by the Department or licensed SSTS professional. An individual or business, independent of the owner, which abandons an SSTS, must be licensed as an SSTS professional by the Minnesota Pollution Control Agency.

(R) Minnesota Rules Chapter 7083.0770, subpart 2, is amended to include: Submit a tank maintenance report for each SSTS to the Department and the property owner.

(Ord. 67-2010, passed 5-17-11; Am. Ord. 90-2018, passed 12-18-18)

**§ 52.022 SSTS SETBACKS.**

SSTS must be designed and installed to comply with the following minimum setback distances measured in feet:

<i>Feature</i>	<i>Tank(s)/ Sealed Privy</i>	<i>Soil Treatment and Dispersal Area/ Unsealed Privy</i>	<i>Building Sewer or Supply Pipes</i>
<i>Feature</i>	<i>Tank(s)/ Sealed Privy</i>	<i>Soil Treatment and Dispersal Area/ Unsealed Privy</i>	<i>Building Sewer or Supply Pipes</i>
Private, single family water supply well with less than 50 feet of casing and not encountering 10 feet of impervious material. <sup>1</sup>	50	100	50
Any other private, single family water supply well or buried water suction pipe. <sup>2</sup>	50	50	50
Buried pipe distributing water under pressure. <sup>3</sup>	10	10	10
Structure(s) <sup>4</sup>	10	20	-
Property lines and road right-of-ways. <sup>4</sup>	10	10 Above grade systems will be measured from the toe of the slope. <sup>5</sup>	
Ordinary high watermark of natural environmental lakes. <sup>6</sup>	150	150	-

Ordinary high watermark of recreational development lakes and protected water courses. <sup>6</sup>	75	75	-
Ordinary high watermark of general development lakes. <sup>6</sup>	50	50	-
Swimming pool.	10	10	-
Slopes of 20% or greater.	20	20	-
Bluff. (Average grade 25% slope and has a 25' rise in elevation.)	50	50	
Interceptor drains.	-	10 (20 feet in Shoreland Areas.)	-

<sup>1</sup> (Minn. Rules Chapter 7080.1710, item B and Minn. Rules Chapter 4725)

<sup>2</sup> (Minn. Rules Chapters 4725 and 4714)

<sup>3</sup> (Minn. Rules Chapter 4714)

<sup>4</sup> (Minn. Rules Chapter 7080.2150 Table VII)

<sup>5</sup> (When lot size prohibits meeting the required ten-foot setback from the toe of the slope, the ten-foot setback may be measured from the absorption area, with Department approval. A survey provided by the property owner, at the property owner's expense, may also be required by the Department.)

<sup>6</sup> (Shoreland Management Act and Minn. Rules Chapters 6105 and 6120)

(Ord. 67-2010, passed 5-17-11; Am. Ord. 90-2018, passed 12-18-18)

#### **§ 52.023 DETERMINATION OF HYDRAULIC LOADING RATE AND SSTS SIZING.**

(A) Minnesota Rules Chapter 7080.2150, subpart 3, item E, Table IX, entitled "Loading Rates for Determining Bottom Absorption Area and Absorption Ratios Using Detail Soil Descriptions" and herein adopted by reference, must be used to determine the hydraulic loading rate and infiltration area for all SSTS permitted under this chapter.

(B) Percolation testing may also be required per §52.162(C)(2). Minnesota Rules Chapter 7080.2150, subpart 3, item E, Table IXa, entitled "Loading Rates for Determining Bottom Absorption Area and Absorption Ratios Using Percolation Tests" and herein adopted by reference. The larger sizing factor of the two must be used for the SSTS design.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.024 HOLDING TANKS.**

Holding tanks may be used for single family homes and other structures with limited water use, as determined by the Department, under the following conditions.

(A) Holding tank(s) may be allowed for structures or pre-existing dwellings where an SSTS, as described in Minn. Rules Chapter 7080.2210 through 7080.2230, or site conditions described in Minn. Rules Chapter 7081.0270, subparts 3 through 7, cannot reasonably be installed as determined by the Department.

(B) Septic tank(s) may be allowed temporarily as holding tank(s) for:

(1) New residential construction completed when the ground is frozen or the soil is above the plastic limit not allowing the full soil treatment and dispersal system to be installed; or

(2) Repair of an imminent threat to public health or safety in accordance with §52.056.

(C) Holding tank(s) must not be used as an SSTS for:

(1) New residential construction;

(2) Improvements greater than 50% of the assessed value of the structure at the time of the application for the improvement; or

(3) Recreational uses on undeveloped lots of record.

(D) A minimum of a 1,500-gallon holding tank must be installed in accordance with Minn. Rules Chapter 7080.2290.

(E) The property owner must provide to the Department a copy of a valid monitoring and disposal contract executed between the property owner and a licensed SSTS maintainer, which guarantees the removal of the holding tank contents in a timely manner that prevents an illegal discharge in accordance with Minn. Rules Chapter 7082.0100, subpart 3, item G.

(F) The property owner must hold a valid contract with a licensed SSTS maintainer at all times.

(G) The licensed SSTS maintainer must certify the date the pumping occurred, number of gallons removed, any tank leakage below or above the operating depth, and the treatment facility to which the waste was discharged and if applicable, water meter reading at the time of pumping. The licensed SSTS maintainer is to note any safety concerns, troubleshooting or repairs conducted.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.025 SSTS CONSTRUCTION IN FLOODPLAINS.**

SSTS must not be located in a floodway and wherever possible, location within any part of a floodplain should be avoided. If no option exists to locate an SSTS outside of a floodplain, location within the flood fringe is allowed if the requirements in Minn. Rules Chapter 7080.2270 and all relevant local requirements are met.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.026 CLASS V INJECTION WELLS.**

All owners of new or replacement SSTS that are considered to be Class V injection wells, as defined in 40 C.F.R. § 144, are required by the Federal Government to submit SSTS inventory information to the Environmental Protection Agency as described in 40 C.F.R. § 144. Further, owners are required to identify all Class V injection wells in property transfer disclosures.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

### ***GENERAL REQUIREMENTS RETROACTIVITY***

#### **§ 52.040 ALL SSTS.**

Except as explicitly set forth in §52.041, all provisions of this chapter shall apply to any SSTS regardless of the date it was originally permitted.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.041 EXISTING SSTS CONSTRUCTION PERMITS.**

Unexpired SSTS construction permits which were issued prior to the effective date of this chapter shall remain valid until the original expiration date or until a change in property ownership, whichever is earlier and shall be governed by the rules in effect at the time the SSTS construction permit was issued.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.042 SSTS ON LOTS CREATED AFTER JANUARY 23, 1996.**

All lots created after January 23, 1996 must have a minimum of two soil treatment and dispersal areas that can support systems as described in Minn. Rules Chapters 7080.2210 through 7080.2230, or site conditions described in Minn. Rules Chapter 7081.0270, subparts 3 through 7, as identified by a licensed SSTS designer. It shall be the responsibility of the property owner to preserve and protect the soil treatment and dispersal areas from compaction, building, or other activities which could conceivably limit the use of the sites for sewage treatment and dispersal.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.043 EXISTING SSTS WITHOUT PERMITS.**

In order to meet water quality goals, the County Board may, from time to time, adopt by resolution programs to accelerate SSTS compliance. The resolution may identify specific geographic areas, timelines for compliance, establish incentives, target specific system types, and may include such other provisions as necessary to accomplish the goals.

(Ord. 67-2010, passed 5-17-11)

### ***SSTS UPGRADE, REPAIR, REPLACEMENT, AND ABANDONMENT***

#### **§ 52.055 FAILURE TO PROTECT GROUNDWATER.**

An SSTS that is determined not to be protective of groundwater in accordance with Minn. Rules Chapter 7080.1500, subpart 4, item B, must be connected to a municipal wastewater treatment system, upgraded, repaired, replaced, or abandoned in accordance with the provisions of this chapter within 36 months of the date of the notice of noncompliance, discovery by the Department, or within ten months from the date of property transfer, whichever is the earlier date. The Department has the authority to require repair or replacement of the SSTS sooner than specified above.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.056 IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY.**

An SSTS that is determined to be an imminent threat to public health or safety in accordance with Minn. Rules Chapter 7080.1500, subpart 4, item A, must be connected to a municipal wastewater treatment system, upgraded, repaired, replaced, or abandoned in accordance with the provisions of this chapter within ten months of the date of the notice of noncompliance or discovery by the Department, whichever is the earlier date. The Department has the authority to require repair or replacement of an imminent threat to public health sooner than specified above. The Department may require the property owner to:

- (A) Respond within five business days of notification by submitting a plan for abating the discharge; or
- (B) Pump the septic tank(s) as an interim abatement measure.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.057 RESERVED.**

#### **§ 52.058 ABANDONMENT.**

(A) Any SSTS, or any component thereof, which is no longer intended to be used, must be abandoned in accordance with Minn. Rules Chapter 7080.2500.

(B) A property owner may retain a licensed SSTS business to abandon all the components of the SSTS, and submit the MPCA's SSTS Abandonment Reporting Form to the Department within 30 days of the abandonment, or complete the abandonment themselves provided a final inspection is conducted by the Department or a licensed SSTS professional.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

### **SSTS CONSTRUCTION PERMIT**

#### **§ 52.070 SSTS CONSTRUCTION PERMIT REQUIRED.**

It is unlawful for any person, business, firm, or corporation to construct, install, modify, replace, or operate an SSTS without the appropriate permit from the Department. The issuing of any permit, variance, or conditional use under the provisions of the Carver County Zoning Code shall not absolve the property owner(s) of responsibility to obtain any other required permits.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.071 SSTS CONSTRUCTION PERMIT.**

An SSTS construction permit must be obtained by the property owner, or an agent of the property owner, from the Department prior to the installation, construction, replacement, modification, alteration, repair, or capacity expansion of an SSTS. The purpose of this permit is to ensure that the proposed construction activity is sited, designed, and constructed in accordance with the provisions of this chapter by appropriately certified and/or licensed SSTS professional(s).

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.072 ACTIVITIES REQUIRING AN SSTS CONSTRUCTION PERMIT.**

(A) An SSTS construction permit is required for the installation of a new SSTS, replacement of an existing SSTS, or any repair or replacement of components that will alter the original design, layout, function, treatment capacity, or location of the system.

(B) Rejuvenation and remediation technologies are allowed as prescribed in Minn. Rules Chapter 7080.2450, subpart 8; or successor rules. These types of repair technologies are not to be considered a minor repair, and require an SSTS construction permit as set forth in § 52.071.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.073 ACTIVITIES NOT REQUIRING AN SSTS CONSTRUCTION PERMIT.**

An SSTS construction permit is not required for minor repairs as long as the repairs do not change the original design, layout, function, treatment capacity, or location of the system. Examples of such minor repairs include, but are not limited to: replacement of the pump, floats, alarm, inspection pipes or caps, maintenance hole risers, or tank baffles.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.074 SSTS CONSTRUCTION PERMIT REQUIRED TO OBTAIN BUILDING PERMIT.**

(A) For any property on which an SSTS construction permit is required, approval and issuance of a valid SSTS construction permit must be obtained in conjunction with a building or land use permit issued by the Carver County Public Services Division.

(B) Failure to submit an existing SSTS compliance inspection for a property transfer, pursuant to § 52.199, will result in all future building or land use permit application(s) for the property to be denied until a certificate of compliance is submitted for the existing SSTS, or an escrow account is established and an SSTS construction permit is issued.

(Ord. 67-2010, passed 5-17-11; Am. Ord. 90-2018, passed 12-18-18) Penalty, see §52.999

#### **§ 52.075 CONFORMANCE TO PREVAILING REQUIREMENTS.**

Any activity involving an existing SSTS that requires an SSTS construction permit shall require that the entire SSTS be brought into compliance with Minn. Rules Chapter 7080.1500 and verification of any existing tank(s) proposed for reuse must meet Minn. Rules Chapter 7080.2010, subpart 1, item A.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.076 SSTS CONSTRUCTION PERMIT APPLICATION REQUIREMENTS.**

SSTS construction permit applications must be made on forms provided by the Department and signed by the property owner and the licensed SSTS installer including the installer's certification number and date of expiration. The applications must include the documents listed in divisions (A) through (E) below.

- (A) Name, mailing address, telephone number, and email address.
- (B) Property Identification Number and address or other description of property location.
- (C) Site evaluation report as described in Minn. Rules Chapter 7080.1730.
- (D) Design report as described in Minn. Rules Chapter 7080.2430.
- (E) SSTS management plan and/or operating permit application as described in Minn. Rules Chapter 7082.0600.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.077 SSTS CONSTRUCTION PERMIT APPLICATION REVIEW AND RESPONSE.**

The Department is authorized to review an SSTS construction permit application and supporting documents. Upon the Department's satisfaction that the proposed work will conform to the provisions of this chapter, a written permit authorizing construction of the SSTS as designed may be issued. In the event the applicant makes a significant change to the approved SSTS construction permit, the applicant must file an amended SSTS construction permit application and SSTS management plan detailing the changed conditions prior to initiating or continuing SSTS construction, modification, or operation for approval or denial.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.078 SSTS CONSTRUCTION PERMIT DENIED.**

If an application for an SSTS construction permit is denied, notice of denial, including reasons for said denial, will be mailed to the address set forth in the SSTS construction permit application.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.079 APPEAL.**

(A) *Hearing.* An appeal from any order, requirement, decision, or determination from the Department shall be heard by the Board of Adjustment pursuant to Carver County Zoning Code, § 152.214.

(B) *Stay of action.* An appeal stays all proceeding and furtherance of the action appealed from unless the Board of Adjustment certifies that by reason of the facts stated in the certificate the stay would cause imminent peril to life or property.

(C) *Action to Board of Adjustment.* The Board of Adjustment may reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination appealed from and to that end shall have all of the powers of the officer from whom the appeal was taken and may direct issuance of the permit. The reasons for the Board of Adjustment's decision shall be stated in writing.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.080 SSTS CONSTRUCTION PERMIT EXPIRATION.**

The SSTS construction permit is valid for a period of one year from its date of issue, provided the preliminary and field evaluations for the SSTS design were completed within 24 months of the date of the SSTS installation.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.081 FEES.**

The County Board has the authority to establish fees for activities undertaken by the Department pursuant to this chapter.



Fees shall be due and payable at a time and in a manner to be determined by the Department. Construction started before an SSTS construction permit has been obtained shall be charged twice the current SSTS construction permit fee.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.082 SSTS CONSTRUCTION PERMIT TRANSFERABILITY.**

An SSTS construction permit shall not be transferred to a new property owner or different licensed SSTS installer. The new property owner or licensed SSTS installer must amend the SSTS construction permit in accordance with this chapter.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.083 SSTS CONSTRUCTION PERMIT SUSPENSION OR REVOCATION.**

(A) The Department may suspend or revoke an SSTS construction permit issued under this chapter for any false statements, erroneous or inaccurate data supplied by the property owner or licensed SSTS designer, or revised interpretation of the law by the Department or a building official, misrepresentations of facts on which the SSTS construction permit was issued or unauthorized changes to the SSTS.

(B) A notice of suspension or revocation and the reasons for the suspension or revocation shall be conveyed in writing to the property owner and the licensed SSTS installer.

(C) If suspended or revoked, installation or modification of an SSTS may not commence or continue until a valid SSTS construction permit is obtained.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.084 SSTS CONSTRUCTION PERMIT POSTING.**

The SSTS construction permit must be posted on the property in such a location and manner so that the SSTS construction permit is visible and available for inspection until SSTS construction is completed and a certificate of compliance is issued.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

### **SSTS MANAGEMENT PLAN**

#### **§ 52.095 PURPOSE.**

The purpose of an SSTS management plan is to describe how a particular SSTS is intended to be operated and maintained to sustain the performance required.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.096 SSTS REQUIRING MANAGEMENT PLANS.**

SSTS management plans are required for all new or replacement SSTS. The SSTS management plan must be submitted to the property owner and the Department with the SSTS construction permit application.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.097 REQUIRED CONTENTS OF AN SSTS MANAGEMENT PLAN.**

SSTS management plans shall include:

(A) Operating requirements describing tasks that the property owner can perform and tasks that a licensed SSTS service provider or maintainer must perform;

(B) Monitoring requirements;

(C) Maintenance requirements including maintenance procedures and a schedule for routine maintenance;

(D) Statement that the property owner is required to notify the Department when the SSTS management plan requirements are not being met;

(E) Disclosure of the location and condition of the additional soil treatment and dispersal area on the owner's property or a property serving the owner's residence; and

(F) Other requirements as determined by the Department.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.098 REQUIREMENTS FOR SSTS NOT OPERATED UNDER A MANAGEMENT PLAN.**

SSTS that are not operated under an SSTS management plan must have sewage treatment tanks inspected and provide for the removal of solids if needed every three years. Solids must be removed when their accumulation meets the limit described in Minn. Rules Chapter 7080.2450.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

## **SSTS OPERATING PERMIT**

### **§ 52.110 SSTS REQUIRING AN OPERATING PERMIT.**

(A) An SSTS operating permit shall be required of all owners of new Type IV, Type V, MSTs, or any other SSTS deemed by the Department to require operational oversight. Sewage effluent must not be discharged to the soil treatment and dispersal system until the Department certifies that the SSTS was installed in substantial conformance, as determined by the Department with the approved plans and a valid SSTS operating permit is issued to the property owner.

(B) Type IV, Type V, and MSTs installed prior to the effective date of this chapter shall require an SSTS operating permit upon identification by the Department, transfer of ownership, replacement, modification, or expansion of the SSTS that requires an SSTS construction permit, or following any SSTS enforcement action.

(Ord. 67-2010, passed 5-17-11; Am. Ord. 90-2018, passed 12-18-18) Penalty, see §52.999

### **§ 52.111 SSTS OPERATING PERMIT APPLICATION REQUIREMENTS.**

Application for an SSTS operating permit must be made on a form provided by the Department including:

- (A) Property owner's name, mailing address, telephone, and email address;
- (B) SSTS construction permit reference number and date of issue;
- (C) Final record drawings of the SSTS; and

(D) SSTS operating permit contracts. The owner of a Type IV, Type V, MSTs, or any other SSTS deemed by the Department to require operational oversight must hold a valid contract with a licensed SSTS service provider at all times, until the time the SSTS is properly abandoned.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

### **§ 52.112 SSTS OPERATING PERMIT DEPARTMENT RESPONSE.**

The Department is authorized to review the SSTS record drawings, operation and maintenance manual management plan, maintenance and servicing contract, and any other pertinent documents as appropriate for accuracy and completeness. If any deficiencies are identified, the SSTS operating permit shall be denied until the deficiencies are corrected to the satisfaction of the Department.

(Ord. 67-2010, passed 5-17-11)

### **§ 52.113 SSTS OPERATING PERMIT TERMS AND CONDITIONS.**

The SSTS operating permit must include the following:

- (A) SSTS performance and operating requirements;
- (B) Maintenance requirements and frequency;
- (C) Monitoring locations, procedures, and recording requirements;
- (D) Compliance limits and boundaries;
- (E) Reporting requirements of monitoring and maintenance;
- (F) Requirement that the property owner and licensed SSTS service provider must notify the Department when the SSTS operating permit requirements are not being met;
- (G) Disclosure of the location and condition of the alternate SSTS location;
- (H) Stipulation of acceptable and prohibited discharges; and
- (I) Valid contract between the property owner and a licensed SSTS maintenance business or service provider.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

### **§ 52.114 SSTS OPERATING PERMIT EXPIRATION AND RENEWAL.**

(A) SSTS operating permits shall be valid for the specific term stated on the permit as determined by the Department.

(B) An SSTS operating permit must be renewed prior to its expiration. If not renewed, the Department may require the SSTS to be removed from service or operated as a holding tank until the SSTS operating permit is renewed. If not renewed within 30 calendar days of the expiration date, the Department may require that the SSTS be abandoned in accordance with § 52.058.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.115 AMENDMENTS TO EXISTING SSTS OPERATING PERMITS NOT ALLOWED.**

The Department may not amend an existing SSTS operating permit to reflect changes in this chapter until the permit term has expired, unless an amendment is necessary to eliminate an imminent threat to public health or safety.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.116 SSTS OPERATING PERMITS NOT TRANSFERRABLE.**

A new property owner must apply for an SSTS operating permit in accordance with §52.111 of this chapter. The Department must not terminate the current SSTS operating permit until 60 calendar days after the date of the property transfer. To consider the new property owner's application, the Department may require monitoring by a licensed SSTS service provider in accordance to § 52.118.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.117 SUSPENSION OR REVOCATION OF SSTS OPERATING PERMITS.**

(A) The Department may suspend or revoke any SSTS operating permit issued under this section for any false statements or misrepresentations of facts on which the SSTS operating permit was issued or if an imminent threat to public health exists.

(B) Notice of suspension or revocation and the reasons for revocation must be conveyed in writing to the property owner.

(C) If suspended or revoked, the Department may require that the SSTS be removed from service, operated as a holding tank, or abandoned in accordance with § 52.058.

(D) At the Department's discretion, the SSTS operating permit may be reinstated or renewed upon the property owner taking appropriate corrective actions.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.118 MONITORING REQUIREMENTS FOR SSTS OPERATING PERMITS.**

(A) Monitoring of an SSTS must be performed by a licensed SSTS service provider hired by the holder of the SSTS operating permit in accordance with the monitoring frequency and parameters stipulated in the SSTS operating permit.

(B) A monitoring report must be prepared and certified by the licensed SSTS service provider. The report must be submitted to the Department on or before the reporting date stipulated in the SSTS operating permit. The report must contain a description of all maintenance and servicing activities performed since the last monitoring report as described below:

- (1) Property owner's name and address;
- (2) SSTS operating permit number;
- (3) Average daily flow since last monitoring report;
- (4) Description of type of maintenance and date performed;
- (5) Description of samples taken (if required), analytical laboratory used, and results of analyses;
- (6) Problems noted with the SSTS, and actions proposed, or taken, to correct them; and
- (7) Name, signature, and license number of the licensed SSTS service provider who performed the work.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

### **PROHIBITIONS**

#### **§ 52.130 OCCUPANCY OR USE OF A STRUCTURE WITHOUT A COMPLIANT SSTS.**

It is unlawful for any person to maintain, occupy, or use any dwelling or structure with plumbing that is not:

(A) Connected to a municipal wastewater treatment system; or

(B) Provided with an SSTS that disposes of wastewater in a manner that complies with the provisions of this chapter.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.131 SEWAGE DISCHARGE TO GROUND SURFACE OR SURFACE WATER.**

It is unlawful for any person to construct, maintain, or use any SSTS, regulated under this chapter, that results in raw or partially treated wastewater seeping to the ground surface or flowing into any surface water. Any surface discharging system must be permitted under the National Pollutant Discharge Elimination System program by the MPCA.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

### **§ 52.132 SEWAGE DISCHARGE TO A WELL OR BORING.**

It is unlawful for any person to discharge raw or treated wastewater into any well or boring as described in Minn. Rules Chapter 4725.2050, or any other excavation in the ground that is not in compliance with this chapter.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

### **§ 52.133 DISCHARGE OF HAZARDOUS OR DELETERIOUS MATERIALS.**

It is unlawful for any person to discharge into any SSTS, regulated under this chapter, any hazardous or deleterious material that adversely affects the treatment or dispersal performance of the system or groundwater quality.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

### **§ 52.134 CONFLICTS OF INTEREST.**

A licensed SSTS inspector working on behalf of a local unit of government must not design or install SSTS that the inspector/business will be responsible for permitting or inspecting as part of its local government duties. A person working for or on behalf of a local unit of government is not allowed to use the person's position to solicit for private business gain.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

## **VARIANCES**

### **§ 52.145 VARIANCE REQUESTS.**

A property owner may request a variance from the standards as specified in this chapter pursuant to county policies and procedures.

(Ord. 67-2010, passed 5-17-11)

### **§ 52.146 AFFECTED AGENCY.**

Variations that pertain to the standards and requirements of the State of Minnesota must be approved by the affected State Agency pursuant to the requirements of the State Agency.

(Ord. 67-2010, passed 5-17-11) Penalty, §52.999

### **§ 52.147 BOARD OF ADJUSTMENT.**

(A) The Board of Adjustment has the authority to consider variances in accordance with Minn. Rules Chapters 7080, 7081, and 7082. Variations shall only be allowed when they are in harmony with the general purposes and intent of this chapter where there are practical difficulties or particular hardship in meeting, the strict letter of this chapter. Applicants must follow the requirements of Carver County Zoning Code § 152.215.

(B) The Board of Adjustment may not grant variations to the following standards:

(1) Flow determinations under Minn. Rules Chapter 7081.0110, if the deviation reduces the average daily estimated flow from greater than 10,000 gallons per day to less than 10,000 gallons per day;

(2) Provisions in Minn. Rules Chapter 7080.2150, subpart 2, items A through D, and 7081.0080, subparts 2 through 5, regarding the vertical separation required beneath the distribution media and saturated soil or bedrock from the required three feet of unsaturated soil material, except as provided in Minn. Rules Chapter 7080.2350, must be approved by MPCA; and

(3) Variations to wells and water supply lines must be approved by the Minnesota Department of Health.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

## **SSTS PRACTITIONER LICENSING**

### **§ 52.160 SSTS PRACTITIONER LICENSING.**

No person shall engage in site evaluation, inspection, design, installation, construction, alteration, extension, repair, maintenance, or pumping of an SSTS without an appropriate and valid license issued by the MPCA, except as exempted in § 52.161.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

### **§ 52.161 SSTS BUSINESS LICENSE EXEMPTIONS.**

An SSTS business license is not required for:

(A) An individual who is a qualified employee performing work as directed by a state or local government employer;

(B) A property owner who properly abandons an SSTS provided a final inspection is conducted by the Department or

licensed SSTS professional;

(C) An individual who performs supervised labor or services as an employee of a licensed SSTS business;

(D) A farmer who pumps septage from an SSTS that serves dwellings or other establishments that are owned or leased by the farmer and applies septage on land that is owned or leased by the farmer;

(E) A property owner, who personally gathers existing information, evaluates, and investigates an SSTS, to provide a disclosure as defined in M.S. § 155.55, subd. 6, for a dwelling that is owned by the individual and functions solely as a dwelling or seasonal dwelling for that individual;

(F) An individual who maintains a toilet waste treatment device for a dwelling that is owned by the individual and functions solely as a dwelling or seasonal dwelling for that individual;

(G) An individual who performs tasks identified in the SSTS management plan, that does not require an SSTS maintainer or service provider license, for a dwelling that is owned by the individual and functions solely as a dwelling or seasonal dwelling for that individual; or

(H) The owner or designee of a campground or other similar facility who removes and transports sewage wastes from recreational vehicles into a holding or treatment system located on the same property as the facility.

(Ord. 67-2010, passed 5-17-11)

### **§ 52.162 SSTS LICENSED DESIGNER RESPONSIBILITIES.**

It is the responsibility of the licensed SSTS designer to submit a design of sufficient detail to allow adequate review for compliance by the Department. At a minimum the following is required.

(A) A detailed design using worksheets approved by the Department.

(B) The soil observation data must be dated within 12 months of the date of the SSTS construction permit application and verify that there are two soil treatment and dispersal areas, that can support systems as described in Minn. Rules Chapters 7080.2210 through 7080.2230, or site conditions described in Minn. Rules Chapter 7081.0270, subparts 3 through 7, available on the lot. Lots existing prior to January 23, 1996 must provide for one complete SSTS.

(C) The site plan must be drawn to scale, include a north arrow, horizontal, and vertical reference points for the proposed SSTS. The site plan must also include:

(1) The location of all soil observations and other testing, all wells and their depth(s) within 100 feet of the proposed SSTS, and water lines within 50 feet;

(2) Any evidence of cut, filled, disturbed, compacted, or other unsuitable soil on the lot. SSTS proposed in these areas may require a method to determine the timed rate of water flowing through the soil. Acceptable methods include, but are not limited to: percolation tests, permeameter tests, and infiltrometer tests;

(3) The distance from proposed SSTS to all other required setbacks including: existing or proposed structures, or improvements, easements, ordinary high water level, property line(s), and road right-of-way(s);

(4) Slope with percent and direction; and

(5) Elevations of the soil observations, periodically saturated soils, and the proposed bottom of the soil treatment and dispersal system in reference to a bench mark. Flood elevation and/or OHW, are to be included if applicable.

(D) The center of each trench, corners of the bed, and any toe slopes must be staked. The entire area is to be protected from disturbance, compaction, or other damage by installing snow or silt fence when there is any other construction proposed on the property. SSTS soils altered by construction traffic or other means will require a revised design be submitted to the Department along with any required fees.

(E) If a proposed SSTS design cannot meet a technical requirement of this chapter, Minn. Rules Chapter 7080 or Chapter 7081, it is the responsibility of the licensed SSTS designer to contact the Department before the design is completed.

(F) Reuse of any tank(s) for a replacement SSTS must include the MPCA tank integrity and safety compliance form and be included with the SSTS design and SSTS construction permit application.

(G) Submit any additional requirements as may be required by the Department or the MPCA.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

### **§ 52.163 SSTS LICENSED INSTALLER RESPONSIBILITIES.**

It is the responsibility of the licensed SSTS installer to:

(A) Verify the SSTS layout and placement proper soil moisture conditions for excavation, elevations of sewage tanks, and soil treatment and dispersal system;

(B) Ensure all work is installed in strict accordance with the design as approved by the Department. If the system is not or

cannot be constructed as designed, it shall be the responsibility of the licensed SSTS installer to inform the licensed SSTS designer and the Department. If proposed changes are approved by the licensed SSTS designer and the Department, it shall be the responsibility of the licensed SSTS installer to submit new or amended designs to the Department before completing construction;

(C) Follow recommended standards and guidance documents for registered products, check the quality of tanks, and other materials used;

(D) Schedule required inspections with the Department before 3:00 p.m. the day before an inspection or reinspection is requested.

(1) Failure of the licensed SSTS installer to cancel an inspection, at least one hour before the scheduled time, will result in a penalty fee as set forth in the Carver County Fee Schedule.

(2) Failure to pay the penalty fee will result in a freeze on all future SSTS inspections for the affected property until the penalty fee has been paid.

(3) Upon inspection, any part of the SSTS that is determined, by the Department, not to be in compliance with this chapter, Minn. Rules Chapters 7080 or 7081, must be properly corrected and reinspected before a certificate of compliance is issued.

(4) Additional inspections required due to violations of this chapter will be subject to a re-inspection fee as set forth in the Carver County Fee Schedule. The re-inspection payment must be received by the Department within ten days following the re-inspection.

(5) If the Department is unable to complete an inspection, the licensed SSTS installer is to take photographs of critical construction phases. The photos are to be submitted along with an as built and any other requested documentation to the Department. The certificate of compliance will not be issued until the Department has reviewed the submitted documentation.

(6) Lack of inspection(s) by the Department shall not relieve or lessen the responsibility or liability of any person owning, operating, controlling, monitoring, or installing any SSTS;

(E) Uncover, upon request from the Department, any work which is backfilled prior to scheduled inspection(s) to determine compliance;

(F) Provide, upon request from the Department, a copy of the final electrical report to the Department within ten working days of the request. The Department may withhold issuing a final certificate of compliance if the electrical report is not received by the Department when requested; and

(G) Fulfill any additional requirements as may be required by the Department or the MPCA.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.164 SSTS LICENSED MAINTAINER RESPONSIBILITIES.**

It is the responsibility of the licensed SSTS maintainer to:

(A) Have equipment capable of agitating the contents of the tank(s);

(B) Thoroughly remove sludge and scum through the maintenance holes. If the property owner or owner's agent refuses to allow removal through the maintenance hole, the maintainer must obtain a signed statement from the property owner or owner's agent, stating said parties were informed of correct removal procedures and reason for refusal. A copy of this statement must be submitted to the Department within 30 days of the pumping;

(C) Note any sensory observations of nondomestic wastes that have been discharged into the SSTS;

(D) Assess the condition of baffles, effluent screens, maintenance hole covers and extensions;

(E) Verify that the tank(s) and all connections are watertight;

(F) Submit a tank maintenance report for each property on forms approved by the Department, to the Department and the property owner. The amount pumped, method, and location of septage disposal must also be included on the form;

(G) Remove all septage from the tank(s) in a sealed container and dispose of in accordance with state, federal, and local requirements.

(1) If septage is to be disposed of into a municipally-controlled wastewater treatment system or into a Metropolitan Waste Control Commission facility, it must be disposed of in a location and manner approved by said governmental authority.

(2) If septage is to be disposed of using land application, Minnesota Pollution Control Agency (MPCA) Septage and Restaurant Grease Trap Waste Management Guidelines, Water/Wastewater-ISTS #4.20, must be followed; and

(H) Fulfill any additional requirements as may be required by the Department or the MPCA.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.165 SSTS LICENSED SERVICE PROVIDER RESPONSIBILITIES.**

It is the responsibility of the licensed SSTS service provider to:

- (A) Assess the operational status and SSTS performance by sampling, measuring, and observing, to verify compliance with the SSTS management plan or operating permit;
- (B) Preserve, store, and ship samples for analysis and interpret sampling results;
- (C) Adjust, repair, or replace components to bring the SSTS into proper operational compliance;
- (D) Report sampling results, operational observations, system adjustments, and other management activities, in compliance with local ordinances. SSTS management plans or operating permit requirements, before December 1st each year to the property owner and the Department;
- (E) Observe and provide written reports of any noncompliance to the property owner and the Department within 30 days; and
- (F) Fulfill any additional requirements as may be required by the Department or the MPCA.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.166 SSTS LICENSED INSPECTOR RESPONSIBILITIES.**

It is the responsibility of the licensed SSTS inspector to:

- (A) Submit the completed Minnesota Pollution Control Agency compliance inspection form for Existing SSTS to the Department and the property owner within 15 calendar days from the date of the inspection; and
- (B) Fulfill any additional requirements as may be required by the Department or the MPCA.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.167 PERIODICALLY SATURATED SOIL DISAGREEMENTS.**

If a documented discrepancy arises on the depth of the periodically saturated soil between licensed individuals for SSTS design or compliance purposes, all disputing parties must follow the procedure outlined in Minn. Rules Chapter 7082.0700, subpart 5.

(Ord. 67-2010, passed 5-17-11)

### **ADMINISTRATION**

#### **§ 52.180 PUBLIC EDUCATION OUTREACH.**

Programs may be provided by the Department and/or others to increase public awareness and knowledge of SSTS. Programs may include distribution of educational materials through various forms of media and SSTS workshops focusing on SSTS planning, construction, operation, maintenance, and management.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.181 RECORD KEEPING.**

The Department will maintain records of SSTS construction permit applications, issued SSTS construction permits, fees assessed, variance requests, certificates of compliance, notices of Noncompliance, enforcement proceedings, site evaluation reports, design reports, record drawings, management plans, operating permits maintenance reports, an annual list of all sewage tanks installed in the county sorted by licensed SSTS installers, and other records relevant to each SSTS.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.182 ANNUAL REPORT.**

The Department shall provide an annual report of SSTS permitting activities to the MPCA.

(Ord. 67-2010, passed 5-17-11)

### **SSTS COMPLIANCE INSPECTION PROGRAM**

#### **§ 52.195 DEPARTMENT RESPONSIBILITY.**

The Department, or its agent, is authorized to perform various SSTS inspections to assure that the requirements of this chapter are met.

- (A) The Department must be given access to enter a property at any reasonable time to inspect and/or monitor the SSTS. As used in this division, "property" does not include a residence or private dwelling.
- (B) No person shall hinder or otherwise interfere with the Department's performance of their duties and responsibilities

pursuant to this chapter. Refusal to allow reasonable access to the property by the Department shall be deemed a separate and distinct offense.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.196 NEW SSTS CONSTRUCTION OR REPLACEMENT.**

(A) Inspections must be performed on new or replacement SSTS to determine compliance with Minn. Rules Chapters 7080 or Chapter 7081, by a qualified employee or licensed SSTS inspection business, authorized by the Department, who is independent of the property owner and the licensed SSTS installer.

(1) Inspections for Type I SSTS may include, but are not limited to: soil verification, pre-rough up (if needed), tank installation, distribution media/pipe installation, and final inspection.

(2) Inspections for all other SSTS types will include applicable Type I SSTS inspections, and additional inspections, as determined necessary by the Department.

(B) The soil treatment and dispersal system must not be placed into operation until a certificate of compliance has been issued.

(C) A certificate of compliance must be issued by the Department, if the Department has reasonable assurance that the SSTS was built in accordance with the applicable requirements as specified in the SSTS construction permit.

(D) The certificate of compliance must include a certified statement by the qualified employee or licensed SSTS inspector, authorized by the Department who conducted the inspection that the SSTS is or is not in compliance with the chapter requirements.

(E) Certificates of compliance for new SSTS construction or replacement shall remain valid for five years from the date of issue, unless the Department finds evidence of noncompliance.

(Ord. 67-2010, passed 5-17-11)

#### **§ 52.197 EXISTING SSTS COMPLIANCE INSPECTION.**

(A) Compliance inspections of existing SSTS are required:

(1) Before any permit or variance is issued for a property with an SSTS located in a shoreland area (1,000 feet of a lake, pond, or flowage; or 300 feet of a river or stream, or the landward extent of a floodplain), subject to the exceptions in Carver County Zoning Code § 152.122;

(2) When there is a change in the use of the property or structure(s) that would affect water use, including but are limited to: a permit or variance to expand a structure for the purpose of a bedroom, home business, contractor's yard, or daycare. The certificate of compliance must also certify that all components are sized to state minimum requirements for the additional bedroom or the change in use;

(3) When an SSTS construction permit is required to repair, modify, or upgrade an existing SSTS;

(4) At the time of property sale or transfer, in accordance with §52.199. Any evaluation, investigation, inspection, recommendation, or other process used to prepare a disclosure statement, if conducted by a party who is not the SSTS owner, constitutes a compliance inspection, and must be conducted in accordance with Minn. Rules Chapter 7080.1500;

(5) When there is a division of land pursuant to Carver County Zoning Code §152.035(D);

(6) During systematic lake or area wide SSTS surveys by the Department as described in §52.043; and

(7) Any time that a building permit is applied for and no record of a soil treatment and dispersal system exists.

(B) When a compliance inspection is required and cannot be completed, due to frost conditions, during the period of November 1 to April 30, permits or land use application(s) pursuant to division (A) of this section can be issued provided an escrow account is provided in the amount set forth in the Carver County Fee Schedule. A compliance inspection must be performed before the following June 1 and/or the SSTS is brought into compliance by the following September 30.

(C) Compliance inspections of existing SSTS must be reported on the inspection report forms provided by MPCA. The following conditions, must be assessed or verified:

(1) Tank watertightness assessment must be completed by pumping all of the tanks. A valid tank integrity report from a licensed SSTS maintainer must be provided;

(2) A soil separation compliance assessment must be completed by a licensed inspection business or a qualified employee inspector with jurisdiction. Compliance must be determined either by conducting new soil observations or by prior soil separation documentation made by two independent parties. The soil observations used for system design or previous inspections are allowed to be used if they contain the information required in Minn. Rules Chapter 7080.1720, subpart 5, items B, D, and F. If the soil separation has been verified by two independent parties, a subsequent determination is not required unless requested by the owner or owner's agent;

(3) Sewage backup, surface seepage, or surface discharge including a hydraulic function report; and



(4) Compliance with the SSTS management plan or SSTS operating permit if applicable.

(D) The certificate of compliance must include a certified statement by a licensed SSTS inspector, indicating whether the SSTS is in compliance with chapter requirements. If the SSTS is determined not to be in compliance with the applicable requirements, a notice of noncompliance must include a statement specifying those chapter provisions with which the SSTS does not comply.

(E) SSTS that are determined to have operation or monitoring deficiencies must immediately be maintained, monitored, or otherwise managed according to the SSTS operating permit.

(F) SSTS found to be noncompliant with other applicable requirements must be brought into compliance with this chapter within the timeframes established in § 52.055 and § 52.056.

(G) The certificate of compliance or notice of noncompliance must be submitted to the Department no later than 15 calendar days after the date the existing SSTS compliance inspection was performed.

(H) Certificates of compliance for existing SSTS shall remain valid for three years from the date of issue unless the Department finds evidence of noncompliance.

(I) The Department may waive an existing SSTS compliance inspection required by this chapter, if the owner of the real property served by an existing SSTS acknowledges in writing to the Department that the existing SSTS is not compliant and will be brought into compliance with this chapter within ten months.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.198 COMPLIANCE CRITERIA FOR EXISTING SSTS.**

(A) SSTS that were built before April 1, 1996, are outside of areas designated as shoreland and wellhead protection areas, and do not service a food, beverage, or lodging establishment, must have at least two feet of vertical separation between the bottom of the distribution media and the periodically saturated soil and/or bedrock. The vertical separation measurement must be made outside the area of system influence but in an area of similar soil.

(B) SSTS built after March 31, 1996 or SSTS located in a shoreland area, wellhead protection area, or serving a food, beverage, or lodging establishment as defined in Minn. Rules Chapter 7080.1100, subpart 84, must have three feet of vertical separation between the bottom of the distribution media and the periodically saturated soil and/or bedrock. The vertical separation measurement must be made outside the area of system influence but in an area of similar soil. Existing SSTS that have no more than a 15% reduction in this separation distance (a separation distance no less than 30.6 inches) to account for settling of sand or soil, normal variation of separation distance measurements, and interpretation of limiting layer characteristics, may be considered compliant under this chapter.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

#### **§ 52.199 TRANSFER OF PROPERTIES.**

(A) Whenever a conveyance of land occurs, the following requirements shall be met:

(1) The seller of the property is responsible for providing a completed Carver County point of sale certificate and MPCA existing SSTS compliance inspection form, with any required attachments, to the buyer at or before closing. These documents shall provide the status and location of all known SSTS and components thereof on the property and, if applicable, the requirements for bringing the SSTS into compliance with this chapter;

(2) The buyer is responsible to file the Carver County point of sale certificate, and required attachments, along with the certificate of real estate value at the County Auditor's Office; and

(3) If the seller fails to provide a certificate of compliance, sufficient security must be established in the form of an escrow account to assure the installation of a complying SSTS. The security, in the amount set forth in the Carver County Fee Schedule, shall be placed in an escrow with a licensed real estate closer, licensed attorney-at-law, or federal or state chartered financial institution. The SSTS must be installed within the time frame established in §§ 52.055 and 52.056. After a complying SSTS has been installed and a certificate of compliance issued, the escrow may be released.

(B) The MPCA existing SSTS compliance inspection form need not be obtained if the sale or transfer involves one of the following circumstances:

(1) Tract of land is vacant or contains no structures with plumbing fixtures;

(2) The SSTS serving the existing dwelling or other structure with plumbing has been abandoned per §52.058. Attach the MPCA's SSTS abandonment reporting form;

(3) The transfer does not require the filing of a certificate of real estate value, as described in M.S. § 272.115;

(4) The transfer is a foreclosure or tax forfeiture. This subsection applies only for the transfer from the original mortgagee, to the financial/lending institution or local unit of government. The subsequent transfer shall meet the requirements of this chapter;

(5) A refinance of a property;

(6) The sale or transfer is to the seller's spouse or ex-spouse only. The sale or transfer may be by deed, through a joint tenancy, of a testamentary nature, or by trust document;

(7) The sale or transfer completes a contract for deed or purchase agreement entered into prior to February 24, 1998. This division applies only to the original vendor and vendee on such a contract; or

(8) Dwellings or other structures connected exclusively to a municipal wastewater treatment system. Including 201 systems which discharge directly to the Metropolitan Council Environmental Services interceptor/collector sewer and do not utilize a septic tank(s) or soil treatment and disposal system.

(C) All property conveyances subject to this chapter occurring during the period between November 1st and April 30th, and SSTS compliance cannot be determined due to frozen soil conditions, shall have an escrow account established pursuant to the Carver County Fee Schedule. The buyer is responsible to have the compliance inspection completed by the following June 1st by a licensed SSTS inspector. If, upon inspection, the SSTS is found to be in compliance, the funds in escrow may be released. If, upon inspection, the SSTS is found to be non-compliant, the SSTS shall be brought into compliance within ten months from the date of property transfer.

(D) Should the seller fail to have the compliance inspection completed, and neither party established an escrow account, the buyer of the property becomes wholly responsible and shall have a certificate of compliance on the existing SSTS submitted to the Department within 30 days of the property transfer or have the SSTS brought into compliance within 90 days of the property transfer.

(Ord. 67-2010, passed 5-17-11) Penalty, see §52.999

## **ENFORCEMENT**

### **§ 52.210 NOTICE OF VIOLATION.**

The Department is authorized to serve, in person or by mail, a notice of violation to any person determined to be violating provisions of this chapter. The notice of violation may contain:

- (A) A statement documenting the findings of fact determined through observations, inspections, or investigations;
- (B) A list of specific violation(s) of this chapter;
- (C) Specific requirements for correction or removal of the specified violation(s); and/or
- (D) A mandatory time schedule for correction, removal, and compliance with this chapter.

(Ord. 67-2010, passed 5-17-11)

### **§ 52.211 CEASE AND DESIST ORDERS.**

Cease and desist orders may be issued when the Department has probable cause that an activity regulated by this, or any other provision of this chapter, is being, or has been conducted without an SSTS construction permit, or in violation of an SSTS construction permit. When work has been stopped by a cease and desist order, the work shall not resume until the reason for the work stoppage has been completely satisfied, any administrative fees paid and the cease and desist order lifted.

(Ord. 67-2010, passed 5-17-11; Am. Ord. 90-2018, passed 12-18-18)

### **§ 52.212 CIVIL REMEDIES.**

In the event of a violation or a threat of a violation of this chapter, the county may institute appropriate civil actions or proceedings, including injunctive relief, to prevent, restrain, correct, or abate such violations or threat of violations. The county may recover costs incurred for corrective action in a civil action in any court of competent jurisdiction, and such costs may be certified by court order to the County Auditor as a special tax against the real property. These and other remedies, as determined appropriate by the county, may be imposed upon the property owner, permittee, licensed SSTS installer, or other responsible person, either in addition to or separate from other enforcement actions.

(Ord. 67-2010, passed 5-17-11)

### **§ 52.213 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 county, and shall not be deemed a limitation or repeal of any other powers granted by Minnesota Statutes.

(Ord. 67-2010, passed 5-17-11)

### **§ 52.999 PENALTY.**

Any person, firm, agent, or corporation who violates any of the provisions of this chapter, or who fails, neglects, or refuses to comply with the provisions of this chapter, including violations of conditions and safeguards, or who knowingly makes any material false statement, or knowing omission in any document required to be submitted under the provisions hereof, shall

be guilty of a misdemeanor and upon conviction thereof, shall be punishable as defined by Minnesota State Statutes. Each day that a violation exists shall constitute a separate offense.

(Ord. 67-2010, passed 5-17-11)

## CHAPTER 53: OPEN BURNING

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### Section

- 53.01 Purpose, scope and authority
- 53.02 General provisions
- 53.03 Standards adopted
- 53.04 Administration and enforcement
- 53.05 Permit holder responsibility
- 53.06 Prohibited materials
- 53.07 Permit required for open burning
- 53.08 Purposes allowed for open burning
- 53.09 Permit application for open burning and permit fees
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- 53.12 Denial of open burning permit
- 53.13 Burning ban, burning restrictions or air quality alert
  
- 53.99 Penalty

### § 53.01 PURPOSE, SCOPE AND AUTHORITY.

(A) This subchapter regulates the disposal, by the method of burning, of solid waste materials in Carver County. If a local requirement is more restrictive than the requirement found in this subchapter, the local requirement will supersede the county requirement. This subchapter has been adopted by the Carver County Board of Commissioners to protect the public's health and prevent nuisance; to protect air and ground water resources; to minimize reliance upon disposal by burning; to promote waste abatement such as recycling and composting; and to supplement and support Carver County and State of Minnesota controls over open burning.

(B) This subchapter establishes standards for the regulation of open burning activities in Carver County, Minnesota. This subchapter requires that appropriate permits be obtained from the Department of Natural Resources (DNR) for the purpose of open burns.

(Ord. 5B, passed 6-26-01; Am. Ord. 73-2012, passed 3-20-12)

### § 53.02 GENERAL PROVISIONS.

(A) *Definitions.* The following words and phrases, when used in this subchapter, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section.

**AGRICULTURAL FIRE.** Open burning for the purpose of disposing of materials generated on ten acres or larger parcels of land that is in "agricultural use" as defined in M.S. § 17.81, as it may be amended from time to time.

**BURNING BAN.** The Commissioner, by written order, may suspend the issuance of permits for open fires, revoke or suspend the operation of a permit previously issued and, to the extent he or she deems necessary, prohibit the burning of all or some kinds of open fires. t

**BURNING RESTRICTION.** No permit may be issued in instances where there are alternatives to burning or burning can be delayed until after the restriction has been lifted. Variances may be given on a case by case basis. DNR Foresters will review variance applications and make recommendations to the local Fire Chief, who will have the final authority during the restriction period.

**COMMISSIONER.** The Commissioner of the Department of Natural Resources.

**CONSTRUCTION DEBRIS.** Waste building material, packaging and rubble resulting from construction, remodeling and repair.

**DEMOLITION DEBRIS.** Solid waste resulting from the demolition of buildings, roads, and other man-made structures, including but not limited to, materials such as concrete, brick, bituminous concrete, treated wood, masonry, glass, rock, and plastic building parts. Demolition debris does not include asbestos wastes.

**DEPARTMENT OF NATURAL RESOURCES (DNR).** The Minnesota Department of Natural Resources. The DNR is charged with conserving and managing the state's natural resources.

**DESIGNATED LOCAL AUTHORITY (DLA).** A representative of a local unit of government, fire chief, fire marshal, or fire warden who has been trained and certified by the DNR. The Carver County Environmental Services Department shall be the local DLA in local governmental units who do not choose to designate a DLA.

**HAZARDOUS WASTE.** As defined in M.S. § 116.06, as it may be amended from time to time, means any refuse, sludge, or other waste material or combinations of refuse, sludge, or other waste materials in solid, semi-solid, liquid, or contained gaseous form which because of its quantity, concentration, or chemical, physical, or infectious characteristics may: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste material include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants and corrosives. **HAZARDOUS WASTE** does not include source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

**INDUSTRIAL SOLID WASTE.** All solid waste generated from an industrial or manufacturing process and solid waste generated from non-manufacturing activities such as service and commercial establishments. Industrial solid waste does not include office materials, restaurant and food preparation waste, discarded machinery, demolition debris, or household refuse.

**LAW ENFORCEMENT.** Means any licensed peace officer.

**MIXED MUNICIPAL SOLID WASTE (MMSW).** Garbage, refuse, and other solid waste from residential, commercial, industrial, and community activities that the generator aggregates for disposal, but does not include auto hulks, street sweepings, ash, construction debris, mining waste, sludges, tree and agricultural wastes, tires, lead acid batteries, used oil, and other materials, collected, processed, and disposed of as separate waste streams.

**OPEN BURNING.** The burning of any matter if the resultant combustion products are emitted directly to the atmosphere without passing through a stack, duct or chimney, except a recreational fire as defined herein.

**RECREATIONAL FIRE.** A fire set with approved starter fuel, with the materials to be burned no more than 3 feet in diameter and 3 feet in height, using dry, clean wood; producing little detectable smoke, odor or soot beyond the property line; for recreational, ceremonial, food preparation or social purposes; extinguished completely before quitting the occasion; and respecting weather conditions, neighbors, burning bans, and air quality so that nuisance, health or safety hazards will not be created. Mobile cooking devices such as, charcoal grills, propane, and natural gas devices are not defined as recreational fires. Recreational fires shall not be located closer than 25 feet to any structure.

**RUNNING FIRE.** An open burn that is not confined to piled materials but is meant to consume materials over an unconfined area. Running fires include but are not limited to, open burning conducted to clear or maintain small areas of land surrounded by tilled agricultural land, open burning to maintain wildlife habitat in managed wildlife areas, and open burning conducted by a local government unit to maintain road rights-of-way. Permits for all running fires must be reviewed and approved by the DNR.

**SNOW COVERED.** The ground has a continuous unbroken cover of snow, to a depth of three inches or more, surrounding the immediate area of the fire.

**STARTER FUELS.** Dry, untreated, unpainted kindling, branches, or cardboard, or charcoal fire starter. Paraffin candles and alcohols are permitted as starter fuels and as aids to ignition only. Only propane gas torches or other clean gas burning devices causing minimal pollution may be used to start an open burn.

**WOOD.** Dry, clean fuel only such as twigs, branches, limbs, "presto logs," charcoal, cordwood or untreated dimensional lumber. **WOOD** does not include pallets, wood that is green, with leaves or needles, rotten, wet, oil soaked, or treated with paint, glue or preservatives. Clean pallets may be used for recreational fires when cut into three-foot lengths.

(B) *Compliance.* No person shall cause or permit open burning, except in full compliance with the provisions of this subchapter.

(C) *Conditions.* Violations of any condition, imposed by the Department or DLA on a permit, shall be deemed a violation of this subchapter.

(D) *False information.* Omission of any information or submission of false information may be deemed a violation of this subchapter or may be deemed a violation of state statute.

(E) *Right of entry.* Whenever necessary to perform an inspection, to enforce any of the provisions of this subchapter, or whenever the DNR, Department, DLA or Law Enforcement has reasonable cause to believe that prohibited materials are being burned upon the premises, the DNR, Department, DLA or Law Enforcement may enter such premises at all reasonable times to inspect the same or to perform any duty imposed upon the DNR, Department, DLA and Law Enforcement by this subchapter, provided that if such premises be occupied, the authorized agent shall first present proper credentials and demand entry; and if such premises be unoccupied, the DNR, Department, DLA or Law Enforcement shall

first make a reasonable effort to locate the owner or other persons having charge or control of the premises and demand entry. If such entry is refused, the DNR, Department, DLA or Law Enforcement shall have recourse to every remedy provided by law to secure entry including administrative search warrants.

(Ord. 5B, passed 6-26-01; Am. Ord. 73-2012, passed 3-20-12)

### **§ 53.03 STANDARDS ADOPTED.**

“Open Burning,” as it may be amended from time to time, M.S. §§ 88.01 to 88.22, as they may be amended from time to time, and Minnesota Uniform Fire Code (where adopted), are hereby adopted by reference and made a part of this subchapter as if fully set forth at this point.

(Ord. 5B, passed 6-26-01)

### **§ 53.04 ADMINISTRATION AND ENFORCEMENT.**

(A) *Duties of the Department.* The Department shall be responsible for the administration and enforcement of this subchapter. The Department’s duties shall include, but are not limited to, the following:

- (1) The Department shall maintain records of open burns within Carver County;
- (2) The Department shall review and issue open burn permits for local governments who do not designate a DLA;
- (3) The Department and its agents shall administer this subchapter, investigate complaints and violations related to it and enforce the provisions of this subchapter as provided in rules and statutes;
- (4) The Department shall assist the DNR in providing training to certify a DLA;
- (5) The Department shall recommend certification of the DLA to the DNR when appropriate;
- (6) The Department may decommission a DLA for failure to carry out the duties and responsibilities assigned to them.

(B) *Duties of local government.* The local government duties shall include, but are not be limited to the following:

(1) Local governmental unit may name one or more DLA as provided by this subchapter. The DLA must be trained and certified by the DNR. The local governmental unit shall provide the Department with the names and addresses of these persons. A DLA may not issue open burning permits before such notification is provided to the county.

(2) A local governmental unit may, by ordinance, require open burning regulations that are more stringent than the provisions of this subchapter.

(C) *Duties of designated local authority.* Referred to hereafter as DLA shall have the following duties:

(1) The DLA shall review applications and issue or deny permits according to the criteria established in this subchapter and the Minnesota Rules and Statutes incorporated herein by reference;

- (2) The DLA shall report to the Department violations of this subchapter as they become aware of them;
- (3) The DLA shall submit burn permits to the Department by the seventh day of the following month;
- (4) The DLA shall issue burning permits in accordance with instructions received from the DNR;
- (5) The DLA shall fill out the burning permit form;
- (6) The DLA shall report all unauthorized fires through 911 and the Department;
- (7) The DLA shall issue written burning permits only. Verbal permission by itself does not constitute a legal permit;
- (8) The DLA shall report any problems or difficulties to the Department;
- (9) The DLA shall attend training provided by the DNR or the Department;
- (10) A DLA who moves outside of their assigned commission area would not be authorized to continue writing permits. DLA who is no longer interested in working for the fire prevention program may simply request to be decommissioned. In addition, an individual may be decommissioned for failure to properly carry out the duties and responsibilities assigned to them;
- (11) The DLA shall insure that the permit holder understands all the regulations associated with conducting an open burn;
- (12) A DLA shall only issue permits within their assigned commission area.

(Ord. 5B, passed 6-26-01; Am. Ord. 73-2012, passed 3-20-12)

### **§ 53.05 PERMIT HOLDER RESPONSIBILITY.**

(A) *Responsibility.*

- (1) The permit holder is responsible for compliance and implementation of all general conditions and special conditions

as established in the permit issued.

(2) A person lighting or responsible for the lighting of an agricultural fire shall also carry out the duties and responsibilities of an open burn permit holder as per this section and shall be subject to the same costs and penalties.

(3) After completing the burning permit online service application, the permit holder will be able to save an electronic copy and will be asked to print the permit. The printed permit must be present while conducting the burn.

(B) *Safeguard.*

(1) Open burning shall not be conducted within 100 feet of any structure.

(2) Open burning, excluding recreational fires and running fires, shall not be conducted within 50 feet of a stream, river, lake, or other water body.

(3) An open burn shall not be allowed to smolder with no flame present.

(C) *Notification.* The permit holder cannot conduct the burn until they have requested activation as instructed on the permit. The permit holder may activate on-line during the application process, or by calling the DNR burn activation line. Activation will only be possible if burning conditions are favorable to allow open burning; the permit holder will receive an activation code that they must write on their permit in the space provided.

(D) *Attendance.*

(1) Every open burn event shall be constantly attended by the permit holder or his or her competent representative.

(2) The open burn fire shall be completely extinguished before the permit holder or his or her representative leaves the site.

(E) *Inspections.*

(1) It is the responsibility of the permit holder to have a valid permit, on site and, available for inspection by the Department, DLA, DNR, or Law Enforcement.

(2) The permit holder shall allow the Department, DLA, DNR or Law Enforcement access on site for inspection prior to burning, while conducting the burn, as well as after the burn as referenced in division (E).

(F) *Costs and penalties.*

(1) The permit holder shall be responsible for all costs incurred as a result of the burn, including, but not limited to, fire suppression, tickets, citations and permit fees.

(2) Any person who violates any provisions of this subchapter, in addition to any penalties herein prescribed, shall also be liable in full damages to any and every person suffering loss or injury by reason of the violation, including liability to the county, cities, townships, and fire suppression and medical response teams, for all expenses incurred in fighting or preventing the spread of, or extinguishing any fire caused by, or resulting from, any violation of this subchapter. When a fire set by any person spreads to and damages or destroys property belonging to another, the setting of the fire shall be prima facie evidence of negligence in setting and allowing the same to spread.

(Ord. 5B, passed 6-26-01; Am. Ord. 73-2012, passed 3-20-12)

### **§ 53.06 PROHIBITED MATERIALS.**

(A) *Prohibition.* No person shall conduct, cause or permit the open burning of any material that was not generated at the site of the open burn.

(B) *Hazardous and solid waste.*

(1) No person shall conduct, cause or permit the open burning of leaves.

(2) No person shall conduct, cause or permit the open burning of oils, petrol fuels, rubber, plastics, plastic pesticide containers, plastic liners in seed, feed, or pesticide bags, chemically treated materials, or other materials which produce excessive or noxious smoke such as tires, railroad ties, treated, painted or glued wood, composite shingles, tar paper, insulation, composition board, sheetrock, wiring, paint or paint filters, mixed municipal solid waste, hazardous waste, industrial waste, construction debris or demolition debris.

(3) No person shall conduct, cause or permit the open burning of hazardous waste, salvage operations, solid waste generated from an industrial or manufacturing process or from a service or commercial establishment, or building material generated from demolition of commercial or institutional structures.

(C) *Food waste.* No person shall conduct, cause or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving or consumption of food.

(D) *Wetlands, grasslands and farm fields.* No person shall conduct, cause, or permit the open burning of wetlands, grass lands, pastures, crop residue, or road rights-of-way except as provided in § 53.08.

(E) *Animal carcasses.* No person shall conduct, cause, or permit the open burning of any dead domestic animal without the approval of the Department. Such burning shall be permitted only to abate an immediate public health threat.

(F) *Structures*. No person shall conduct, cause or permit the open burning of a structure except as provided in §3.08. (Ord. 5B, passed 6-26-01; Am. Ord. 73-2012, passed 3-20-12)

#### **§ 53.07 PERMIT REQUIRED FOR OPEN BURNING.**

(A) *Permit required*. No person shall start or allow any open burning on any property in the county without having obtained valid open burning permit.

(B) *Recreational fires*. Recreational fires, as defined in §53.02, are exempt from this provision year round.

(C) *Snow cover*. A permit is required at all times throughout the year, even when the ground is snow covered.

(Ord. 5B, passed 6-26-01; Am. Ord. 73-2012, passed 3-20-12)

#### **§ 53.08 PURPOSES ALLOWED FOR OPEN BURNING.**

(A) When all alternative utilization methods for brush has been deemed not practicable, open burning will be permitted. This decision shall be made by the DLA, the Department, or the DNR.

(B) Open burn permits may be issued only for the following purposes:

(1) *Fire or health hazard*. Elimination of fire or health hazard that cannot be abated by other practical means. The Commissioner may allow burning of prohibited materials when the commissioner of health or the local board of health has made a determination that the burning is necessary to abate a public health nuisance.

(2) *Maintenance or construction*. Ground thawing for utility repair and construction.

(3) *Disposal*.

(a) Disposal of vegetative matter for managing forest, prairie or wildlife habitat, and in the development and maintenance of land and rights-of-way where chipping, composting, landspreading or other alternative methods are not practical.

(b) Disposal of diseased trees, diseased or infected nursery stock, and diseased bee hives, all generated on site.

(c) Disposal of unpainted, untreated, non-glued lumber and wood shakes where recycling, reuse, removal or other alternative disposal methods are not practical, and provided that the material was not generated by demolition of a commercial or institutional structure. A farm building is not a commercial structure.

(d) Disposal of wet hay windrowed in a field or pasture.

(e) Disposal of bailing twine and paper feed sacks without plastic liners.

(4) *Fire department training*.

(a) Permits for structures can only be issued by the DNR.

(b) The property owner or project contractor shall obtain a demolition permit from the local unit of government.

(c) All required paperwork provided by the Minnesota Pollution Control Agency shall be completed.

(d) Fire departments shall ensure that the property owner properly dispose of all debris following permitted burns. Receipts, showing proper disposal, shall be retained by the fire department for the period of three years upon removal of the debris.

(Ord. 5B, passed 6-26-01; Am. Ord. 73-2012, passed 3-20-12)

#### **§ 53.09 PERMIT APPLICATION FOR OPEN BURNING AND PERMIT FEES.**

(A) *Application*. Open burning permits shall be obtained by making application through the DNR's burning permit online service or on a form provided by the DNR.

(B) *Permit fee*.

(1) A permit fee is collected at the time of applying for a permit on the DNR's burning permit online service. The burning permit online service fee shall be set by the DNR.

(2) Application and permit fees for permits reviewed or issued by the Department shall be set by resolution of the Carver County Board of Commissioners. The Board of Commissioners may, at other times, amend its resolution setting the fees as it deems necessary. The fees established by the Board of Commissioners resolution shall continue to be the required fee until amended by a resolution.

(3) A DLA may require application or permit fees for permits issued in their jurisdiction. These fees may be set and amended by resolution by the DLA as it deems necessary.

(Ord. 5B, passed 6-26-01; Am. Ord. 73-2012, passed 3-20-12)

#### **§ 53.10 PERMIT PROCESS FOR OPEN BURNING.**

(A) *Review, approval and attached conditions.*

(1) Upon receipt of a completed open burning permit application, the Department or DLA shall review and approve or deny the application. The Department or the DLA may attach conditions to the permit consistent with Minnesota Pollution Control Agency (MPCA), DNR, Department, or local regulations and ordinances. The DLA may also attach reasonable special conditions to the permit due to site specific conditions which would or which may have the potential to create safety or pollution concerns or nuisance conditions.

(2) Permits for all running fires and structures must be reviewed and approved by the DNR. Permits for other permitted materials may be reviewed and issued by the Department or DLA. A Department or DNR representative may inspect the proposed burn site and may deny the issuance of the permit based upon finding that a practical alternative method of disposal exists, or safety, pollution or nuisance conditions may result.

(3) A permit for a running fire may be issued for the purpose of maintaining wildlife habitat, establishing and/or maintaining a prairie, maintenance of road rights-of-way, and for maintenance of small areas of land surrounded by tilled agricultural land.

(B) *Permit length.* Permits obtained through the DNR burning permit online service or through a DLA are valid for the calendar year in which they are purchased, but must be activated each day burning occurs.

(Ord. 5B, passed 6-26-01; Am. Ord. 73-2012, passed 3-20-12)

#### **§ 53.11 REVOCATION OF OPEN BURNING PERMIT.**

The open burning permit and the right to conduct an agricultural fire is subject to revocation at the discretion of DNR, the Department, DLA, or Law Enforcement. Reasons for revocation include, but are not limited to: discovery of inappropriate materials at a open burn site, a fire hazard existing or developing during the course of the burn, any of the conditions of the permit being violated during the course of the burn, pollution or nuisance conditions developed during the course of the burn, or a fire smoldering with no flame present.

(Ord. 5B, passed 6-26-01; Am. Ord. 73-2012, passed 3-20-12)

#### **§ 53.12 DENIAL OF OPEN BURNING PERMIT.**

The Department or a DLA may deny the open burning permit application based on the following circumstances:

- (A) If established criteria for the issuance of an open burning permit are not met during review of said application;
- (B) It is determined that a practical alternative method of disposal of the material exists;
- (C) A pollution or nuisance condition would result;
- (D) Inappropriate weather conditions; or
- (E) Any other condition as determined by the Department or DLA.

(Ord. 5B, passed 6-26-01)

#### **§ 53.13 BURNING BAN, BURNING RESTRICTIONS OR AIR QUALITY ALERT.**

No open burn or agricultural fires will be permitted when the Department or DNR has officially declared burning restrictions. A variance to permit open burning, however, may be obtained for special circumstances through the DNR.

(Ord. 5B, passed 6-26-01; Am. Ord. 73-2012, passed 3-20-12)

#### **§ 53.99 PENALTY.**

(A) *Misdemeanor.* Except as where separately provided for in §§53.01 through 53.13 or state statutes, any person who fails to comply with the provisions of §§ 53.01 through 53.13 is guilty of a misdemeanor. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

(B) *Civil actions and injunctive relief.* In the event of a violation or a threat of violation of §§53.01 through 53.13, the county may institute appropriate actions or proceedings, including injunctive relief to prevent, restrain, correct or abate such violations or threatened violations. The county may recover costs incurred for corrective action in a civil action in any court of competent jurisdiction or, at the discretion of the County Board, the costs may be certified to the County Auditor as a special tax against the real property.

(C) *Permit issuance and denial.* In the event that a violation of §§53.01 through 53.13 or any state or local ordinance occurs, the violator must apply for any future permits through the Department.

(Ord. 5B, passed 6-26-01)



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**GENERAL PROVISIONS**

**§ 54.01 PURPOSE.**

It is the intent and purpose of this chapter to maintain and improve the county's agricultural economy and community, and to ensure that animal feedlots and animal wastes are properly managed to protect public health and natural resources.

(Ord. 49, passed 7-7-03)

**§ 54.02 TITLE.**

This chapter shall be known, cited, and referred to as the Carver County Feedlot Management Ordinance.

(Ord. 49, passed 7-7-03)

**§ 54.03 SCOPE AND AUTHORITY.**

(A) *Scope.* From and after the effective date of July 23, 1996, when this chapter was originally adopted, the use of all land and every building or portion of a building used for a feedlot, or as part of a feedlot shall be in conformity with the provisions of this chapter. Pre-existing structures, which are not in conformity with the setback and area provisions of this

chapter, and/or the County Zoning Code (§ 152.001 *et seq.*), but were in conformity with the standards prior to changes established by the County Zoning Code and/or this chapter, shall be allowed as long as pollution hazards are mitigated within the timelines set forth by the MPCA Feedlot Rule, Chapter 7020, or this chapter.

(B) *Authority.* This chapter is adopted pursuant to the authorization and policies contained in M.S. Chapters 115 and 116, and MPCA Feedlot Rule, Chapter 7020 and the planning and zoning enabling legislation in M.S. Chapter 394.

(C) *Jurisdiction.* The jurisdiction of this chapter shall apply to all the areas of Carver County outside the incorporated limits of municipalities.

(Ord. 49, passed 7-7-03)

#### **§ 54.04 DEFINITIONS.**

(A) For the purpose of this chapter, certain terms or words used herein shall be interpreted as follows:

- (1) The word “shall” is mandatory, and not discretionary; the word “may” is permissive; the word “person” shall include individuals, businesses, and corporations;
- (2) Words used in the present tense shall include the future; and words used in the singular shall include the plural, and the plural the singular;
- (3) Words shall be given their common usage if not defined;
- (4) The word “used for” shall include the phrases “arranged for,” “designed for,” “intended for,” “maintained for,” and “occupied for”;
- (5) The masculine gender shall include the feminine and neuter;
- (6) The word “Board” includes the “county commissioners,” the “Board of County Commissioners”, or any other word or words meaning the “Carver County Board of Commissioners”.

(B) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning or the term is defined in Minn. Rule 7020.

**AGENCY.** The Minnesota Pollution Control Agency (MPCA) as established in M.S. Chapter 116.

**BLUFF.** As defined by the County Zoning Code.

**BLUFF IMPACT ZONE.** As defined by the County Zoning Code.

**BUILDING, AGRICULTURAL.** All buildings, other than dwellings, which are incidental to a farming operation.

**CEMETERY.** As defined by the County Zoning Code.

**COMMERCIAL APPLICATOR.** As defined by M.S. § 18C.430, Commercial animal waste technician.

**COMMISSIONER.** The Commissioner of the Minnesota Pollution Control Agency whose duties are defined in M.S. § 116.03.

**CONDITIONAL USE PERMIT (CUP).** A permit specifically and individually granted, with provisions, by the County Board, after recommendations thereon, pursuant to the provisions of the County Zoning Code.

**CHURCH.** As defined by the County Zoning Code.

**DRAINAGE WAY.** Any natural or artificial water course, including but not limited to streams, rivers, creeks, ditches, channels, canals, conduits, culverts, waterways, gullies, ravines, or washes, in which waters flow in a definite direction or course, either continually or intermittently; and including any area adjacent thereto which is subject to inundation by reason of overflow or floodwater.

**FAMILY.** An individual, or two or more persons related by blood, marriage, or adoption, living together as a single housekeeping unit in a dwelling unit.

**FAMILY FARM.** As defined by M.S. § 116B.02(6).

**FAMILY, IMMEDIATE.** Persons related by blood, marriage, or certified legal instrument.

**FARM.** A tract of land or lands, which is primarily used for agricultural activities such as the production of cash crops, livestock or poultry farming. A farm may include agricultural dwellings and accessory buildings and structures necessary to the operation of the farm. It may be individually, jointly, or corporately owned.

**FEEDLOT ADMINISTRATOR.** A county employee, or his/her designee, appointed by the County Board, to administer the provisions of this chapter. This employee(s) shall have the same duties and powers as a County Feedlot Pollution Control Officer as defined by MPCA Feedlot Rule, Chapter 7020.

**FEEDLOT, (NEW) ANIMAL.** An animal feedlot constructed and operated at a site where no animal feedlot existed previously or where a pre-existing animal feedlot has been abandoned or unused for a period of three years or more.

**FEEDLOT, (EXISTING) ANIMAL.** An animal feedlot that has registered, pursuant to Minn. Rule 7020.0350 and/or has

registered with Carver County Environmental Services prior to July 7, 2003.

**FEEDLOT OPERATOR.** An individual, a corporation, a group of individuals, a partnership, joint venture, owner or any other business entity having charge or control of one or more livestock feedlots, poultry lots or other animal lots.

**FEEDLOT RUNOFF.** The movement of water, in any form, from, or through, a feedlot, carrying particles of manure or process wastewater into a body of water, ditch, right of way, or to a channelized flow environment.

**FLOOD.** As defined by the County Zoning Code.

**FLOOD FREQUENCY.** As defined by the County Zoning Code.

**FLOOD FRINGE.** As defined by the County Zoning Code.

**HOTEL.** As defined by the County Zoning Code.

**LETTER OF COMPLETION.** A letter, from the County Environmental Services Department, that an owner/operator of an animal feedlot has attended an approved educational workshop.

**NON-AGRICULTURAL COMMERCIAL USE.** The principal use of land or buildings, for the sale, lease, rental, or trade of products, that is not associated with an agricultural activity.

**NON-AGRICULTURAL INDUSTRIAL USE.** The principal use of land or buildings, for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities, or other wholesale items, that is not associated with an agricultural activity.

**NRCS.** The Natural Resources Conservation Service of the USDA, a federal agency.

**OFFSET.** Odor From Feedlots Setback Estimation Tool developed by the Department of Biosystems and Agricultural Engineering of the University of Minnesota

**PARCEL.** As defined by the County Zoning Code.

**PERSON.** Includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

**POLLUTION HAZARD.** As defined by the MPCA Feedlot Rule, Chapter 7020, including but not limited to an animal feedlot or manure storage area where construction or operation will allow a discharge of pollutants to surface water or ground water in excess of applicable standards, including Minn. Rules 7050 and 7055, during a rainstorm event less than a 25-year, 24-hour magnitude or will violate any state or county rules or ordinances.

**POLLUTION, IMPAIRMENT, OR DESTRUCTION.** As defined by M.S. § 116B.02(5).

**SCHOOLS.** As defined by the County Zoning Code. For the purpose of this chapter, home schools shall not apply.

**REGIONAL PARK.** As defined in the County 2020 Comprehensive Plan as Baylor Regional Park, Lake Minnewashta Regional Park, Carver Park Reserve, Lake Waconia County Park, and Lake Bavaria Boat Launch.

**RESTAURANT.** As defined by M.S. § 157.15(12).

**RIGHT-OF-WAY.** For the purpose of this chapter, the right-of-way shall be one-half of the actual right-of-way width, indicated by available county records. However, if no records exist, the right-of-way shall be assumed to be 33 feet, measured from the centerline of the road, as built.

**SWCD.** The Carver Soil and Water Conservation District

**USDA.** The United States Department of Agriculture

**VARIANCE.** A modification or variation of the provisions of this chapter where it is determined that, by reason of exceptional circumstances, the strict enforcement of this chapter would cause an unnecessary hardship.

**WETLAND.** As defined by M.S. § 103G.005(17b).

(Ord. 49, passed 7-7-03)

#### **§ 54.05 COMPLIANCE AND MEASUREMENTS.**

(A) The use of any land for the establishment, expansion, or management of an animal feedlot shall comply with the provisions of this chapter, the County Zoning Code, the provisions of MPCA Feedlot Rule, Chapter 7020, the provisions of the MPCA Waters of the State Rule, Chapter 7050, and the provisions of the Department of Health Wells and Borings Rule, Chapter 4725.

(B) All stated and measured distance shall be taken to the nearest integral foot. If a fraction is one-half foot or less, the integral foot next below shall be taken.

(Ord. 49, passed 7-7-03)

#### **§ 54.06 TOWNSHIP POLICIES.**

Township Comprehensive Plan Chapters may address policies regarding maximum animal unit density/numbers and

thresholds that would trigger a Conditional Use Permit (CUP). This chapter will administer township feedlot policies provided Township Comprehensive Plan Chapters are adopted in accordance with the county's Comprehensive Land Use Plan.

(Ord. 49, passed 7-7-03)

#### **§ 54.07 PROPERLY OPERATED FEEDLOT NOT A NUISANCE**

(A) Agriculture often includes such activities as the intense use of farm equipment and machinery; plowing during dry and windy conditions; the raising of livestock and fowl; the use of soil amendments, including manure, herbicides, and pesticides; and storage of manure. These activities may occur during any 24-hour period. Thus, owners or renters of property located in agricultural areas may be subject to discomforts such as odors, dust, insects, and noise. While these activities may be considered nuisances in a more urban setting, they are common in an agricultural community and vital to the sustenance of an agricultural economy.

(B) Pursuant to M.S. § 561.19, agricultural activities shall not be considered a public nuisance, provided such activities do not violate any state statute, rule, or other law.

(C) This section shall not prevent any party or person from proceeding to bring civil action against an agricultural operator/owner. However, it is strongly encouraged that complaints between agricultural operations and local property owners/renters seek a resolution through the County Dispute Resolution Program or other form of mediation or dispute resolution before pursuing litigation.

(Ord. 49, passed 7-7-03)

### **ADMINISTRATION AND ENFORCEMENT**

#### **§ 54.15 ADMINISTRATION.**

(A) The County Environmental Services Department shall administer this chapter. The County Board shall appoint a County Feedlot Administrator(s) to discharge the authorities of this Department under the Feedlot Management chapter.

(B) The County Feedlot Administrator(s) shall have the authority to:

- (1) Administer and enforce this chapter;
- (2) Supervise the keeping of all necessary records for feedlots, including but not limited to:
  - (a) Permit applications;
  - (b) Inspection reports;
  - (c) Correspondence;
  - (d) Site plans;
  - (e) Engineering and construction reports for manure storage facilities, and/or other required engineering plans;
- (3) Consult with SWCD, NRCS, MPCA, and private consultants as necessary to ensure construction standards are followed on manure handling and runoff control structures, or other management practices for the purpose of pollution control;
- (4) Provide and maintain public information and educational materials relative to this chapter and feedlot management;
- (5) Oversee the inspection of feedlot operations to insure compliance with the standards of this chapter;
- (6) Review permits and feedlot sites every four years, or more, to determine continuing compliance with this chapter;
- (7) Consult with other county departments, state and federal agencies, and private consultants as needed.

(C) The County Feedlot Administrator(s) shall have the authority to review applications and process as follows:

(1) Copies of application materials for state and/or federal administered feedlots shall be submitted to the County Feedlot Administrator. Originals should be sent to the MPCA. However, feedlot owners and/or operators that need assistance with state and/or federal applications can request support from the County Feedlot Administrator.

(2) No building permits, or other similar permit, for the purpose of the confined feeding, breeding, raising, or holding of animals or the handling or storage of manure shall be issued until approval is made by the County Feedlot Administrator(s).

(D) Feedlots that are administered by the MPCA shall not be exempt from this chapter, or the Zoning Code.

(Ord. 49, passed 7-7-03)

#### **§ 54.16 VIOLATIONS AND ENFORCEMENT.**

(A) *Violations.* Any person, firm or corporation who shall violate any of the provisions hereof or who shall fail to comply with any of the provisions hereof or who shall make any false statement in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor. Each day that a violation continues shall constitute a separate offense.

(B) *Enforcement.*

(1) *Access to premises.* Upon the request of the County Feedlot Administrator, the applicant, permittee or any other person shall allow access at any reasonable time to the affected premises for the purposes of regulating and enforcing this chapter.

(2) *Interference prohibited.* No person shall hinder or otherwise interfere with the County Feedlot Administrator in the performance of duties and responsibilities required pursuant to this chapter.

(3) *Stop work orders.* Whenever any work is being done contrary to the provisions of this chapter, the County Environmental Services Department, or the Land Management Department may order the work stopped by written notice personally served upon the owner or operator of the feedlot. All activities shall cease and desist until subsequent authorization to proceed is received from the Environmental Services Department or the Land Management Department.

(4) *Revocation.* Any person who fails to comply with the conditions set forth in the feedlot permit may be subject to revocation upon written notice personally served upon the owner or operator of the feedlot.

(5) *Injunctive relief and other remedies.* In the event of a violation or a threat of a violation of this chapter, the county may institute appropriate actions or proceedings, including injunctive relief, to prevent, restrain, correct or abate such violations or threat of violations. The county may recover costs incurred for corrective action in a civil action in any court of competent jurisdiction, and such costs may be certified by court order to the County Auditor as a special tax against the real property. These and other remedies, as determined appropriate by the county, may be imposed upon the applicant, permittee, installer, or other responsible person either in addition to or separate from other enforcement actions.

(Ord. 49, passed 7-7-03)

**§ 54.17 JOINT AND SEVERABLE LIABILITY.**

(A) Owners and operators of feedlots shall have joint and severable liability for clean-up, closure, and remediation of abandoned feedlot sites.

(B) The owner, and/or operator, of any animal feedlot shall be responsible for the storage, transportation, and disposal of all animal manure and associated wastewater generated by the animal feedlot.

(Ord. 49, passed 7-7-03)

**§ 54.18 VARIANCES.**

(A) Any person seeking a variance to this chapter shall complete a Variance Application Form and submit it to the County Environmental Services Department.

(B) All variances shall be processed per the County Zoning Code, §152.215.

(C) The Board of Adjustment may impose conditions it considers necessary to protect the public health, safety, and welfare. Such conditions may include odor mitigation or other agricultural management practices.

(D) Any use that is also prohibited by the Zoning Code will require a variance to the Zoning Code and can be addressed in the same application to the Land Management Department.

(Ord. 49, passed 7-7-03)

**§ 54.19 APPEALS.**

(A) *Hearing.* An appeal from any order, requirement, decision, or determination from the Feedlot Administrator shall be heard by the Board of Adjustment within 60 days from the date of filing the appeal. The Board of Adjustment shall give due notice thereof to the appellant and the officer, from whom the appeal is taken, and to the public and decide the same within 90 days of the hearing date.

(B) *Stay of action.* An appeal stays all proceeding and furtherance of the action appealed from unless the Board of Adjustment certifies that by reason of the facts stated in the certificate the stay would cause imminent peril to life or property.

(C) *Action to Board of Adjustment.* The Board of Adjustment may reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination appealed from and to that end shall have all of the powers of the officer from whom the appeal was taken and may direct issuance of the permit. The reasons for the Board of Adjustment's decision shall be stated in writing.

(Ord. 49, passed 7-7-03)

**PERMIT AND EDUCATIONAL REQUIREMENTS**

**§ 54.30 FEEDLOT PERMITS.**

(A) All feedlots of ten animal units or more shall be inventoried through the County Feedlot Inventory.

(B) Permit required. Any person owning or operating an existing feedlot, or proposing a new feedlot, shall make

application to the Environmental Services Department, and obtain a permit:

- (1) When required under the MPCA Feedlot Rule, Chapter 7020;
- (2) When a change in the construction or operation of an animal feedlot would significantly or adversely affect the storage, handling, utilization, or disposal of animal manure;
- (3) When a new feedlot, of ten animal units or more in shoreland, and 50 animal units or more out of shoreland, is proposed;
- (4) (a) The County Board may, by resolution, require all un-permitted feedlots within environmentally sensitive areas to apply for, obtain, and operate according to the requirements of a permit. These areas may include, but are not limited to:
  1. Shoreland areas;
  2. Specific watersheds or sub-watersheds;
  3. Areas determined by the County Board to be sensitive to ground or surface water pollution;

(b) The resolution adopting these requirements must state the reason or reasons for declaring the area an environmentally sensitive area and shall include legally sufficient findings of fact. A public meeting, for the purpose of receiving comment on the proposed resolution, shall take place prior to the adoption of the resolution. All known feedlots and local governments within the area shall receive written notice of the intention of the County Board to take such action at least 14 days prior to the public comment meeting.
- (5) A feedlot, of any size, which is located within the Shoreland Zoning District, may be reviewed by the Carver County Feedlot Administrator to determine if a pollution hazard exists. The Feedlot Administrator may place conditions upon the operations of such feedlots to limit their impact on surface water quality.

(C) Permit application. Applications will be the MPCA permit application for animal feedlots and/or manure storage areas.

(Ord. 49, passed 7-7-03)

#### **§ 54.31 CONDITIONAL USE PERMITS.**

(A) Feedlots meeting one or more of the following criteria must apply for and receive a Conditional Use Permit (CUP), pursuant to the County Zoning Code, when issuance of a permit is required by § 54.30(B) of this chapter:

- (1) Feedlots, of ten animal units or more, located in the Shoreland Zoning District;
- (2) Feedlots of 300 animal units or more located in the following areas:
  - (a) The portion of the county located east of County Road 10 in Watertown Township, all of Laketown Township, all of Chaska Township, the part of Dahlgren Township lying east of Guernsey Avenue and north of County Road 140 and that part of Dahlgren Township lying east of County Road 40, and the part of San Francisco Township lying east of County Road 40;
  - (b) Feedlots of 600 animal units or more located in that part of the county not covered by division (2) above;
  - (c) Feedlots identified by specific policies of a Township Comprehensive Plan Chapter, pursuant to §54.06 of this chapter;
  - (d) Any feedlot expansion requested within Transition Areas identified by the County Comprehensive Land Use Plan. An application shall only be accepted by the county provided the affected municipality submits a letter stating the operation would conform to the city's Comprehensive Plan.

(B) Continuation of the public hearing may be necessary in order to gather further information prior to making recommendation to the County Board.

(C) Conditions shall be required for approval. Conditions should address, but may not be limited to, the following:

- (1) Maintaining an appropriate crust or cover on an earthen basin;
- (2) Providing a notice to neighbors before manure hauling/application;
- (3) Using an injection method or a spread and incorporate method for manure application;
- (4) Managing odors through use of covers, curtains, or biofilters;
- (5) Utilizing new technology, approved by the County Feedlot Administrator;
- (6) Utilizing OFFSET for odor prediction.

(Ord. 49, passed 7-7-03; Am. Ord. 62-2007, passed 12-11-07 )

#### **§ 54.32 SERVICE FEES.**

Service fees are annually set by the County Board for various permits and other such services.

(Ord. 49, passed 7-7-03)

### **§ 54.33 EDUCATION.**

(A) Any operator/owner of an animal feedlot, with ten animal units or more, shall participate in an educational workshop or program, approved by the Environmental Services Department, once every three years. A letter of completion or attendance shall be proof of fulfillment of this requirement.

(B) Any operator/owner of an animal feedlot, who is required to fulfill the educational requirement in division (A), is exempt from such requirement if he/she has an approved manure management plan, in accordance with Minn. Rule 7020.2225, or has a written agreement to close the feedlot, within three years, in accordance with Minn. Rule 7020.2025.

(C) Any person, required to meet this condition, who fails to attend an approved workshop or program, within the three-year period, shall be subject to a \$100 penalty fee. This fee may be used to offset the cost of an unscheduled workshop or program that the individual(s) are required to attend.

(Ord. 49, passed 7-7-03)

## ***FEEDLOT AND SETBACK REQUIREMENTS***

### **§ 54.45 MINIMUM ACREAGE.**

A minimum area of five acres or such greater area required to meet all setbacks set forth by the County Zoning Code and this chapter shall be required for feedlot operations.

(Ord. 49, passed 7-7-03)

### **§ 54.46 SETBACKS.**

(A) Livestock buildings, all types of manure storage areas, and manure stockpiles shall be constructed, operated, and maintained to minimize, within economical reason and industry standards, the aesthetic, health, odor, and pollution concerns.

(B) For the purpose of this section, when measuring from a road, the edge of the right-of-way line shall be considered the property line.

(C) New feedlots.

(1) A setback of 200 feet shall apply to all new feedlots of ten animal units or more from rear, front, and side property lines.

(2) A setback of 1,000 feet shall apply to all feedlots of 30 animal units or more from residences, churches, schools, regional parks, cemeteries, non-agricultural commercial and industrial activities, and restaurants.

(a) A setback of 1,000 feet shall also apply to all new residences, churches, schools, regional parks, cemeteries, non-agricultural commercial and industrial activities, and restaurants from animal feedlots of 30 animal units or more.

(b) Owners and/or operators of a proposed feedlot, that also own the residences, churches, schools, regional parks, cemeteries, non-agricultural commercial and industrial activities, and restaurants, on the site, shall be exempt from the setback requirements set forth in this section. This exemption shall be reciprocal.

(D) Existing feedlots as of July 7, 2003.

(1) The modifications and/or expansions of animal feedlots, that are located within 200 feet of existing property lines, may be allowed if they do not further encroach on the established setback.

(2) The modification or expansion of animal feedlots that are located within 1,000 feet of residences, churches, schools, regional parks, cemeteries, non-agricultural commercial and industrial activities, and restaurants may be allowed if the modification and/or expansion does not further encroach on the established setback.

(a) This setback shall be reciprocal.

(b) Odor mitigation techniques as authorized in §54.48 of this chapter may be required for feedlots seeking to expand or modify pursuant to this section.

(E) Feedlots established after July 7, 2003. Animal feedlots, consisting of fewer than 30 animal units, that are located within 1000 feet of residences, churches, schools, regional parks, cemeteries, non-agricultural commercial and industrial activities, and restaurants shall not be allowed to expand to greater than 30 animal units.

(F) Residential lots and building sites that were approved by plat, minor subdivision, CUP, variance, or other similar action -- prior to May 1, 2000 -- shall be exempt from the 1000-foot setback requirement. The dwelling shall be located as far from the feedlot as reasonably practical, determined by the Department of Environmental Services in coordination with the Land Management Department.

(G) Manure stockpiles. No manure stockpile, of a feedlot over 30 animal units, shall be permitted within 200 feet of residences, churches, schools, regional parks, cemeteries, non-agricultural commercial and industrial activities, and

restaurants.

(H) Wetlands.

(1) No new feedlot shall be permitted within 300 feet of an unprotected wetland that is Type 3 or greater of one acre or more.

(2) Modifications or expansions to existing feedlots that are located within 300 feet of an unprotected wetland that is Type 3 or greater, of one acre or more, are allowed as long as the expansion does not further encroach into the wetland or pose a pollution hazard.

(3) No new feedlots shall be permitted within 500 feet of any wetland designated as a special protection area.

(Ord. 49, passed 7-7-03)

**§ 54.47 LOCATIONS.**

(A) *Well head protection areas.* Feedlot and manure management practices may be further regulated within a Well Head Protection Zone established by local units of government.

(B) *Bluff impact zone.* Modifications or expansions to existing feedlots that are located within a bluff impact zone are allowed if they do not further encroach on the bluff impact zone, all zoning regulations are complied with, and all identified pollution hazards are corrected.

(C) *Transition areas.* No new feedlot shall be constructed within any of the Transition Areas identified by the County Comprehensive Land Use Plan without approval of the city.

(D) *Abandoned Wells.* All abandoned wells shall be properly sealed pursuant to Minn. Department of Health Rule, Chapter 4725.

(Ord. 49, passed 7-7-03)

**§ 54.48 ODOR MITIGATION.**

(A) The use of odor modeling to analyze feedlot odors and make recommendations for odor management may be necessary for an expansion or modification pursuant to § 54.46(D)(2), a CUP, or variance request. For the purpose of this section, measuring for an odor rating shall be achieved by using OFFSET -- or another feedlot odor measuring tool recommended by the University of Minnesota and approved by the County Feedlot Administrator.

(B) New liquid manure storage facilities, for swine feedlots over 300 animal units, shall not be constructed unless the facility will be covered, with an approved cover, for the purpose of odor mitigation. The cover shall be in place and maintained from May 1 through November 1.

(C) New barns, including modifications of barns, with shallow or deep pits, must be constructed using approved biofiltration air systems, or approved equivalent (i.e., University of Minnesota approved systems).

(D) Feedlots requiring a liquid manure storage facility, for the purpose of pollution abatement, may be exempt from this section, if so determined by action of the Board of Commissioners.

(Ord. 49, passed 7-7-03)

**MANURE AND LAND APPLICATION REQUIREMENTS**

**§ 54.60 LAND APPLICATION OF MANURE.**

(A) All application of manure shall follow the MPCA Feedlot Rule, Chapter 7020 in addition to the requirements set forth in this chapter.

(B) Buffer requirements.

(1) Streams, wetlands, and drainage ditches.

(a) Protected. If applying manure, or process wastewater, within 300 feet of the ordinary high water of a protected stream, wetland, or drainage ditch, a 25-foot vegetated buffer shall be maintained along the stream, wetland, or drainage ditch.

(b) Unprotected. If applying manure, or process wastewater, within 50 feet of the ordinary high water of an unprotected stream, wetland, or drainage ditch, one rod (16.5 feet) of vegetated buffer shall be maintained along the stream, wetland, or drainage ditch.

(2) Lakes. If applying manure, or process waste water, within 300 feet of the ordinary high water of any lake, a 25-foot vegetated buffer shall be maintained along the lake.

(C) Right-of-Way. Manure shall not be applied to the right-of-way of public roads.

(D) Wells.

(1) If no pollution hazard exists, a minimum distance of 100 feet shall be maintained between manure, or process



wastewater, and any private water supply well.

(2) If no pollution hazard exists, a minimum distance of 300 feet shall be maintained between manure, or process wastewater, and any public water supply well.

(E) Residences. Animal manure, and process wastewater, shall not be applied within 100 feet of a residence unless it is injected or immediately incorporated into the soil. However, permission by the resident may be granted to spread closer. When determining the distance between a residence and manure application, the distance shall be measured from the residence, not property lines, to manure application.

(F) Treatment or disposal. Any manure not utilized as domestic fertilizer shall be treated or disposed of in accordance with applicable state rules.

(G) Irrigation of liquid manure. Irrigation of liquid manure is strictly prohibited in the county.

(Ord. 49, passed 7-7-03)

#### **§ 54.61 MANURE SPREADERS AND OTHER VEHICLES.**

(A) All vehicles used to transport animal manure, or process wastewater, on public roads shall be leak proof. Manure spreaders with end gates shall be in compliance with this provision provided the end gate works effectively to restrict leakage and the manure spreader is leak proof.

(B) All animal manure shall be stored and transported in conformance with MPCA Feedlot Rule (Chapter 7020) and this chapter.

(Ord. 49, passed 7-7-03)

#### **§ 54.62 STEEL MANURE HOLDING TANKS.**

No steel tanks shall be used for underground manure storage.

(Ord. 49, passed 7-7-03)

#### **§ 54.63 COMMERCIAL MANURE PUMPERS AND APPLICATORS.**

(A) All commercial manure pumpers and applicators must be registered with the County Environmental Services Department in order to conduct business within the county.

(B) Registration must include the following:

(1) Written request for registration that includes company name, owner(s) name, address, description of land application procedures/policies used;

(2) Any other information as requested by the County Environmental Services Department;

(3) Registration shall be renewed every four years.

(C) The following conditions shall apply to manure application:

(1) Liquid manure must be injected or incorporated within 24 hours of application;

(2) Pumpers and applicators shall comply with the conditions of this chapter and the feedlot owner's permit.

(Ord. 49, passed 7-7-03)

#### **§ 54.64 ADDITIONAL LAND.**

The feedlot owner and/or operator shall own, or have sufficient additional land under contract to meet the manure utilization requirement for spreading of manure produced at their feedlot. The county may retain copies of all written agreements between the feedlot operators and lessors, or any person who permits land manure application. Each parcel of land subject to agreement shall be limited to one agreement per parcel.

(Ord. 49, passed 7-7-03)

## **CHAPTER 55: PUBLIC HEALTH NUISANCES**

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### Section

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- 55.06 Response to public health nuisance that is not a clandestine lab site
- 55.07 Clandestine drug lab site; law enforcement notice to affected public, public health, and child protection authorities
- 55.08 Notice of chemical investigation site public health nuisance to owner and occupant
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- 55.10 Chemical investigation site; property owner's and occupant's responsibility to act
- 55.11 Property owner's responsibility for costs and opportunity for recovery
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- 55.14 Enforcement
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### § 55.01 PURPOSE AND AUTHORITY.

(A) The purpose of this chapter is to establish standards and authority to protect the public health, safety and general welfare of the people of Carver County pursuant to powers granted under M.S. Chapters 145A, 375. and 152, and other applicable state law, as they may be amended from time to time.

(B) This chapter establishes minimum standards for the health, safety and protection of parties who may be exposed to public health nuisances by:

(1) Establishing responsibility for involved parties to assure that people are not unnecessarily exposed to the dangers of public health nuisances:

(2) Preventing injury and illness to occupants of the property and the public, especially children and vulnerable adults.

(3) Requiring that proper steps are taken to remove public health nuisances: and

(4) Requiring that appropriate tests be done to demonstrate that affected structures and media (air, water, soil) are sufficiently cleaned for human contact if/when appropriate.

(C) The provisions of this chapter shall be interpreted and applied as the minimum requirements necessary to protect public health, safety and welfare.

(Ord. 53-2004, passed 8-2-04; Am. Ord. 76-2013, passed 6-18-2013)

### § 55.02 JURISDICTION.

(A) This chapter applies throughout all of Carver County, but does not preempt ordinances related to clandestine drug labs adopted by a statutory or home rule charter city or a town.

(B) This chapter applies throughout all of Carver County. but does not preempt ordinances related to housing or public nuisance adopted by a statutory or home rule charter city or a town.

(C) This chapter shall be applicable in all incorporated and unincorporated municipalities (city or township) within the boundaries of Carver County under the jurisdiction of the County Board of Health,

(Ord. 53-2004, passed 8-2-04; Am. Ord. 76-2013, passed 6-18-2013)

### § 55.03 DEFINITIONS.

For the purpose of this chapter, the following terms or words shall be interpreted as follows:

**ABATEMENT.** Means the proper removal and/or containment of substances or materials hazardous to humans and/or the environment. **ABATEMENT** is part of remediation.

**BOARD OF HEALTH.** Means the Carver County Board of Commissioners and its designated employees, agents or contractors. Additionally, it shall have the meaning given to it by M.S. § 145A.02, subd. 2.

**CHEMICAL INVESTIGATION SITE.** Means a drug lab site (such as a clandestine drug lab) that is under notice and order for cleanup and/or remediation as a public health nuisance, as authorized by M.S. Chapter 145A and this chapter.

**CHILD.** Means any person less than 18 years of age.

**CLEANUP.** Means the proper removal and/or containment of substances or materials hazardous to humans and/or the environment. **CLEANUP** is part of remediation.

**CLANDESTINE DRUG LAB.** Means any structure or conveyance or outdoor location occupied or affected by the

conditions or chemicals typically associated with the manufacturing of methamphetamine or other unlawful manufacture of a controlled substance.

**CONTROLLED SUBSTANCE.** Means a **CONTROLLED SUBSTANCE** or an immediate precursor as defined in M.S. § 152.01, subd. 4, as amended in the future. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors, or tobacco.

**COUNTY PROTECTION UNIT.** Means the department and/or section of a department assigned the responsibilities for child protection and/or adult protection.

**MEDICAL CONSULTANT.** Means a physician licensed to practice medicine in Minnesota who is working under a written agreement with, employed by, or under contract with the Board of Health.

**OCCUPANT.** Means a natural or legal person who occupies real property, whether with or without any right, title or interest in the property, or who is in possession or charge of such property, in the event the owner resides or is located elsewhere.

**OWNER.** Means any person, firm, partnership or corporation who owns, in whole or in part, real property, a structure and/or fixtures, or is the purchaser of the property under a contract for deed or personal property such as a motor vehicle, trailer, boat or other appliance.

**PERSONAL PROPERTY.** Means all property other than real estate or structures.

**PROFESSIONAL REMEDIATION FIRM.** Means a firm that has provided written assurance to the Board of Health that it has appropriate equipment, procedures and personnel to accomplish remediation, and that it is an experienced HAZMAT contractor.

**PROPERTY.** Means publicly or privately owned real property, including buildings and other structures, motor vehicles as defined in M.S. § 609.487, subd. 2a, public waters and public rights-of-way.

**PROPERTY AGENT.** Means legal or natural person authorized by an owner to act in transacting business matters or in managing real estate.

**PUBLIC HEALTH NUISANCE.** Shall have the meaning given to it by M.S. § 145A.02, subd. 17, and shall include, but not be limited to, any condition that poses an immediate and direct hazard to human health if left unremedied due to the existence of the condition itself, or due to the immediate threat of transmission of disease through insects, animals or other means for the transmission of infection. A clandestine drug lab is a **PUBLIC HEALTH NUISANCE**.

**RECORDER.** Means the Carver County Property Records and Taxpayer Services Division.

**REMEDIATION.** Means methods employed in dealing with public health nuisances and include, but are not limited to, assessment, evaluation, testing, venting, detergent scrubbing, enclosure, encapsulation, demolition, and/or removal of materials.

**STRUCTURE.** Means a dwelling, building, motor vehicle, trailer, boat, or any other area or location, either fixed or temporary.

**VULNERABLE ADULT.** Shall have the meaning given to it by M.S. § 626.5572, subd. 21.

(Ord. 53-2004, passed 8-2-04; Am. Ord. 76-2013, passed 6-18-2013)

#### **§ 55.04 PROHIBITIONS.**

(A) The creation or maintenance of a public health nuisance is prohibited.

(B) The following are hereby expressly declared to be public health nuisances, without limitation by reason of such enumeration:

(1) Failure to keep waste, refuse or garbage in an enclosed building or properly contained in a closed, insect- and rodent-proof container designed or reasonably adapted for such purpose, except for the immediate time preceding pick-up by a licensed solid waste hauler;

(2) Accumulation of carcasses of animals, birds or fish by failing to bury or otherwise dispose of a carcass in a sanitary manner within 24 hours after death. This provision shall not apply if the animals, birds or fish are intended for human consumption;

(3) Accumulation of decayed animal or vegetable matter, animal or human feces, trash, rubbish, garbage, rotting lumber, packing material, scrap metal, tires or any other substances in which flies, mosquitoes, other disease-carrying insects, rodents or other vermin can harbor: this definition does not include compost bins or compost sites that are being managed in accordance with acceptable standards:

(4) Any structure or property that has become dangerous for further occupancy because of sanitary defects, which may include, but are not limited to: accumulation of human or animal feces, evidence of garbage and rotting food, infestation by rodents or insects, environmental conditions that affect children and vulnerable adults, and lack of approved potable water supply or sewage disposal;

(5) Infestations of flies, fleas, cockroaches, lice, ticks, rats, mice, fly larvae and hookworm larvae;

(6) Unnatural breeding grounds that support mosquito larvae and mosquitoes carrying West Nile Virus, LaCrosse encephalitis, or any other disease-causing microorganisms;

(7) Accumulations of animal feces or solid waste remaining in any place so as to become injurious and dangerous to the health and safety of any individual or to the public in general;

(8) Causing or allowing improper sewage disposal facilities to be operated, or causing or allowing the effluent from any cesspool, septic tank, drain field or sewage disposal system to discharge upon the surface of the ground or into any body of water;

(9) Maintaining a hole or opening caused by an improperly abandoned cistern, septic system, unused or non-maintained private swimming pool, foundation, mine shaft or tunnel, including an improperly abandoned, sealed, barricaded or backfilled excavation;

(10) A clandestine drug lab and/or clandestine drug lab site.

(Ord. 76-2013, passed 6-18-2013)

#### **§ 55.05 ADMINISTRATION.**

(A) This chapter shall be administered by the County Department of Public Health, hereinafter referred to as the "Board of Health".

(B) It shall be the duty of the Board of Health to determine whether or not a public health nuisance exists.

(C) In accordance with M.S. § 145A.04, subd. 7, the Board of Health has right of entry for inspection of property where a public health nuisance is reasonably suspected or known.

(1) The owner, occupant or property agent shall, upon the request of the Board of Health and after proper identification, permit access to all parts of the site or structure as often as necessary, and at any reasonable time for the purposes of inspection, remediation and abatement, and shall exhibit and allow copying of any and all records necessary to ascertain compliance with this chapter.

(2) No person shall in any way interfere with or hinder the Board of Health in the performance of its duties, or refuse the Board of Health access to gather information necessary to ascertain compliance with this chapter.

(D) Except where otherwise specified, this chapter is subject to all provisions of Chapters 10, 50, 51, 52 and 54 of this code, and any other applicable county ordinances, as they may be amended from time to time.

(E) Waste generated through cleanup or remediation of a site that is considered a public health nuisance shall be treated, stored, transported and disposed in accordance with applicable Minnesota Department of Health, Minnesota Pollution Control Agency, and county guidelines, rules and regulations for remediation of a clandestine drug lab, for solid waste, and for hazardous household/other hazardous wastes.

(Ord. 76-2013, passed 6-18-2013)

#### **§ 55.06 RESPONSE TO PUBLIC HEALTH NUISANCE THAT IS NOT A CLANDESTINE LAB SITE.**

(A) If the Board of Health determines that a public health nuisance exists, it shall promptly issue a notice and order requiring the owner, occupant or property agent to abate the public health nuisance as provided in M.S. § 145A.04, subd. 8 and this chapter.

(B) The owner and occupant may be ordered to abate such public health nuisance within ten calendar days of receipt of the notice, unless another time is required due to the Board of Health's further determination that the immediate abatement is necessary to preserve the public health and safety. In such case, the time for abatement shall be specified in the order, and the reasons for a shortened abatement period shall be specified.

(C) The Board of Health may leave a posted warning sign at the public health nuisance site. It shall be unlawful for any person to remove this sign.

(D) (1) The notice and order for abatement must be served on the owner, occupant or property agent, if applicable, in one of the following ways:

(a) By registered or certified mail; or

(b) By an officer authorized to serve a warrant; or

(c) By a person aged 18 years or older who is not reasonably believed to be a party to any action arising from the notice.

(2) If the owner of the property is unknown or absent and has no known representative upon whom notice can be served, the Board of Health shall post a written or printed notice on the property or structure, stating that, unless the threat to the public health is abated or removed within a period of ten days, the Board of Health will have the threat abated or removed at the expense of the owner under M.S. § 145A.08, this chapter, or other applicable state or local law.

(E) The Board of Health shall notify and order the owner and occupant to have the public health nuisance removed or

abated as provided in M.S. § 145A.04 and this chapter. The Board of Health shall include the following as part of the notice and order:

- (1) Property location by street address, property identification number, or other property description.
- (2) Information identifying the nature of the public health nuisance at the property.
- (3) A summary of the owner's and occupant's responsibilities under this chapter.
- (4) Specific orders for abatement or remediation of the public health nuisance.

(5) A date for completion of the abatement, not to exceed ten days following the receipt of the notice, unless a shorter time is required due to the Board of Health's further determination that the immediate abatement is necessary to protect public health and safety. In such cases, the reason for a shortened abatement period shall be specified.

(6) Information regarding a right of appeal, as provided in §55.13, and that, unless the threat to public health is abated or removed in accordance with the terms of the notice, the Board of Health will have the public health nuisance abated or removed at the expense of the owner under the provisions of M.S. § 145A.08, this chapter, or other applicable state or local law.

(F) Pursuant to M.S. § 145A.04, subd. 8, if the owner, occupant or property agent fails or neglects to comply with the requirements of the notice and order provided under division (A) of this section, then the Board of Health may abate the public health nuisance. The Board of Health may recover the costs of abatement as provided in § 55.12.

(G) Following the service of a notice of abatement, the Board of Health may send written notice describing the condition of the property and the action required to the following parties:

- (1) Child Protection Division in situations of potential child maltreatment or endangerment;
- (2) Adult Protection Division in situations of potential vulnerable adult maltreatment or endangerment;
- (3) Neighbors in close proximity likely to be affected by the conditions found at the site;
- (4) The local city or township;
- (5) Local law enforcement;
- (6) Other state and local authorities that may have public or environmental protection responsibilities; and/or
- (7) Lien and/or mortgage holders.

(H) If after the expiration of the time provided in the notice and order, the Board of Health is unable to obtain reasonable assurance from the owner, occupant or property agent that the public health nuisance is being abated or remediated, the Board of Health may provide a copy of the public health nuisance notice and order to the County Recorder, who shall file that information with the property record.

(I) Where it is determined that a child neglect, child endangerment or vulnerable adult situation may exist as a result of the public health nuisance, the Board of Health shall notify the County Protection Unit for response to the potential child neglect, child endangerment or vulnerable adult situation.

(J) The notice provided by the Board of Health, as referenced in division (I) of this section, shall include sufficient information to inform the County Protection Unit of the following:

- (1) Property location by street address and other identifiable location;
- (2) Owner's and occupant's identities, including the identities of any children or vulnerable adults found at, or known to be associated with the site;
- (3) Conditions found that make this home or residence a public health nuisance; and
- (4) Any other conditions that may be associated with the site that could present harmful conditions as determined by state law.

(K) The Board of Health may modify conditions of the notice and order, including timelines.

(Ord. 76-2013, passed 6-18-2013)

#### **§ 55.07 CLANDESTINE DRUG LAB SITE; LAW ENFORCEMENT NOTICE TO AFFECTED PUBLIC, PUBLIC HEALTH, AND CHILD PROTECTION AUTHORITIES.**

(A) Law enforcement authorities, who identify and confirm a clandestine drug lab site or clandestine drug lab operation, shall notify the Board of Health and the county department responsible for child protection within one working day of identifying and confirming the lab site, as permitted by M.S. § 13.82. The obligation to promptly notify may be delayed to accomplish appropriate law enforcement objectives, but any decision to delay notification must be in compliance with state law, including but not limited to, M.S. § 626.556. The notice shall include sufficient information to inform the recipients of the following:

- (1) Property or structure location by street address and other identifiable location;

- (2) Property or structure owner's and occupant's identities—especially the identities of any children and women of child-bearing age found or known to be associated with the site;
- (3) Chemicals found, indications of chemical residues, and any related odors and vapors;
- (4) Equipment in a dwelling or structure that is typically associated with the manufacture of a controlled substance; and
- (5) Conditions typically associated with a clandestine drug lab site or operation, including but not limited to, weapons, illicit drugs, filth, fire, or electrical shock and other harmful conditions as determined by state law.

(B) Upon identification of the clandestine drug lab site or operation, law enforcement agencies may treat, store, transport or dispose of all hazardous waste found at the site in a manner consistent with rules and regulations adopted by the Minnesota Department of Health, the Minnesota Pollution Control, the county and all other state, federal and local agencies with jurisdiction over the site or operation.

(C) When a law enforcement agency completes its work under division (B) and is prepared to leave such sites, the agency shall affix a warning sign to a conspicuous part of the site. The warning sign shall be prepared in advance for such situations by the Board of Health. The warning sign shall be of a size and contain information sufficient to alert visitors or returning occupants that the site is a chemical investigation site public health nuisance, may be dangerous to enter, and must not be entered except by authorization of the Board of Health and/or law enforcement agency identified on the sign.

(D) Any person, other than a representative of the Board of Health, who willfully removes the warning sign specified in division (C), is guilty of a misdemeanor pursuant to M.S. § 145A.04, subd. 10.

(Ord. 53-2004, passed 8-2-04; Am. Ord. 76-2013, passed 6-18-2013)

#### **§ 55.08 NOTICE OF CHEMICAL INVESTIGATION SITE PUBLIC HEALTH NUISANCE TO OWNER AND OCCUPANT.**

(A) After the Board of Health receives notice from a law enforcement agency that the agency has identified a clandestine drug lab site and posted the appropriate chemical investigation site public health nuisance warning sign, the Board of Health shall serve the known lawful occupants and owners of the site, pursuant to M.S. § 145A.04, subd. 8(b), with notice of their responsibilities relative to the chemical investigation site public health nuisance.

(B) The notice and order must be served on the owner, occupant or property agent, if applicable, in one of the following ways:

- (1) By registered or certified mail; or
- (2) By an officer authorized to serve a warrant; or
- (3) By a person aged 18 years or older who is not reasonably believed to be a party to any action arising from the notice.

(C) If the owner of the property or structure is unknown or absent and has no known representative upon whom notice can be served, the Board of Health shall post a written or printed notice on the property or structure, stating that, unless the threat to the public health is abated or removed within a period of ten days, the Board of Health will have the threat abated or removed at the expense of the owner under M.S. § 145A.08, this chapter, or other applicable state or local law.

(D) The Board of Health shall notify and order the property owner of record and known occupant or agent to have the public health nuisance removed or abated within ten days, as provided in M.S. § 145A.04 and this chapter. The public health notice and order shall include the following:

- (1) A replica of the chemical investigation site public health nuisance declaration that is posted at the site's entrance(s).
- (2) Information about the potentially hazardous condition of the chemical investigation site.
- (3) A summary of the property owner's and occupant's responsibilities under this chapter.
- (4) Information on locating professional services necessary to remove and abate the chemical investigation site public health nuisance status as provided in this chapter and M.S. § 145A.04.

(E) Subject to any restrictions imposed by M.S. Chapter 13, the Board of Health shall endeavor to provide information in writing about the chemical investigation site public health nuisance declaration and potential hazard(s) to the following additional concerned parties:

- (1) Neighbors within close proximity that can be reasonably affected by the conditions found;
- (2) The local city or township;
- (3) Local law enforcement;
- (4) Other state and local authorities, such as the Minnesota Pollution Control Agency and Minnesota Department of Health, that may have public health or environmental protection responsibilities at the site;
- (5) County Administrator; and
- (6) Lien and/or mortgage holders.

(Ord. 53-2004, passed 8-2-04; Am. Ord. 76-2013, passed 6-18-2013)

**§ 55.09 CHEMICAL INVESTIGATION SITE; NOTICE FILED WITH PROPERTY RECORD AND/OR MOTOR VEHICLE RECORD.**

(A) When 30 days have passed since the owner received the order of abatement specified in §55.09(B), and the Board of Health has not obtained any reasonable assurance or plan from the property owner, occupant or property agent that the structure is being properly vacated, cleaned, remediated and tested, the Board of Health shall provide a copy of the chemical investigation site public health nuisance notice and order to the County Recorder, and to the lien and mortgage holders of the affected structure and/or properties. The County Recorder is authorized to file that information with the property record to notify other persons with interest in the property about the property's chemical investigation site public health nuisance status.

(B) When the affected property is a motor vehicle, boat or trailer, the Board of Health shall notify the appropriate state and local agencies that maintain motor vehicle, boat or trailer records, and the holders of liens or security interests against the vehicle, boat or trailer.

(Ord. 53-2004, passed 8-2-04; Am. Ord. 76-2013, passed 6-18-2013)

**§ 55.10 CHEMICAL INVESTIGATION SITE; PROPERTY OWNER'S AND OCCUPANT'S RESPONSIBILITY TO ACT.**

(A) Property owner(s) and occupant(s) provided with a notice, which also includes the posted warning sign informing them about the chemical investigation site public health nuisance, shall promptly act to vacate occupants from those parts of a structure that are a chemical investigation site public health nuisance. This includes dwellings, buildings, motor vehicles, trailers, boats, appliances or any other affected area or location.

(B) Within ten business days of receiving the public health notice and order to cleanup the chemical investigation site public health nuisance, the property owner(s) and/or occupant(s) shall take the following actions:

(1) Notify Board of Health that the affected parts of the dwellings, buildings, and/or motor vehicles have been and will remain vacated and secured until the Board of Health provides notice that the chemical investigation site public health nuisance no longer exists.

(2) Contract with one or more acceptable environmental hazard testing and cleaning firms (acceptable firms are those that have provided assurance of appropriate equipment, procedures and personnel, as determined by the Board of Health) to accomplish the following:

(a) A detailed on-site assessment of the extent of contamination at the site and the contamination of the personal property therein;

(b) Soil testing of the site and testing of all property and soil in proximity to the site that the environmental hazard testing and cleaning firm determines may have been affected by the conditions found at the site;

(c) A complete cleanup of the site (including but not limited to, the cleanup or removal of contaminated plumbing, ventilation systems, fixtures and soil), or a demolition of the site and a complete cleanup of the demolished site;

(d) A complete cleanup, or disposal at an approved dumpsite, of all personal property in the site;

(e) A complete cleanup of all property and soil in proximity to the site that is found to have been affected by the conditions found at the site, and

(f) Remediation testing and follow-up testing to determine that all health risks are sufficiently reduced, according to Minnesota Department of Health guidelines, to allow safe human occupancy and use of the site, and use of the personal property therein.

(3) Provide the Board of Health with the identity of the testing and cleaning firm the owner, occupant or property agent has contracted with for remediation of the structure(s) as described above.

(4) Provide the Board of Health with the contractor's plan and schedule for remediation that will abate the chemical investigation site public health nuisance declaration.

(5) The property owner, occupant or property agent may request an extension of time to consider options for arranging cleanup or removal of the affected parts of the structure. The owner, occupant or property agent must show good cause for any such extension. Any such extension shall be dependant on the owner's assurance that the affected parts of the structure will not be occupied pending appropriate cleanup or demolition.

(C) The Board of Health and County Recorder is authorized to administer requirements imposed by M.S. § 152.0275, subd. 2. The Board of Health shall maintain a list available to the public, of properties to which notices and orders have been issued pursuant to § 55.08(B). Prior to signing a lease or rental agreement, the owner, occupant or property agent must disclose, in writing, to the renter if, to the knowledge of the owner, occupant or property agent, methamphetamine production has occurred on the property.

(Ord. 53-2004, passed 8-2-04; Am. Ord. 76-2013, passed 6-18-2013)

**§ 55.11 PROPERTY OWNER'S RESPONSIBILITY FOR COSTS AND OPPORTUNITY FOR RECOVERY.**

(A) Consistent with M.S. Chapter 145A, the property owner shall be responsible for:

- (1) Private contractor's fees, cleanup, remediation and testing of public health nuisance conditions; and
- (2) County fees and costs of administering notices and enforcing, vacating, cleanup, remediation and testing of affected parts of the property.

(B) Nothing in this chapter is intended to limit the property owner's, agent's, occupant's or the county's right to recover costs or damages from persons contributing to the public health nuisance, such as the operators of the clandestine drug lab and/or other lawful sources.

(C) The county's administrative and enforcement services, referenced in division (A), include but are not limited to the following:

- (1) Posting warning notices or signs at the site;
- (2) Notification of affected parties;
- (3) Securing the site, providing limited access to the site, and prosecution of unauthorized persons found at the site;
- (4) Expenses related to the recovery of costs, including the assessment process;
- (5) Laboratory fees;
- (6) Cleanup services;
- (7) Administrative fees; and
- (8) Other associated costs.

(Ord. 53-2004, passed 8-2-04; Am. Ord. 76-2013, passed 6-18-2013)

#### **§ 55.12 SPECIAL ASSESSMENT TO RECOVER PUBLIC COSTS.**

(A) The county is authorized under M.S. § 145A.04, subd. 8(c) to proceed, within ten business days of service of a notice for abatement or removal of the public health nuisance, to initiate the assessment and cleanup when:

- (1) The property owner is not located; or
- (2) The Board of Health determines that the owner refuses to, or cannot pay the costs, or arrange timely assessment and cleanup that is acceptable to the Board of Health.

(B) The Board of Health shall be fully authorized to act, consistent with state law, on behalf of the county to direct funds to assure prompt remediation of public health nuisance conditions.

(C) When the estimated cost of testing, cleanup and remediation exceeds 75% of the County Assessor's market value of the structure and land, the Board of Health is authorized to notify the property owner of the county's intent to remove and dispose of the affected real property, instead of proceeding with cleaning and remediation. For motor vehicles, the county will use the most recent version of Kelley Blue Book value or equivalent to determine market value.

(D) The property owner shall be responsible for all costs, including those of the county incurred to abate the public health nuisance, including contractor's fees and public costs for services that were performed in association with a public health nuisance site cleanup. The county's costs may also include, but shall not be limited to, those set forth in § 55.11(C). Fees and costs specified above that are not paid for in any other way may be collected through a special assessment on the property as allowed by M.S. § 145A.08, or by any other applicable federal, state and county laws, ordinances and/or applicable County Board resolution.

(E) The cost of testing, cleanup and remediation shall be certified by the Board of Health. Notice of cost and demand for payment shall be forwarded to the property owner, by certified mail, to the property owner's last known address as shown on property tax records. If payment in full is not made within 30 days of mailing of notice, the Board of Health may request that all costs be assessed against the property.

(F) Payment on the special assessment shall be collected at the time real estate taxes are due.

(G) The county may also seek recovery of costs through other methods allowed by federal or state law.

(Ord. 53-2004, passed 8-2-04; Am. Ord. 76-2013, passed 6-18-2013)

#### **§ 55.13 MODIFICATIONS AND APPEALS.**

(A) The Board of Health may modify conditions of the declaration and order removal of the declaration of a public health nuisance.

(B) Such modification or removal shall be only after the Board of Health has determined the level of public health nuisance is sufficiently reduced through remediation to warrant modification or removal of the declaration. The Board of Health may rely on information from competent sources, including those supplied by the owner, occupant, property agent and/or others, such as state and local health, safety and pollution control authorities, to reach such decisions.



(C) When the declaration is modified, rescinded or removed, the Board of Health shall forward that information to the County Recorder for addition to the property record if the Recorder has been notified as described in §§ 55.06(H) and 55.09(A).

(D) When a public health nuisance is declared, an owner and/or an occupant of the affected property may appeal the declaration, including an order for abatement or remediation from the Board of Health, by filing a written request with the Board of Health for an administrative hearing within ten calendar days of the date of service, exclusive of the day of service. In the event of an unknown or absent property owner, the appeal must be requested within ten calendar days from the day of posting of the notice under § 55.06(D).

(E) If any owner, occupant or property agent makes a written request to the Board of Health for an administrative hearing, such hearing shall be held before an administrative law judge.

(F) The hearing shall be held no later than 20 calendar days after the request for a hearing was received by the Board of Health. For good cause shown, the hearing officer may continue the date of the hearing for up to another 20 calendar days.

(G) The Board of Health shall mail a notice of the time and place of the hearing at least seven calendar days prior to the hearing.

(H) All parties shall have full opportunity to respond to and present evidence and witnesses.

(I) The appellant shall have the burden of proving its position by clear and convincing evidence.

(J) Hearings shall be informal. The parties shall have the opportunity to present testimony and question any witnesses, but strict rules of evidence shall not apply. The independent hearing officer shall make an audio recording of the hearing and receive testimony and exhibits, and the full record of the hearing shall be maintained. The independent hearing officer shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their serious affairs. Irrelevant, immaterial and repetitious evidence shall be excluded. In the case of an administrative law judge, the hearing will be conducted in accordance with the hearing procedures of the Office of Administrative Hearings. Failure to attend the hearing as scheduled shall be deemed an admission of the facts set forth in the notice and order for abatement.

(K) The decision of the administrative law judge shall be issued within ten calendar days following the administrative hearing. Unless otherwise provided by law, the decision of the administrative law judge shall constitute the final decision of the Board of Health.

(L) *Further appellate rights.* Any party aggrieved by a final decision is entitled to judicial review of the decision. A petition for a writ of certiorari by the party must be filed with the Court of Appeals not more than 30 calendar days after the party receives the final decision from the administrative law judge.

(M) *Cost share for appeal.* Fees and expenses for the administrative law judge as part of the administrative hearing shall be borne equally by the Board of Health and the owner, occupant or property agent. In the event that the hearing results in a decision in the appellant's favor, the Board of Health will be responsible for the full expense.

(Ord. 53-2004, passed 8-2-04; Am. Ord. 76-2013, passed 6-18-2013)

#### **§ 55.14 ENFORCEMENT.**

(A) Any person who violates any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided by law. A separate offense shall be deemed committed upon each day that a violation occurs or continues.

(B) In the event of a violation or a threat of violation of this chapter, the County Attorney may take appropriate action to enforce this chapter, including application for injunctive relief, action to compel performance, or any other appropriate action in court to prevent, restrain, correct or abate such violation or threatened violation.

(Ord. 76-2013, passed 6-18-2013)

#### **§ 55.15 FEES.**

Fees for the Board of Health complaint investigation, verification, administration and enforcement of violations of this chapter shall be those established by resolution, as amended from time to time, by the County Board of Commissioners.

(Ord. 76-2013, passed 6-18-2013)

## **CHAPTER 56: SUBSURFACE SEWAGE TREATMENT SYSTEM AND WATER WELL LOAN PROGRAM**

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### Section

56.01 Purpose

56.02 Authority

- 56.03 Definitions
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- 56.05 Application and certification procedures
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#### **§ 56.01 PURPOSE.**

This chapter is adopted to provide for the creation of a public loan program that assists private property owners in the financing of site evaluation, installation, repair, or replacement of subsurface sewage treatment systems and in the financing of the sealing and replacement of wells on private property. Such a loan program promotes the public health and welfare by preventing, reducing, and eliminating water pollution from subsurface sewage treatment systems or providing clean and safe drinking water supplies that meet the priority criteria established in the Administrative Plan.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 89-2018, passed 12-18-18)

#### **§ 56.02 AUTHORITY.**

Carver County may establish a subsurface sewer treatment system and well loan program pursuant to the authority granted under M.S. Chapter 103I, M.S. Chapter 115, and Minn. Rules Chapters 7080 through 7083, and as amended that may pertain to sewage and wastewater treatment and enforcement standards for subsurface sewage treatment systems and wells, and provide other financing in accordance with M.S. § 17.117.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 89-2018, passed 12-18-18)

#### **§ 56.03 DEFINITIONS.**

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

**BORROWER.** Individual or multiple landowners applying for a low-interest loan.

**IMPROVEMENT.** A site evaluation, design, installation, repair, or replacement of a subsurface sewage treatment system or well or sealing of an abandoned well, appropriate modifications and connections to existing facilities and components to make the improvement functional, and restoration of the site or structure consistent with the existing conditions before the project was commenced.

**LOCAL LENDER.** A state or federally chartered bank, a savings and loan association, a state or federal credit union, a non-profit economic development organization approved by the Commissioner, a farm credit systems institution, any participating lender under contract with the Agricultural Best Management Practices Loan Program, or the applicant when designating itself as the **LOCAL LENDER**.

**PROJECT.** All required components, approved by the County CDA or other designated department or agency, to make the improvement fully functional.

**PROPERTY OWNER.** The owner or owners as recorded on the tax roll of the county where the real property on which the SSTS or well that is installed, repaired or replaced is located.

**SUBSURFACE SEWAGE TREATMENT SYSTEM or SSTS.** A sewage treatment system or parts thereof, using soil treatment and disposal to treat 5,000 gallons or less of waste water per day (M.S. § 116.18, subd. 3c) or uses an alternative discharging system treating 10,000 gallons per day using treatment methods and disposal other than subsurface soil treatment and disposal (M.S. Chapter 103I).

**WELL.** A well as defined in M.S. § 103I.005, subd. 21, and all other eligible water supplies under M.S. § 17.117.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 89-2018, passed 12-18-18)

#### **§ 56.04 ADMINISTRATION.**

(A) Borrowers may use any participating local lender. The Carver County Board of Commissioners may designate by resolution a county department or agency to serve as local lender for purposes of the grant program.

(B) The Carver County Board of Commissioners may designate by resolution a loan administrator to administer the loan program to determine the eligibility of property owners, and to approve eligibility of project expenses and distribution of loan funds to eligible borrowers.

(C) All repairs and improvements made to SSTS or wells under this chapter shall be performed by a licensed

professional and shall comply with the agency rules adopted pursuant to M.S. § 115.55, subd. 3 and Minn. Rules Chapters 7080 through 7083, and other applicable requirements.

(D) Loan funds shall be disbursed to eligible property owners according to priority criteria adopted by the County Board. In considering loan requests, the loan administrator shall consider criteria including, but not limited to, the age and depth of the SSTS or well, the proximity of the SSTS or well to contaminant sources, the pollution potential, and the risks to public health and safety.

(E) Access to the fund is voluntary. Loans issued by the county when acting as the local lender shall result in a lien on the benefiting property according to the terms set forth in the Administrative Plan. The Administrative Plan may be amended by the Carver County Board.

(F) The property owner has the right to prepay loans and assessments.

(G) Projects shall only be funded to the extent of funds available in the loan fund.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 89-2018, passed 12-18-18)

#### **§ 56.05 APPLICATION AND CERTIFICATION PROCEDURES.**

(A) Property owners shall contact the Carver County Community Development Agency (CDA) or Carver County Environmental Services to receive an application form. The property owner shall complete the application, and submit it to the Carver County CDA or other designated department or agency.

(B) CDA or other designated department or agency shall review applications, contact applicants for additional information if needed and forward applications to the loan program administrator for determination of eligibility.

(C) Property owners shall have a site evaluation, system design and construction bid completed by a licensed SSTS professional, licensed well driller, or other qualified service provider, and provide this information to the loan administrator along with any related information requested by the loan administrator. The loan administrator shall review the information provided and notify the property owner of eligibility for grant and loan funds and project approval or disapproval. The loan administrator may request additional information or construction bids for the project.

(D) Work on projects shall begin promptly after the property owner receives approval by the loan program administrator. All repairs and improvements made to SSTS or wells under this chapter shall be performed by a licensed professional and shall comply with the agency rules adopted pursuant to M.S. § 115.55, subd. 3, Minn. Rules Chapters 7080 through 7083, Chapter 52 of this code, and other applicable requirements. The project must be completed within one year of project approval, unless otherwise stated or extended in writing by the loan administrator.

(E) Carver County shall inspect the site to observe installation and conditions at the time of inspections. Inspections related to the installation of any wells will be conducted by the Minnesota Department of Health. Copies of the certification shall be promptly forwarded to the loan program administrator.

(F) Upon receiving documentation of incurred costs for eligible project components or certification of completion, the local lender shall distribute the funds to the licensed contractor or other appropriate recipient in accordance with the local lender.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 89-2018, passed 12-18-18)

#### **§ 56.06 ELIGIBILITY.**

(A) *Eligible activities.*

(1) Repair or replacement of an existing subsurface sewage treatment system (SSTS) that does not conform with provisions of Minn. Rules Chapters 7080 through 7083 and/or Chapter 52 of this code.

(2) Relocation of SSTS out of environmentally sensitive areas.

(3) Replacement of SSTS that are failing or non-conforming with an expanded SSTS.

(4) Installation of new SSTS in compliance with Minn. Rules Chapters 7080 through 7083 and/or Chapter 52 of this code, and all other applicable requirements at the time of installation.

(5) Replacement of SSTS up to 30 days prior to loan application submittal and in full compliance with this chapter.

(6) Abandonment of an existing SSTS.

(7) New connections or repairing old connections to collection systems or municipal waste treatment systems, including connection fees, but excluding components owned by a municipality.

(8) Expansion or upgrading of a conforming SSTS due to construction of additional living quarters, new construction, or new or expanded use.

(9) Well projects:

(a) Sealing abandoned wells or wells that do not conform to M.S. § 103I.005, subd. 21, § 103I.301, subd. 1.

(b) Replacement or relocation of wells that do not conform to M.S. § 103I.005, subd. 21, § 103I.301, subd. 1.

(c) Replacement, relocation, or treatment of wells that do not conform to U.S. EPA primary or secondary drinking water standards.

(B) *Ineligible activities.*

(1) Costs that were incurred after the termination date of the loan agreement with the applicant.

(2) Well projects:

(a) Installation of new wells for new construction.

(b) Installation of new wells for increased yield or flow rate.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 89-2018, passed 12-18-18)

#### **§ 56.07 LOAN FINANCING TERMS.**

(A) *Interest rate.* Loans shall be made based on an interest rate to be established by the County Board of Commissioners.

(B) *Term.* Loans shall be made based on a term to be established by the County Board of Commissioners in the Administrative Plan.

(C) *Fees.*

(1) *Origination fee.* An origination fee established by the County Board of Commissioners and set forth in the fee-for-service schedule, shall be charged for administration costs related to the implementation and management of the loan program.

(2) *Pre-application fee.* The Carver County CDA may charge a pre-application certification fee in an amount established by the County Board of Commissioners.

(D) *Loan amount.* The maximum loan amount shall not exceed the total incurred cost for eligible components of the project as set by the County Board of Commissioners, and limits of M.S. § 17.117.

(E) *Repayment.* Repayments must be paid to the local lender issuing the loan. Repayment of loans issued by the county when acting as a local lender shall be made as a special assessment collected with the property tax payable for the property.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 64-2008, passed 4-8-08; Am. Ord. 89-2018, passed 12-18-18)

#### **§ 56.08 APPEALS.**

The borrower may appeal a decision of the local lender in accordance with established procedures and regulations applicable to the respective local lender. Borrowers applying for a loan from the county when acting as a local lender shall have the following appeal process.

(A) *Right to appeal.* An applicant may appeal a decision by the loan administrator to deny or modify a SSTS loan application. Such appeal must be made within 30 days of the notice of denial or modification.

(B) *Hearing.* An appeal from any order, requirement, decision, or determination from the loan administrator shall be heard by the Board of Adjustment within 30 days from the date of filing the appeal. The Board of Adjustment shall give due notice thereof to the appellant and officer, from whom the appeal is taken, and decide the same within 30 days of the hearing date.

(C) *Stay of action.* An appeal stays all proceeding and furtherance of the action appealed from unless the Board of Adjustment certifies that by reason of the facts stated in the certificate the stay would cause imminent peril to life or property.

(D) *Action to Board of Adjustment.* The Board of Adjustment may reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination appealed from and to that end shall have all of the powers of the officer from whom the appeal was taken and may direct issuance of the loan. The reasons for the Board of Adjustment's decision shall be stated in writing.

(E) *Fee.* Any applicant requesting a hearing with the Board of Adjustment shall pay a non-refundable fee to assist in covering the costs of the Board of Adjustment hearing.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 89-2018, passed 12-18-18)

#### **§ 56.09 SEPARABILITY.**

(A) If any part of this chapter shall be held invalid by a court of competent jurisdiction, it shall not invalidate any other section, provision, or part thereof.

(B) Amendments to M.S. § 17.117 enacted subsequent to the adoption of this chapter shall take precedence over any conflicting provision of this chapter.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 89-2018, passed 12-18-18)

## § 56.10 EFFECTIVE DATE AND DISSOLUTION.

This chapter shall be in full force and effect from and after January 1, 2019 according to law. Carver County may dissolve the subsurface sewer treatment system and well loan program by passing an ordinance complying with the provisions of M.S. § 115.57.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 89-2018, passed 12-18-18)

## TITLE VII: TRAFFIC CODE

[Reserved]

## TITLE IX: GENERAL REGULATIONS

Chapter

- 90. ALARM SYSTEMS
- 91. PARKS AND RECREATION
- 92. DANGEROUS AND POTENTIALLY DANGEROUS DOGS
- 93. PUBLIC RIGHT-OF-WAY MANAGEMENT

### CHAPTER 90: ALARM SYSTEMS

Section

- 90.01 Title
- 90.02 Purpose and scope
- 90.03 Definitions
- 90.04 Compliance
- 90.05 User fees; exemptions
- 90.06 Enforcement
  
- 90.99 Penalty

#### § 90.01 TITLE.

This chapter shall be known, cited and referred to as the "Alarm Systems Chapter," except as herein referred to as "this chapter."

(Ord. 44-89, passed -22-82)

#### § 90.02 PURPOSE AND SCOPE.

The purpose of this chapter is to protect the public safety services which serve the county from misuse and to provide for the maximum possible service to alarm users. This chapter provides regulation for the use of burglary, robbery, fire and medical alarms and establishes a system of administration and an alarms user's fee.

(Ord. 44-89, passed -22-82)

#### § 90.03 DEFINITIONS.

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

**ALARM SYSTEM.** Any equipment or device which emits an audible, visual or electronic signal upon the detection of a potential burglary, robbery, fire, medical emergency, trespass or property, intrusion. The term **ALARM SYSTEM** does not include anti-theft or tampering alarms installed in any motor vehicle.

**ALARM USER.** Any person in control of any building structure, facility or tract of land wherein or whereon an alarm system is used or maintained within the county.

**FALSE ALARMS.** An alarm signal eliciting a response by public safety personnel when a situation requiring a response

does not exist, and which is caused by the activation of the alarm system through mechanical failure, alarm malfunction improper installation or the inadvertence of the owner or lessee of the alarm system or of his or her employees or agents. **FALSE ALARMS** do not include alarms caused by climatic conditions such as tornadoes, thunderstorms, utility line mishaps, violent conditions of nature or any other conditions which are clearly beyond the control of the alarm manufacturer, installer or alarm user.

**PERSON.** Any human being, corporation, partnership, firm, association or other organization, any receiver, trustee, association, agent or other legal representative of any of the foregoing or any other legal entity.

**PUBLIC SAFETY ANSWERING POINT.** The central facility used to receive emergency results for public safety services and general information from the public to be dispatched to public safety personnel.

**PUBLIC SAFETY PERSONNEL.** All personnel employed by any law enforcement agency and any firefighting personnel and any ambulance personnel.

**SHERIFF.** The County Sheriff or his or her designee.

(Ord. 44-89, passed -22-82)

#### **§ 90.04 COMPLIANCE.**

(A) No person shall locate, install construct, alter, repair, use or maintain any alarm system within the county, except in full compliance with this chapter and the standards adopted herein.

(B) All audible alarms shall meet the following requirements:

(1) Every person maintaining an alarm system with an audible alarm signal shall post a notice containing the name and telephone number of a person to be notified to render repairs or service to the alarm system during any hour of the day or night upon activation of the alarm system. The notice shall be posted at the main entrance to the premises or near the alarm in a position as to be legible from the ground level adjacent to the building.

(2) Alarm systems with audible alarm signals that sound like police or fire sirens are prohibited.

(3) All alarm systems with audible alarm signal, except for fire alarms, shall have an automatic which will silence the audible alarm signal within a period not to exceed 15 minutes.

(C) (1) All persons using or maintaining any alarm system within the county shall register the alarm system with the Sheriff, utilizing registration forms to be furnished by the Sheriff, no later than the later of the following dates:

(a) The sixtieth day after the effective date of this chapter; or

(b) The thirtieth day after the installation of the alarm system.

(2) Any alteration or modification of previously registered alarm system shall be registered with the Sheriff, utilizing registration forms to be furnished by the Sheriff, within 30 days of the commencement of the alteration or modification.

(D) Financial institutions having an alarm system with a robbery signal feature shall have an on- premises annunciator panel providing specific annunciation of the sensors at a private monitoring location on the premises. When, in the judgment of the Sheriff, no on-premises monitoring location is feasible, the requirements of this section may be waived by the Sheriff. All alarm systems installed in financial institutions after the effective date of this chapter shall have annunciator panels when installed. All alarm systems currently used by financial institutions shall have the annunciator panels installed within one year from the effective date of this chapter.

(E) Alarm systems that have more than one alarm signal function must report specifically which of the functions has been violated, when reporting to the Public Safety Answering Point for the purpose of dispatching public safety personnel to the site of the alarm system.

(F) No alarm system shall connect directly to the Public Safety Answering Point, except financial institutions and/or public buildings. All other alarms must report to the Public Safety Answering Point in some other manner. No automatic telephone dialing device shall be allowed to dial direct or be programmed so that it dials directly into the Public Safety Answering Point.

(Ord. 44-89, passed -22-82) Penalty, see § 90.99

#### **§ 90.05 USER FEES; EXEMPTIONS.**

(A) An alarm user fee is hereby imposed upon any alarm user from whose alarm system emanates more than 3 false alarms within any 12 consecutive month period. The fees payable under this section shall be set from time to time by Board ordinance.

(B) (1) All federal, state, county and/or municipal buildings and all public schools shall be exempt from the alarm user's fee.

(2) All newly installed alarm systems are hereby granted a 30-day probationary period, commencing on the date of first operational use thereof, during which period false alarms will not be counted for the purpose of computing the amount of any alarm user fee imposed by this chapter.

(3) All alarm systems which are altered by the addition to any new alarm feature are hereby granted a 15-day

probationary period, commencing on the date of first operational use of the new feature, during which period false alarms will not be counted for the purpose of computing the amount of any alarm user fee imposed by this chapter.

(C) Subsequent to any false alarm, the Sheriff shall notify the affected alarm user in writing of the date of the false alarm, the apparent reason therefor and the alarm user fee imposed pursuant to this chapter. It shall be the duty of each alarm user to pay all alarm user fees imposed by this chapter to the Sheriff within 30 days of the date of mailing of the Sheriff's fee statement specifying the amount of the alarm user fees. For the purpose of mailing the Sheriff's fee statement under this section, the statement shall be mailed to the affected alarm user at his, her or its address shown on the registration form required by § 90.04(C).

(D) One-half of all alarm user fees collected by the Sheriff shall be remitted to the county to defray its administrative and prosecution costs incurred in connection with the enforcement of this chapter. The other half of the alarm user fees shall be retained by the Sheriff to defray his or her administrative costs incurred in enforcing this chapter.

(Ord. 44-89, passed -22-82)

#### **§ 90.06 ENFORCEMENT.**

(A) If in the judgment of public safety personnel at the scene of an alarm, it is determined that the alarm user should appear at the location of any alarm for the purpose of admitting public safety personnel to the subject premises to investigate any alarm system signal, for the purposes of deactivating any alarm system signal or for the purpose of identifying third parties found on the subject premises during the investigation of any alarm system signal, the alarm user shall appear immediately if so requested by the Sheriff.

(B) If an alarm user has had more than 3 false alarms in a 12-month period, the alarm user, upon the written request of the Sheriff, shall be required to submit in written form a description of any steps being taken to remedy any problems with false alarms emanating from the alarm user's location.

(C) The Sheriff shall promulgate the rules and regulations as necessary for the implementation and/or administration of this chapter.

(Ord. 44-89, passed -22-82)

#### **§ 90.99 PENALTY.**

(A) Any person who fails to comply with the provisions of this chapter, is guilty of a misdemeanor, in addition to being subject to the alarm users fees imposed by this chapter. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

(B) In the event of a violation or a threat of violation of this chapter, the county may institute appropriate action or proceeding, including requesting injunctive relief to prevent restrain, correct or abate the violation or threatened violation.

(C) If a person fails to comply with the provisions of this chapter, the county may recover costs, damages or alarm user fees in a civil action in any court of competent jurisdiction.

(D) In addition to the remedies specified in divisions (A) and (B) above, but in lieu of the remedy specified in division (C) above, the county may certify any unpaid alarm user fees to the County Auditor or County Finance Director as a governmental services lien for collection with the real property taxes imposed on the real property upon which the alarm system is or was located.

(Ord. 44-89, passed -22-82)

## **CHAPTER 91: PARKS AND RECREATION**

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### Section

- 91.01 Purpose
- 91.02 Authority
- 91.03 Definitions
- 91.04 Public use regulations
- 91.05 Conduct; personal behavior
- 91.06 Operation requirements
- 91.07 Protection of property, structures and resources
- 91.08 Recreation activities
- 91.09 Traffic regulations

91.10 Enforcement

91.99 Penalty

**Cross-reference:**

*Park Commission, see § 30.01*

**§ 91.01 PURPOSE.**

The purpose of this chapter, which is enacted pursuant to M.S. Chapter 398, as it may be amended from time to time, is to secure the quiet, orderly and suitable use and enjoyment of public park properties by the Board of Commissioners.

(Ord. 30, passed 4-14-87; Am. Ord. 72-2011, passed 1-17-12; Am. Ord. 86-2018, passed 8-21-18)

**§ 91.02 AUTHORITY.**

The Board of Commissioners, under M.S. §§ 398.31 to 398.36, as it may be amended from time to time, in performing its primary duty of the acquisition, development, and maintenance of parks, wildlife sanctuaries, forest, and other reservations, and providing the means for public access to historic sites, lakes, rivers, streams, and other natural phenomena is granted full power and authority to acquire and establish parks and to operate, maintain, protect, and improve a park system and conduct a recreational program. As an aid to the accomplishment of these duties, the Board is granted the authority to enact ordinances and to declare that the violation thereof shall be a penal offense.

(Ord. 30, passed 4-14-87; Am. Ord. 72-2011, passed 1-17-12; Am. Ord. 86-2018, passed 8-21-18)

**§ 91.03 DEFINITIONS.**

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

**AMUSEMENT CONTRAPTIONS.** Any device, contrivance, gadget, machine, or structure designed to test the skill or strength of the user or to provide the user with any sort of ride, lift, swing, or fall experience including, but not limited to, ball throwing contest devices, pinball type devices, electronic videos, animal ride devices, dunk tanks, ball and hammer devices, trampoline devices, and the like.

**AREA** or **AREAS.** A specified place within a **PARK**.

**ASSISTED MOBILITY DEVICE.** Any permitted single passenger, electric powered device, which provides access for a **PERSON(S)** in need of assistance due to a medical condition.

**BEACH.** The part of a body of water and shore designated for swimming.

**BICYCLE.** Any non-motorized **VEHICLE** which is driven by means of pedaling. Such **VEHICLES** include, but are not limited to, road bicycles, mountain bicycles, recumbent bicycles, tricycles, and mopeds with the motor off.

**BOARD.** The appointed and elected members of the Board of Commissioners.

**CONTROLLED SUBSTANCE.** Any drug substance or immediate precursor in M.S. § 152.02, as it may be amended from time to time.

**CREATIVE PLAY AREA.** An outdoor area set aside for recreation and play, especially one containing equipment such as slides and swings.

**DISK GOLF.** A game played much like traditional golf. Instead of using a ball and clubs, players use a flying disc or frisbee from a tee area to an elevated target basket which is the "hole."

**GEOCACHING.** An outdoor recreational activity that involves the use of a global positioning system (GPS) receiver to find an object or geocache placed at a pre-determined location. The internet is often used to provide the direction and coordinates of the geocache.

**HIKING.** Traveling on foot, specifically, walking, running, or with an **ASSISTIVE MOBILITY DEVICE**.

**HORSE.** A horse, mule, donkey, llama, alpaca, or other ungulate or ruminant that is used to transport people, equipment, or materials.

**MALT LIQUOR.** Any beer, ale, or other beverage made from malt by fermentation and containing not less than .5% alcohol by volume.

**METAL DETECTING.** To use an electronic or mechanical device to locate metals or other artifacts that are underground or under water.

**MOTORIZED RECREATION VEHICLE.** Any self-propelled, off the road or all-terrain **VEHICLE** including, but not limited to, snowmobile, mini-bike, amphibious **VEHICLE**, motorcycle, go-cart, trail bike, dune buggy, or all terrain cycle.

**NATURAL RESOURCES.** All flora and fauna within the parks and the physical factors upon which they depend, including



air, water, soil, and minerals.

**PARK.** Any land, water area, or trail corridor, and all facilities thereon, under the jurisdiction, control, or ownership of the county for the recreational enjoyment of the public.

**PARKS AND RECREATION DIRECTOR.** The person selected by the **BOARD** to serve as the Chief Administrative Officer of the **PARKS DEPARTMENT**.

**PARKS DEPARTMENT.** An operating unit of the Public Works Division responsible for the planning, development, operation, and maintenance of county parks.

**PERSON** or **PERSONS.** Individuals, firms, corporations, societies, or any group or gathering whatsoever.

**PET.** Any animal that is tamed and domesticated and kept as a companion.

**POLLUTANT.** Any substance, solid, liquid, or gas, which could cause contamination of air, land, or water, so as to create or cause a nuisance or render unclean or noxious or impure so as to be actually or potentially harmful or detrimental or injurious to public health, safety, or welfare, or that of wildlife or vegetation.

**PROPERTY.** Any land, waters, facilities, or possessions of the county.

**RESOLUTION.** Official control promulgated by the **BOARD** establishing additional rules and regulations relative to this chapter, and as on file in the County Auditor's Office.

**RESPONSIBLE PERSON.** The parent, guardian, or **PERSON** having lawful custody and control of a minor.

**ROLLER SKATER.** Any **PERSON** riding or propelling oneself by human power or gravity on wheeled devices that are worn on a **PERSON'S** feet or stood upon by a **PERSON**. Such devices specifically include, but are not limited to, roller skates, in-line skates, roller skis, skateboards, and scooters.

**SMOKE/SMOKING.** The inhaling or exhaling **SMOKE** from any lighted cigar, cigarette, pipe, or any other lighted tobacco or plant product. **SMOKING** includes the inhalation of nicotine, tobacco, or any other substance intended for human consumption to stimulate **SMOKING** through inhalation of a vapor or aerosol from an electronic delivery device manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor. **SMOKING** also includes carrying a lighted cigar, cigarette, pipe, or any other lighted tobacco or plant product intended for inhalation.

**USE PERMIT.** The written permission that must be obtained from the Parks Division to carry out a given activity.

**VEHICLE.** Every device in, upon, or by which any **PERSON** or **PROPERTY** is or may be transported or drawn upon a roadway, except devices moved by human power or used exclusively upon stationary rails or tracks.

**WATERCRAFT.** Any contrivance used or designated for navigation on water other than seaplanes.

**WEAPON.** Any device, including, but not limited to, firearms, bows, electronic weapons, slings, and pellet or BB, guns from which a shot or projectile of any type is discharged or propelled by means of an explosive, gas, compressed air, or other means. An **ELECTRONIC WEAPON** means a portable device which is designed, used, or intended to be used, offensively or defensively, to immobilize or incapacitate persons by the use of an electronic current.

**WILDLIFE.** Any living creature, not human, wild by nature, endowed with sensation, power of voluntary motion, including, but not limited to, mammals, birds, fish, amphibians, reptiles, crustaceans, and mollusks.

**WINE.** A vinous beverage containing no more than 14% alcohol by volume.

(Ord. 30, passed 4-14-87; Am. Ord. 72-2011, passed 1-17-12; Am. Ord. 82-2015, passed 1-5-16; Am. Ord. 86-2018, passed 8-21-18)

## **§ 91.04 PUBLIC USE REGULATIONS.**

### **(A) Hours of operation.**

(1) Parks shall be open to the public daily at hours established by the Board. It shall be unlawful for any person to enter or remain in a park at any other time without a use permit, except when the park area or facility is otherwise designated open to the public by the Board.

(2) Either the Board, the Parks and Recreation Director or his or her designee, is authorized to close any park or portion thereof at any time for the protection of park property or for the public health, safety, or welfare.

### **(B) Use permits.**

(1) Use permits shall be required for the exclusive or special use of all or portions of park areas, buildings, or trails; for use of park areas and facilities when they are closed to the public; to conduct certain activities not normally permitted as per conditions of this chapter; for regulation of large group activities, as defined herein; or to reduce or eliminate certain user fees for groups, as defined herein.

(2) Procedures to issue use permits shall be in accordance with guidelines established by Board resolution.

(3) Use permits shall be approved by the Director or his or her authorized designee, or if required by this chapter, by

the Board. However, the Director reserves the right to defer any use permit approval to the Board.

(4) It shall be unlawful for a person or persons to violate any provisions of an approved use permit.

(5) It shall be unlawful for a person or persons to engage in any activity requiring a use permit without first obtaining the permit.

(C) *User and special use fees/modifications.*

(1) User fees for entrance into parks and special use fees for various park uses shall be set by Board resolution.

(2) It shall be unlawful for any person to use, without payment, any facility or area for which a user fee or special use fee is charged, unless payment is reduced or waived by use permit.

(3) Upon group request for reduction or elimination of fees, the issuing authority shall evaluate the request including, but not limited to, the following factors:

- (a) Charitable nonprofit;
- (b) Property or income tax supported; and
- (c) Educational or religious.

(4) Use permits to reduce or eliminate fees shall be approved by the Board, the Director or his or her authorized designee. The Director reserves the right to defer any fee modification request to the Board.

(D) *Use by groups.* Use permits shall be required for any entertainment, tournament, exhibition, or any other special use which can reasonably be expected to have 20 or more persons involved or potentially have a detrimental effect on park property or other park users.

(E) *Vehicle permits.* It shall be unlawful for any person to bring a motor vehicle into a park (where a vehicle permit is required) without appropriately displaying an approved annual, daily, or temporary vehicle permit, attached with its own adhesive, hung from a rear view mirror or otherwise displayed as directed, unless exempted by a use permit.

(Ord. 30, passed 4-14-87; Am. Ord. 65-2009, passed 8-4-09; Am. Ord. 72-2011, passed 1-17-12; Am. Ord. 86-2018, passed 8-21-18) Penalty, see § 91.99

#### **§ 91.05 CONDUCT; PERSONAL BEHAVIOR.**

(A) *Drug and alcohol use.* It shall be unlawful for any person to:

- (1) Use, possess, or sell any controlled substance in violation of state statutes; and/or
- (2) Serve, possess, or consume any alcoholic beverage, except malt liquor and wine, within a park, except at areas designated by either the Board, or by use permit approved by the Board; and/or
- (3) Serve, possess, consume, or bring beer or wine into a park in kegs, barrels, or other bulk tap quantities.

(B) *Gambling.* It shall be unlawful for any person to gamble or participate in any game of chance for a consideration of items of value, except charitable gambling as approved by either the Board or by use permit approved by the Board.

(C) *Disorderly conduct.* It shall be unlawful for any person to engage in disorderly conduct as defined in M.S. § 609.72, subd. 1, as it may be amended from time to time.

(D) *Property of others.* It shall be unlawful for any person to:

- (1) Intentionally disturb, harass, or interfere with a park visitor's property; and/or
- (2) Leave or store personal property on park property without prior authorization from either the Board, the Director his or her designee, or by use permit.

(E) *Littering.* It shall be unlawful for any person to deposit, scatter, drop, or abandon bottles, cans, broken glass, hot coals, ashes, sewage, waste, or other materials in a park, except in receptacles provided for those purposes.

(F) *Firearms; dangerous weapons; fireworks.* It shall be unlawful for any person to:

(1) Have in their possession within a park, fire or discharge, or cause to be fired or discharged across, in, or into any portion of a park, any gun or firearm, spear, bow and arrow, crossbow, sling shot, air or gas weapon, paintball gun, or any other dangerous weapon or projectile, except for purposes designated by either the Board, the Director or his or her designee, or by use permit approved by the Board, in areas and at times designated by the Director; and/or persons who possess a valid Minnesota permit, or a valid permit from another state which is recognized in Minnesota, may carry, hold, keep, store, or possess a pistol within the park lands, facilities, and buildings to the extent permitted by state law. Employees or volunteers when acting in the course and scope of their employment or duties are prohibited from carrying, holding, keeping, storing, or possessing a pistol within park lands, facilities, and buildings. Licensed peace officers are exempt from the provisions of this division.

(2) Set off or attempt to set off or ignite any firecracker, fireworks, smoke bombs, rockets, black powder guns, or other pyrotechnics without authorization from either the Board or by use permit approved by the Board.

(G) *Smoking and tobacco use.* It shall be unlawful for any person to:

- (1) Smoke or use any tobacco product in or within 25 feet of any indoor area; or
- (2) Smoke or use any tobacco product inside the designated perimeter of any creative play area or beach.

(H) *Child safety.* It shall be unlawful for any person to:

- (1) Permit a child age 10 or under to be in a creative play area unless under the supervision of a responsible person;
- (2) Permit a child age 10 or under to swim or wade at beaches or swim ponds within a park, unless under the supervision of a responsible person. Swimming is not permitted in other areas; or
- (3) Permit a child age 10 or under to be in a designated sledding hill area unless under the supervision of a responsible person.

(I) *Interference with employee performance of duty.* It shall be unlawful for any person to impersonate any employee of the Parks Department or interfere with, harass, or hinder any employee in the discharge of their duties.

(Ord. 30, passed 4-14-87; Am. Ord. 72-2011, passed 1-17-12; Am. Ord. 82-2015, passed 1-5-16; Am. Ord. 86-2018, passed 8-21-18) Penalty, see § 91.99

#### **§ 91.06 OPERATION REQUIREMENTS.**

(A) *Commercial use; solicitation; advertising and photography.* It shall be unlawful for any person to:

- (1) Solicit, sell, or otherwise peddle any goods, wares, merchandise, services, liquids, or edibles in a park, except by authorized concession or written permission granted by the Board;
- (2) Operate a still, motion picture, video, or other camera for commercial purposes in a park without prior authorization from either the Board, the Director or his or her designee, or by use permit approved by the Board; and
- (3) Expose, distribute, or place any sign, advertisement, notice, poster, or display in a park without authorization from the Parks Department.

(B) *Pets in parks.* It shall be unlawful for any person to:

- (1) Bring any dog, cat, or other pet into a park, unless caged or kept on a leash not more than six feet in length and under the handler's control, unless in a pet exercise area designated by the Board;
- (2) Allow any dog, cat, or other pet to enter a beach area, nature center area, refuge area, picnic area, park building, or other "no pet" designated areas within a park;
- (3) Permit a pet under his or her control to disturb, harass, or interfere with any park visitor, a park visitor's property, or a park employee;
- (4) Tether any animal to a tree, plant, building, or park equipment; and/or
- (5) Have custody or control of any dog or domestic pet in a designated area of a park without possessing an appropriate device for cleaning up pet feces and disposing of it in a sanitary manner.

(C) *Noise; amplification of sound.*

(1) It shall be unlawful for any person, without the prior authorization either of the Board, the Director or his or her designee, or by use permit, to:

- (a) Install, use, or operate within the park a loudspeaker or sound amplifying equipment in a fixed or movable position or mounted upon any sound truck for the purposes of giving instructions, directions, talks, addresses, lectures, or transmitting music to any persons or assemblages of persons in or upon any place within the park;
- (b) Use or operate, or permit the use or operation of any radio, tape player, phonograph, television set, music amplifier, or other machine or device for the production or reproduction of sound in a manner as to be disturbing or a nuisance to reasonable persons of normal sensitivity within the area of audibility; and/or
- (c) Willfully make or continue, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace or quiet within any park or which causes discomfort or annoyance to any reasonable park visitor of normal sensitivity, except as duly authorized for special programs at dates and times.

(2) The standards which shall be considered in determining whether a violation of the provisions of this section exists shall include, but not be limited to, the following:

- (a) Level of the noise;
- (b) The intensity of the noise;
- (c) Whether the nature of the noise is usual or unusual;

- (d) The level and intensity of the background noise, if any;
- (e) The type of area within which the noise emanates;
- (f) The intensity of human use of the area during the time at which the noise emanates;
- (g) The time of the day or night the noise occurs;
- (h) The duration of the noise; and
- (i) Whether the noise is recurrent, intermittent, or constant.

(D) *Fires*. It shall be unlawful for any person to:

- (1) Start a fire in a park, except in a designated area, and then only in fire rings, portable stoves, or grills, except by use permit;
- (2) Leave a fire unattended or fail to fully extinguish a fire; and/or
- (3) Scatter or leave unattended lighted matches, ashes, burning tobacco, paper, or other combustible material.

(E) *Assemblies, meetings, and the like*. It shall be unlawful for any person to conduct public meetings, assemblies, worship services, entertainment, parades, or demonstrations within a park without a use permit or prior authorization from either the Board, the Director or his or her designee, or by use permit.

(F) *Amusement contraptions*. It shall be unlawful to bring in, set up, construct, manage, or operate any amusement or entertainment contraption, device, or gadget without prior authorization from either the Board, the Director or his or her designee, or by use permit.

(G) *Engine-powered models and toys*. It shall be unlawful for any person to start, fly, or use any fuel or battery powered model aircraft, model boat, rocket, or like powered toy or model.

(H) *Unlawful occupancy*. It shall be unlawful for any person to enter in any way any building, installation, or area that may be under construction or locked or closed to public use, or to enter or be upon any building, installation, or area after the posted closing time or before the posted opening time, or contrary to posted notice in any park.

(I) *Aviation*. It shall be unlawful to use park property for a starting or landing field for aircraft, hot air balloons, parachutes, hang gliders, or other flying apparatus without a permit.

(Ord. 30, passed 4-14-87; Am. Ord. 61-2007, passed 11-6-07; Am. Ord. 72-2011, passed 1-17-12; Am. Ord. 86-2018, passed 8-21-18) Penalty, see § 91.99

## **§ 91.07 PROTECTION OF PROPERTY, STRUCTURES AND RESOURCES.**

(A) *Disturbance of natural features*. It shall be unlawful for any person to:

- (1) Intentionally remove, alter, injure, or destroy any tree, other plant, rock, soil, or mineral;
- (2) Dig trenches, holes, or other excavations;
- (3) Introduce any plant, animal, or other agent within a park without a use permit, and other permits as required by state and federal law;
- (4) Harvest/grow/cultivate a controlled substance;
- (5) Cut or gather wood;
- (6) Engage in metal detecting for reclaiming lost personal property without a permit; and/or
- (7) Transport, possess, or burn firewood in a county park unless the firewood is purchased from the county or a Minnesota Department of Natural Resources approved firewood vendor.

(B) *Disturbance of wildlife*. It shall be unlawful for any person to:

- (1) Kill, trap, hunt, pursue, or in any manner disturb or cause to be disturbed, any species of wildlife, except in nuisance situations as permitted by a use permit;
- (2) Remove any animal, living or dead, from a park without a use permit; and any animal so removed or taken contrary to the provisions of this chapter or laws of the state shall be considered contraband and subject to seizure and confiscation; and/or
- (3) Release or abandon any animal within a park.

(C) *Destruction or defacement*. It shall be unlawful for any person to:

- (1) Intentionally deface, vandalize, or otherwise cause destruction to park property; and/or
- (2) Intentionally deface, destroy, cover, damage, or remove any placard, notice, sign, or parts thereof, whether permanent or temporary, posted or exhibited by the Public Works Division.

(D) *Release of harmful or foreign substances.* It shall be unlawful for any person to:

(1) Place any debris or other pollutant in or upon any park lands or any body of water in or adjacent to a park, or any tributary, stream, storm sewer, or drain flowing into the waters; and/or

(2) Discharge waste water or any other wastes in a park, except into designated containers, drains, or dumping stations.

(E) *Interference of park property.* It shall be unlawful for any person to cause or permit physical encroachment upon park property including, but not limited to, actions such as mowing of grasses, and/or placement of personal property, debris, materials, buildings, sheds, other structures, informal trails, or signs on park lands unless permitted.

(Ord. 30, passed 4-14-87; Am. Ord. 72-2011, passed 1-17-12; Am. Ord. 86-2018, passed 8-21-18) Penalty, see §91.99

#### **§ 91.08 RECREATION ACTIVITIES.**

(A) *Camping.* It shall be unlawful for any person to:

(1) Camp in a park, except in areas provided and designated for that purpose;

(2) Camp without a use permit from the park system;

(3) Occupy camp sites in a park contrary to a permit or otherwise violate provisions of a use permit;

(4) Operate any vehicle within a campground during posted quiet hours, except in emergencies;

(5) Camp overnight in a park if under 18 years of age, unless accompanied by parent or legal guardian, or possessing written permission from a parent or legal guardian;

(6) Camp in a park longer than ten consecutive days; and/or

(7) Camp in a park more than 14 days in a calendar month without approval of the Director or his or her designee.

(B) *Picnicking.* It shall be unlawful for any person to:

(1) Assume exclusive use of a reservation picnic site without a use permit;

(2) Use a portion of a reservation picnic area without a permit if the area is reserved by permitted group;

(3) Conduct picnic activity at reservation picnic sites contrary to a use permit or otherwise violate provisions of a use permit; and/or

(4) Set up temporary shelters, such as tents, tarps, canopies, and other devices, other than in designated camping areas, without authorization by a use permit.

(C) *Swimming.* It shall be unlawful for any person to:

(1) Wade or swim within a park, except at beaches and at times designated by the Board for those uses;

(2) Wade, swim, or use any beach in a park without proper attire;

(3) Take glass bottles or glass containers of any kind into designated beach areas;

(4) Use outside of a beach area so designated, any innertube, life raft, or other inflatable or buoyant object or flotation device intended to support a person, except persons are permitted to use a U.S. Coast Guard approved life jacket or vest when properly attached; and/or

(5) Fail to obey posted beach safety rules as established by Board resolution for each park system beach.

(D) *Boating.* It shall be unlawful for any person to:

(1) Launch or land any watercraft upon any waters within a park, except at designated locations and times;

(2) Leave any watercraft unattended on land or in the water, except in designated areas;

(3) Operate any watercraft in a designated swimming area or other prohibited area;

(4) Operate a watercraft in a park; and/or

(5) Tow a person on water skis, surf board, knee board, innertube, or jet ski in a designated swimming area, boat launching area, or other unauthorized area, or enter a designated swimming area on the device.

(E) *Fishing.* It shall be unlawful for any person to:

(1) Fish in a park in violation of any provision; and/or

(2) Fish in a prohibited area.

(F) *Horses and horseback riding.* It shall be unlawful for any person to ride, lead, or allow a horse within a park except as

authorized by the Board for park patrolling and by use permit.

(G) *Bicycling*. It shall be unlawful for any person to:

- (1) Operate any type of bicycle, except on roadways, paved or aggregate surfaced trail, and designated trails;
- (2) Operate any type of bicycle except as close to the right-hand side of the authorized trail or roadway as conditions permit, or to cross to the left of a solid yellow centerline;
- (3) Operate a bicycle in violation of M.S. Chapter 169, as it may be amended from time to time;
- (4) Ride or operate a bicycle, except in a prudent and careful manner, and at speed faster than is reasonable and safe with regard to the safety of the operator and other persons in the immediate area; and/or
- (5) Park a bicycle at any park beach except at a bicycle rack if the rack is provided.

(H) *Snowmobiling*. It shall be unlawful for any person to:

- (1) Operate a snowmobile anywhere in a park, except on designated trails and then only on the right-hand side of the trail;
- (2) Operate a snowmobile in a park contrary to rules and regulations issued by the Board;
- (3) Operate a snowmobile in a park in excess of posted speed limits when present or at a rate of speed greater than reasonable or proper under current conditions, or in a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto;
- (4) Operate a snowmobile in violation of M.S. §§ 84.81 to 84.91, as they may be amended from time to time, and published annually in the Minnesota Department of Natural Resources Snowmobile Rules and Regulations (all rules and regulations therein pertaining to "public land and water" shall apply on park property);
- (5) Operate a snowmobile in violation of any posted trail sign; and/or
- (6) Tow another person or thing, except through the use of a rigid tow bar attached to the rear of the snowmobile, except in emergencies.

(I) *Cross-country skiing*. It shall be unlawful for any person to:

- (1) Cross-country ski in any park, except on designated trails at designated times when weather and grounds conditions permit;
- (2) Conduct an organized meet or race on park cross-country ski trails without a use permit;
- (3) Cross-country ski in a park in violation of M.S. §§ 85.40 to 85.45, as they may be amended from time to time; and/or
- (4) Operate a dog sled or any motorized recreation vehicle on cross-country ski trails.

(J) *Other special activity uses*. It shall be unlawful for any person to participate in or conduct any activity, except those uses for which a park area or facility has been planned or promoted by the Parks Department, without a use permit.

(K) *Other winter activities*. It shall be unlawful for any person to:

- (1) Ice skate, sled, coast, snowshoe, or ski in a park except at designated times and places; and/or
- (2) Enter an area marked by signs indicating thin ice.

(L) *Hiking*. It shall be unlawful for any person to:

- (1) Hike in a park except in recreation use areas and on designated trails and roadways, unless authorized by special use permit; and/or
- (2) Hike on designated packed or groomed cross-country ski trails after a two-inch or more snowfall.

(M) *Geocaching*. It shall be unlawful for any person to place a geocache in a park except by permit.

(N) *Disc golfing*. It shall be unlawful for any person to play disc golf in a park except in designated areas or by permit.

(Ord. 30, passed 4-14-87; Am. Ord. 72-2011, passed 1-17-12; Am. Ord. 86-2018, passed 8-21-18) Penalty, see §91.99

## **§ 91.09 TRAFFIC REGULATIONS.**

(A) *Motorized recreation vehicles*. It shall be unlawful for any person to operate a motorized recreation vehicle within a park, except in areas and at times as designated by either the Board, the Director or his or her designee, or by use permit.

(B) *Vehicle operation*. It shall be unlawful for any person to:

- (1) Operate a vehicle at a speed in excess of 25 mph or posted speed limits;
- (2) Operate any vehicle within a park, except upon roadways, parking areas, or other designated locations therefore, unless it is an assisted mobility device permitted by the Parks Department;

- (3) Operate a vehicle within a park in violation of posted regulations, M.S. Chapter 169, as it may be amended from time to time, or municipal traffic codes, or orders or directions of traffic officers authorized to direct traffic;
- (4) Operate a vehicle in a careless or reckless manner;
- (5) Operate a vehicle which emits excessive or unusual noise, noxious fumes, dense smoke, or other pollutants; and/or
- (6) Fail to yield right-of-way to pedestrians and other trail users.

(C) *Parking vehicles.* It shall be unlawful for any person to:

- (1) Park or leave a vehicle standing, except in a designated area and then only in a manner so as not to restrict normal traffic flow;
- (2) Leave a vehicle standing after posted closing hours without a valid use permit;
- (3) Park in a space designated for handicapped parking only, except with handicapped vehicle license or permit;
- (4) Park or leave a vehicle without a boat trailer in a parking space designated for vehicles with boat trailers;
- (5) Park a vehicle with a boat trailer, except in designated vehicle/boat-trailer parking areas;
- (6) Leave a vehicle unattended with keys in the ignition; and/or
- (7) Park on the grass or sides of campground roads. Vehicles in campsites must be parked on the gravel pads or designated campground parking areas.

(D) *Maintenance of personal vehicles.* It shall be unlawful for any person to wash, polish, grease, change oil, or perform other maintenance on any vehicle on park property, except in emergencies.

(Ord. 30, passed 4-14-87; Am. Ord. 72-2011, passed 1-17-12; Am. Ord. 86-2018, passed 8-21-18) Penalty, see §91.99

**§ 91.10 ENFORCEMENT.**

(A) The County Sheriff's Department, local law enforcement agencies, and agents of the State Department of Natural Resources, in connection with duties imposed by law, shall enforce the provisions of this chapter and may issue citations and eject from any park persons acting in violation of the provisions of this chapter. The above agencies shall have the authority to seize, confiscate, and impound any substance, plant, animal, vehicle, or other article which upon probable cause, is found to be used or possessed in violation of this chapter.

(B) The Board shall have the right to adopt by resolution additional rules and regulations relative to this chapter.

(C) The County Sheriff's Department or local law enforcement agencies shall have the authority to impound pets found in violation of this chapter and shall collect an impoundment fee, plus a per diem fee, specified in the contract for impounding of animals which may be in force within an animal control service district.

(D) Either the Board or the Parks Department, shall have the authority to revoke for good cause any use permit. Any permit or reservation may be revoked upon violation by the permittee of any ordinance, rule, or regulation of the county.

(E) Nothing in this chapter shall prevent employees or agents of the Parks Department from performing their assigned duties.

(Ord. 30, passed 4-14-87; Am. Ord. 72-2011, passed 1-17-12; Am. Ord. 86-2018, passed 8-21-18)

**§ 91.99 PENALTY.**

A person guilty of violating any provision of this chapter shall be guilty of a misdemeanor pursuant to M.S. § 398.34 and as defined in M.S. § 609.02(3), as they may be amended from time to time. All fines collected under this chapter shall be deposited into the County Park Fund.

(Ord. 30, passed 4-14-87; Am. Ord. 72-2011, passed 1-17-12; Am. Ord. 86-2018, passed 8-21-18)

**CHAPTER 92: DANGEROUS AND POTENTIALLY DANGEROUS DOGS**

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Section

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**§ 92.01 PURPOSE AND INTENT.**

(A) Dogs classified as “dangerous” or “potentially dangerous” pose a direct threat to the people, domestic animals and livestock of and in the Carver County community. It is the intent of Carver County to protect the public against the health and safety risks posed by dangerous and potentially dangerous dogs. In order to do so, Carver County intends this chapter to address the threat posed by these animals. To that end, this chapter utilizes the statutory framework in M.S. §§ 347.50 through 347.565, which establishes how municipalities are to address reports of dog attacks.

(B) Minnesota Statute § 347.51, subd. 8, and M.S. § 347.565 authorize counties to establish a procedure by which a dog may be declared dangerous or potentially dangerous, including the right to appeal that designation. Pursuant to the authority granted by Minnesota Statutes, the Board of Commissioners of Carver County prescribes the following procedures and enforcement regulations governing dangerous dog designations. This chapter does not regulate, govern, or control dogs not considered dangerous or potentially dangerous, or otherwise impact the regulation and control of other animals, whether wild or domestic.

(Ord. 69-2010, passed 8-10-10)

**§ 92.02 TITLE.**

This chapter shall be known as, and may be cited and referenced as, the “Carver County Dangerous and Potentially Dangerous Dog Chapter,” and when referred to herein, it shall be referenced to as “this chapter.”

(Ord. 69-2010, passed 8-10-10)

**§ 92.03 VALIDITY.**

All sections and provisions of this chapter are deemed severable in nature. Should a court of competent jurisdiction declare any particular section or provision to be void, invalid, or unenforceable, that decision shall not affect the validity of this chapter as a whole nor be construed as a determination that any other section or provision is void, invalid, or unenforceable.

(Ord. 69-2010, passed 8-10-10)

**§ 92.04 JURISDICTION.**

This chapter shall apply to all areas of the County of Carver; except this chapter does not apply in any city or town which has a dangerous dog ordinance complying with state law and which has declared itself to be the animal control authority within its jurisdiction. This chapter also does not apply to any dog used by law enforcement officials for police work.

(Ord. 69-2010, passed 8-10-10)

**§ 92.05 INCORPORATION.**

This chapter expressly adopts and incorporates the provisions of M.S. §§ 347.50 through 347.565. When the provisions of this chapter impose greater restrictions than those of any other statute, ordinance, rule, or regulation, the provisions of this chapter shall be controlling. Where the provisions of any other statute, ordinance, rule, or regulation impose greater restrictions than this chapter, the provision of such statute, ordinance, rule, or regulation shall be controlling.

(Ord. 69-2010, passed 8-10-10)

**§ 92.06 DEFINITIONS.**

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



different meaning.

**ANIMAL CONTROL AUTHORITY.** Carver County or any law enforcement agent or other public official acting under its direction and control. Additionally, **ANIMAL CONTROL AUTHORITY** shall mean any individual, organization, partnership, or entity operating under contract to perform animal control operations pursuant to a written agreement authorized and approved by the Carver County Board of Commissioners, or any city or town located within Carver County which has declared itself to be the **ANIMAL CONTROL AUTHORITY** within its jurisdiction.

**BOARD.** The Carver County Board of Commissioners.

**BODILY HARM, GREAT BODILY HARM, and SUBSTANTIAL BODILY HARM.** Shall have the meaning given to it under M.S. § 609.02.

**COUNTY.** The County of Carver, a political subdivision of the State of Minnesota.

**DANGEROUS DOG.** Any dog that has:

- (1) Without provocation, inflicted substantial bodily harm on a human being on public or private property;
- (2) When unprovoked, engaged in any attack on any person under circumstances which indicated danger to personal safety;
- (3) Killed a domestic animal without provocation while off the owner's property;
- (4) Been found to be potentially dangerous, and after the owner has received notice that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or domestic animals;
- (5) When unprovoked, has bitten one or more persons on two or more separate occasions; or
- (6) Been or will be used, trained, or encouraged to fight with another animal; or whose owner has in their custody or possession any training apparatus, paraphernalia, or drugs used to prepare such dog for fighting with another animal.

**HEARING.** A proceeding conducted by a hearing officer in accordance with the requirements of this chapter.

**HEARING OFFICER.** A licensed doctor of veterinary medicine, an Animal Control Authority official, the County Administrator, or any otherwise qualified impartial **HEARING OFFICER** appointed by the County Administrator.

**KILL, KILLS or KILLED.** Any act in which there is a direct causal connection between the act of the attacking dog and the death of the person or other animal. For domestic animals which were euthanized following such an attack, **KILLED** or **KILLS** shall mean the death was the direct consequence of the attack, extensive veterinarian assistance would be futile, and that euthanasia merely hastened the inevitable death of the victim animal.

**OWNER.** Any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having care, custody, or control of a dog. Any person in possession of a dog five consecutive days or more shall, for the purposes of this chapter, be deemed to be an **OWNER** thereof.

**POTENTIALLY DANGEROUS DOG.** Any dog that:

- (1) When unprovoked, inflicts a bite on a human or domestic animal on public or private property;
- (2) When unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or
- (3) Has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

**PROPER ENCLOSURE.** Securely confined indoors, or in a securely enclosed and locked pen or structure outdoors, suitable to prevent the animal from escaping and providing the dog protection from the elements. A **PROPER ENCLOSURE** does not include a porch, patio, or any part of a house, garage, or other structure that would allow the dog to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only obstacles that prevent the dog from exiting. Such enclosure shall not allow the egress of the animal in any manner without human assistance.

A pen or kennel, in order to qualify as a **PROPER ENCLOSURE**, shall meet the following minimum specifications:

- (1) The overall floor size shall have a minimum area of 32 square feet;
- (2) Sidewalls shall have a minimum height of five feet and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed two inches, support posts shall be one and one-quarter-inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of 18 inches into the ground;
- (3) A cover over the entire pen or kennel shall be provided, shall be constructed of the same gauge wire or heavier as the sidewalls, and shall also have no openings in the wire greater than two inches; and
- (4) An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and shall also have no openings in the wire greater than two inches. The gate shall be equipped with a device capable of being locked and shall be locked at all times when the animal is in the pen or kennel. The area under the gate shall be constructed and

maintained in such a way as to prevent the dog from digging under the gate.

**UNPROVOKED.** The condition in which the dog is not purposely excited, stimulated, agitated, or disturbed. Any attack on a child 14 years of age or younger is presumed to be **UNPROVOKED**. This presumption can be rebutted if sufficient evidence is shown to prove beyond a reasonable doubt that the child was engaged in the commission of a crime or illegal activity, including activities classified under M.S. § 343 as cruelty to animals.

(Ord. 69-2010, passed 8-10-10)

## **§ 92.07 DESIGNATION OF A POTENTIALLY DANGEROUS DOG.**

(A) *Designation.* Following the investigation of a dog attack incident, the Animal Control Authority shall review all reports. Following that review, the Animal Control Authority shall designate any dog potentially dangerous if there is a preponderance of evidence that the dog acted in a manner described in §92.06 above.

(B) *Notice.*

(1) Upon determination that a dog is potentially dangerous, the Animal Control Authority shall provide a written notice of potentially dangerous dog to the owner of record, or if there is no owner of record, any owner of such dog by personally serving the owner or a person of suitable age and discretion at the residence of such owner.

(2) Service upon any owner shall be effective as to all owners.

(3) The notice shall state the dates, times, places, and facts of the incidents which form the basis for the determination and shall include the following:

(a) A description of the dog deemed to be potentially dangerous;

(b) The factual basis for that determination; and

(c) The identity of the official who made the determination.

(d) The notice shall also set forth the restrictions imposed upon a potentially dangerous dog under this chapter.

(4) The notice shall also advise the owner(s) that they have five days to ask the Office of the Carver County Attorney to review the designation and shall include a pre-printed form that the owner may use to request the review. The request for a review shall be made directly to the Animal Control Authority and Office of the Carver County Attorney and must be submitted in writing.

(5) If the owner does not request a review within the allotted five days, the designation of potentially dangerous dog as issued in the written notice of potentially dangerous dog will stand, and the owner will be subject to all restrictions and requirements as set forth in the notice by the Animal Control Authority.

(C) *Appeal of a potentially dangerous dog designation.*

(1) Within five business days of being notified that their dog has been designated a potentially dangerous dog by the Animal Control Authority, the owner or custodian of the dog may request a review of the designation in writing on a form provided by the Animal Control Authority and may submit written and other documentary evidence that disputes the designation to the Office of the Carver County Attorney. The Office of the Carver County Attorney shall make a decision within seven days following the receipt of the written request, based only upon the written evidence.

(2) Within five business days after a potentially dangerous dog designation is confirmed by the Office of the Carver County Attorney, the owner or custodian of the dog may request a hearing to contest the designation. The request for a hearing shall be made in writing on a form provided by the Office of the Carver County Attorney.

(3) The hearing shall be held before the Carver County Administrator or by an independent hearing examiner selected by the Carver County Administrator, not more than 15 days after receipt of the request for hearing. The Hearing Officer may allow the hearing date to be extended beyond the 15-day period for good cause. Any dog owner who requests such a hearing is liable to the county for all costs and expenses related to the hearing.

(4) The Hearing Officer shall hear testimony of the parties and their witnesses and shall consider exhibits offered by the parties. At the hearing, both the owner and the Animal Control Authority may present the testimony of live witnesses, cross-examine witnesses, and present documentary evidence. The party offering an exhibit shall mark the party's name on the exhibit in a manner that will not obscure the exhibit. All exhibits will be returned to the parties at the conclusion of the hearing unless otherwise ordered by the Hearing Officer. The Hearing Officer shall normally receive only evidence admissible under the rules of evidence, but in the exercise of discretion and in the interests of justice, may receive otherwise inadmissible evidence. The records of the Animal Control Authority, any police reports relating to an attack or bite, medical records, and all reliable hearsay shall be admissible for consideration by the Hearing Officer without further foundation. The Animal Control Authority and the dog's owner may apply to the District Court for subpoenas for hearings.

(5) The county shall have the burden of proving the dog is potentially dangerous by a preponderance of the evidence. The owner may be represented by private legal counsel of the owner's choosing, although the owner does not have the right to an attorney at public expense. The Animal Control Authority may be represented by the Office of the Carver County Attorney.

(6) The Hearing Officer shall make a final decision within seven days of the hearing. After considering all evidence

pertaining to the dog, the Hearing Officer shall issue a written order which rejects or upholds the determination. If the Hearing Officer upholds the determination as potentially dangerous, the order may affirm or modify the conditions recommended by the Animal Control Authority. If, as a result of testimony or other evidence at the hearing, there are grounds for declaring the dog to be a dangerous dog pursuant to § 92.08(A) of this chapter, the Hearing Officer may change the designation and issue the appropriate orders. The petitioner shall pay the Hearing Officer's fees, unless the county's designation is set aside.

(7) The decision of the Hearing Officer is a quasi-judicial determination that is subject to review by writ of certiorari to the Minnesota Court of Appeals.

(8) Except to the extent that a court or Hearing Officer finds that the seizure or impoundment was not substantially justified by law, the owner or person claiming an interest in the dog is liable for all actual costs of care, keeping, and disposal of the dog. The costs must be paid in full, or a mutually satisfactory arrangement for payment must be made between the county and the person claiming an interest in the dog, before the dog is returned to the person. If the owner or person claiming an interest in the dog does not pay the costs in full or enter into a payment schedule, the owner or person claiming an interest in the dog shall forfeit all rights and interests in the dog.

(9) The Animal Control Authority, or Hearing Officer, may, upon the written request of the owner, review the status of a dog which has been determined to be potentially dangerous if a period of two years has passed without any further incidents or violations of this chapter and may use discretion in determining whether any conditions which have been ordered are still required. If the review is conducted by the Hearing Officer, the burden of proof shall be upon the dog's owner, and the standard of proof shall be by clear and convincing evidence. The owner must provide evidence that the dog's behavior has changed due to the dog's age, neutering, environment, completion of obedience training that includes modification of aggressive behavior, or other factors. This designation may be reviewed again no sooner than one year following the Hearing Officer's most recent order regarding the designation of the dog as dangerous. An administrative hearing fee shall be required prior to such a review. In the event that the potentially dangerous dog designation is upheld by the Hearing Officer, all actual expenses of the hearing will be the responsibility of the dog's owner.

(10) If the Hearing Officer confirms the potentially dangerous dog designation, the owner or custodian of the dog shall complete the potentially dangerous dog registration form and file it with the Carver County Sheriff with evidence as set forth in § 92.07(D)(1) through (7) of this chapter within 14 days of the final decision.

(D) *Potentially dangerous dog requirements.*

(1) Any dog determined to be potentially dangerous shall be microchipped in accordance with §92.09.

(2) The owner of a dog may be required to complete an approved dog obedience class within a designated period of time and provide proof of completion to the Animal Control Authority.

(3) The dog may be required to be kept in a proper enclosure, or restrained by chain or leash not to exceed six feet in length, and/or muzzled, and under the control of a responsible person 18 years of age or older at all times it is outdoors and not inside a proper enclosure.

(4) The owner may be required to post the property where the dog resides with a warning symbol that children can understand, containing a written notice and warning that a potentially dangerous dog is present on the property. Such signs shall conform to the requirements set forth in M.S. § 347.51, subd. 2(a) and § 92.08(L)(4).

(5) The owner may be required to show proof of up-to-date rabies vaccination and, if required, licensing.

(6) The dog may be required to wear, at all times, a tag or marker identifying it as a potentially dangerous dog.

(7) The dog may be required to be sterilized within 30 days of the owner receiving notice.

(Ord. 69-2010, passed 8-10-10) Penalty, see §92.99

**§ 92.08 DESIGNATION OF A DANGEROUS DOG.**

(A) *Designation.* Following the investigation of a dog attack incident, the Animal Control Authority shall review all reports. Following that review, the Animal Control Authority shall designate any dog dangerous if a preponderance of evidence exists that the dog acted in a manner described in § 92.06.

(B) *Impound.* The Animal Control Authority may impound, at the animal owner's expense, any dog determined to pose a threat to public safety pending a final dangerous dog designation order. The Animal Control Authority shall quarantine, at the animal owner's expense, any dog without proof of current rabies vaccination upon receiving evidence that the dog has bitten any person or domestic animal. Any person who fails or refuses to release a dog to the Animal Control Authority or law enforcement agent upon demand, or after it has been found by a Hearing Officer to be dangerous and ordered into custody, at any time in the investigation, review or requirement stages as described in any part of this chapter, shall be guilty of a misdemeanor.

(C) *Notice.*

(1) Upon a designation that a dog is dangerous, the Animal Control Authority shall provide a written notice of dangerous dog to the owner of record or, if none, to any owner of such dog by personally serving the owner or a person of suitable age and discretion at the residence of such owner. Service upon any owner shall be effective as to all owners. The notice shall state the dates, times, places, and facts of the incidents which form the basis for the determination and include the following:

- (a) A description of the dog deemed to be dangerous;
- (b) The factual basis for that determination; and
- (c) The identity of the official who made the determination.

(2) The notice shall also set forth the registration requirements and other restrictions imposed upon a dangerous dog under this chapter or M.S. Chapter 347.

(3) The notice shall also advise the owner(s) that they have five days to appeal the determination by requesting a hearing before the Hearing Officer and shall include a pre-printed form which the owner can use to request a hearing. The request for a hearing shall be made directly to the Animal Control Authority and Office of the Carver County Attorney and must be submitted in writing.

(4) If the owner does not request a hearing within the allotted ten days, the designation of dangerous dog as issued in the written notice of dangerous dog will stand, and the owner will be subject to all restrictions and requirements as set forth in the notice by the Animal Control Authority.

(D) *Appeal of dangerous dog designation.*

(1) Within five days after receiving notice of a dangerous dog designation, the owner or custodian of the dog may request a hearing to contest the designation. The request for a hearing shall be made in writing on a form provided by the Animal Control Authority.

(2) Except as otherwise described in this section, the hearing shall be conducted pursuant to the requirements of § 92.07(C) of this chapter.

(3) Pending a hearing, the dog may be seized and held by the Animal Control Authority at a place of the Animal Control Authority's designation unless the owner shows proof that the dog is properly licensed, if required; has met the requirement for rabies vaccinations; keeps the dog only in a proper enclosure unless restrained on a leash with a muzzle; and otherwise demonstrates to the Animal Control Authority that the dog, under its present circumstances, does not present an unreasonable risk of harm to persons or other domestic animals.

(4) After considering all evidence pertaining to the dog, the Hearing Officer shall make such order(s) as the Hearing Officer deems proper including ordering the Animal Control Authority to take the dog into custody if the dog is not currently in custody.

(E) *Authority to order destruction.* The Hearing Officer, upon finding that a dog is dangerous hereunder, is authorized to order, as part of the disposition of the case, that the dog be destroyed based on a written order containing findings of fact establishing that each of the following criteria are present:

(1) The dog is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning, or multiple attacks;

(2) The owner of the dog has demonstrated an inability or unwillingness to sufficiently control the dog in order to prevent injury to persons or other animals; and

(3) The owner cannot, will not, does not, or otherwise refuses to provide proof of the liability insurance for the dog as required by § 92.08(G)(3)(c).

(F) *Cost.* The owner or person claiming an interest in the dog is liable for all actual costs of care, keeping, and disposal of the dog, except to the extent that a court or Hearing Officer finds that the seizure or impoundment was not substantially justified by law. The costs must be paid in full, or a mutually satisfactory arrangement for payment must be made between the county and the person claiming an interest in the dog, before the dog is returned to the person.

(G) *Dangerous dog registration.*

(1) *Requirements.* For any dog determined or declared to be dangerous by operation of this chapter, state statute, court order, ordinance, or regulation from another jurisdiction, or valid declaration from an Animal Control Authority, the dog shall, at all times during the dog's life, be registered as a dangerous dog pursuant to this chapter or state law.

(2) *Registration.* No person may own or possess a dangerous dog in this county unless the dog is registered as provided in this chapter or applicable state law. All dogs deemed dangerous by the Animal Control Authority or Hearing Officer, as applicable, shall be registered as a dangerous dog with the Animal Control Authority within 30 days after the date the dog was so deemed.

(3) *Registration requirements.* The Animal Control Authority shall issue a certificate of registration to the owner of a dangerous dog only if the owner presents sufficient evidence that all of the following are met:

(a) The owner provides and maintains a proper enclosure for the dangerous dog, as defined in §92.06;

(b) The owner posts clearly visible warning symbol, understandable to children, that there is a dangerous dog on the property. These warning signs must be posted on the front and the rear of all buildings on the property and upon the proper enclosure for the dog. The warning symbol must meet the requirements set forth in M.S. § 347.51, subd. 2(a) and § 92.08(L)(4);

(c) The owner provides, and annually shows proof of, public liability insurance pre-paid in full in the minimum amount of \$500,000 per person and \$1,000,000 per incident, payable to any person or persons injured by the dangerous dog or a policy of liability insurance issued by an insurance company authorized to conduct business in this state in the amount of at least \$500,000 per person and \$1,000,000 per incident insuring the owner for any personal injuries inflicted by the dangerous dog;

(d) The owner pays the annual registration fee set by the Board;

(e) An identification microchip was implanted in the dog as required under M.S. § 347.515 and §92.09;

(f) The owner provides proof that all applicable dog licensing requirements are met;

(g) The owner provides proof that the dog is current on all commonly required vaccines;

(h) The dog must be sterilized. If proof of the sterilization is not delivered to the Animal Control Authority, within 30 days of the designation of a dog as dangerous, the Animal Control Authority shall seize the dog and have it sterilized at the owner's expense. If the owner does not surrender the dog after the 30-day period expires, then the Animal Control Authority may seize the dog pursuant to § 92.08(B).

(i) An owner of a dangerous dog shall renew the registration of the dog annually until the dog is deceased.

(H) *Release.* If a dangerous dog was impounded by the Animal Control Authority or upon order of a Hearing Officer, the dog shall not be released until the owner demonstrates to the Animal Control Authority that all applicable requirements of this chapter, including all registration requirements imposed by this section or applicable state law, have been complied with. The owner shall have a maximum of 30 days to comply with all requirements. The owner shall be responsible for all costs incurred in the seizure and boarding of the dog, prior or the dog's return.

(I) *Revocation.*

(1) Any certificate of registration for a dangerous dog may be revoked, if the owner fails to maintain compliance with any registration requirement or fails to keep or maintain the dangerous dog as required by any provision of this chapter or applicable state law. The provisions of §§ 92.10 and 92.11, applicable to the seizure and disposition of dogs, shall apply.

(2) The Animal Control Authority shall serve upon the owner a written notice setting forth the alleged reasons how the dog is not being kept in conformance with this chapter and shall also notify the owner of the date, time, and location of the hearing. Any hearing to revoke a certificate of registration shall be held before a Hearing Officer within 20 days of the date of the notice, and shall comply with all the requirements as set forth in § 92.07(B). The Hearing Officer may allow the hearing date to be extended beyond the 20-day period for good cause.

(3) If a dangerous dog certificate of registration is revoked following the hearing, the Hearing Officer shall order the dog disposed of immediately or, in the alternative, permit the owner a reasonable time period, not to exceed 30 days, to obtain the dog if the owner is in compliance with all registration requirements.

(J) *Death or relocation of dangerous dog.* An owner of a dangerous dog shall notify the Animal Control Authority, in writing, of the death of the dog, or if the dog relocates or transfers out of the County to a new location or new jurisdiction, within 30 days of the death or relocation. An owner shall, if instructed by the Animal Control Authority, execute an affidavit, under oath and penalty of perjury, setting forth either the circumstances of the dog's death and disposition; or the complete name, address, and telephone number of the person to whom the dog was transferred.

(K) *Sale or transfer of dangerous dogs.* A person who sells or otherwise transfers ownership or control of a dangerous dog must notify any potential purchaser or transferee, prior to the consummation of the transaction that the dog was previously designated as dangerous. The seller must also notify the Animal Control Authority, in writing, of the sale and provide the Animal Control Authority with the new owner's name, address, and telephone number.

(L) *Dangerous dog requirements.*

(1) *Requirements.* For any dog determined or declared to be dangerous by operation of this chapter, state statute, court order, ordinance or regulation from another jurisdiction, or valid declaration from an Animal Control Authority, the dog shall, at all times during the dog's life, be registered as a dangerous dog pursuant to this chapter or state law.

(2) *Restraint.* An owner of a dangerous dog shall, at all times, keep the dog, while on the owner's property, in a proper enclosure as defined by § 92.06. If for any reason and at any time a dangerous dog is not in a proper enclosure the dangerous dog must be muzzled and restrained by a substantial chain or leash not to exceed six feet in length and under the physical restraint of a responsible person 18 years of age or older. The muzzle, chain, and leash must all be of such a design, manufacture, and maintained in a condition that will prevent the dog from biting any person or animal, but that will not cause injury to the dog or interfere with its vision or respiration.

(3) *Leased property.* A person who owns a dangerous or potentially dangerous dog and who rents property from another where the dog will reside shall disclose to the property owner prior to when the dog begins to reside on the property, or prior to entering the lease agreement, and at the time of any lease renewal, that the person owns a dangerous or potentially dangerous dog that will reside at the property.

(4) *Warning symbol.* If the county issues a certificate of registration to the owner of a dangerous dog pursuant to this chapter, the county must provide, for posting on the owner's property, an adequate number of warning symbols to inform all persons, including children, that there is a dangerous dog on the property. The design of the warning symbol must be

uniform with any specifications for such a sign as issued by the Minnesota Commissioner of Public Safety, if any, and shall otherwise be obtained by the county from the Commissioner of Public Safety. The county will charge the owner a reasonable fee to cover its administrative costs and the cost of the warning symbol.

(5) *Tag.* A dangerous dog registered under this section shall have a standardized, easily identifiable tag identifying the dog as dangerous and containing the uniform dangerous dog symbol, as developed by the Commissioner of Public Safety or the Animal Control Authority, affixed to the dog's collar at all times.

(6) *Property inspection.* The owner of a dangerous dog shall permit the Animal Control Authority and/or law enforcement to enter the property where a dangerous dog is kept or located, at all hours reasonable under the circumstances, without a warrant or other advance judicial process, to inspect the premises so as to ensure compliance with the provisions of this chapter, applicable state statutes, order from a Hearing Officer, or directive from the Animal Control Authority. The failure of an owner to permit such inspection is, by itself, a ground to immediately seize the dog pursuant to § 92.10 and revoke the dangerous dog registration pursuant to division (l) of this section.

(7) *Violation.* The Animal Control Authority shall immediately seize a dangerous dog if requirements imposed by this chapter are not followed. The owner or custodian may reclaim the dog upon payment of impounding and boarding fees and upon presenting proof to the Animal Control Authority that the requirements of M.S. §§ 347.51 and 347.52 have been met. A dangerous dog not reclaimed under this section within 14 days may be disposed of as provided by law, and the owner is liable to the Animal Control Authority for costs incurred in confining and disposing of the dog.

(8) *Review of conditions.* If, in reviewing the conditions for keeping a dangerous dog, there have been no ordinance violations for a period of two years, the Animal Control Authority or Hearing Officer may use discretion in determining whether the conditions set forth above are still required.

(9) *Review of designation.* The Animal Control Authority or Hearing Officer may, upon the written request of the owner, review the status of a dog which has been determined to be dangerous if a period of two years has passed without any further incidents or violations of this chapter and may use discretion in determining whether any conditions which have been ordered are still required. If the review is conducted by the Hearing Officer, the burden of proof shall be upon the dog's owner and the standard of proof shall be by clear and convincing evidence. The owner must provide evidence that the dog's behavior has changed due to the dog's age, neutering, environment, completion of obedience training that includes modification of aggressive behavior, or other factors. This designation may be reviewed again no sooner than one year following the Hearing Officer's most recent order regarding the designation of the dog as dangerous. An administrative hearing fee shall be required prior to such a review. In the event that the dangerous dog designation is upheld by the Hearing Officer, all actual expenses of the hearing will be the responsibility of the dog's owner.

(Ord. 69-2010, passed 8-10-10) Penalty, see §92.99

#### **§ 92.09 MICROCHIP IDENTIFICATION.**

It shall be the responsibility of each owner of any dog kept or harbored within the county and determined to be a dangerous or potentially dangerous dog under this chapter, court order, state statute, designation from the Animal Control Authority, or a substantially similar ordinance from another jurisdiction to ensure that a microchip is implanted in the dog for identification. The name of the microchip manufacturer and identification number of the microchip must be provided to the Animal Control Authority. If the microchip is not implanted by the owner, the Animal Control Authority may seize the dog to have a microchip implanted by a qualified veterinarian, clinic or shelter staff. In either case, all costs related to purchase and implantation of the microchip must be borne by the dog's owner.

(Ord. 69-2010, passed 8-10-10) Penalty, see §92.99

#### **§ 92.10 CONFISCATION.**

(A) *Seizure.* The Animal Control Authority shall immediately seize any dangerous dog or potentially dangerous dog if:

(1) After 30 days after the owner has notice that the dog is dangerous or potentially dangerous, the dog is not validly registered under this chapter or applicable state law;

(2) After 30 days after the owner has notice that the dog is dangerous, the owner does not secure the proper liability insurance or surety coverage as required under this chapter;

(3) The dog is not maintained in a proper enclosure as defined in §92.06;

(4) The dog is outside the proper enclosure and not under the proper physical restraint of a responsible person as required under this chapter or any applicable state law;

(5) The owner is served with written notice, by certified mail to the owner's last known address, that the owner is in violation of any of the requirements of this chapter or any applicable state statute, or is in violation of any directive issued by the Animal Control Authority or order from a Hearing Officer, and within 30 days of service of such written notice, has refused or failed to achieve satisfactory compliance;

(6) The Animal Control Authority has reason to believe that the dog is a dangerous or potentially dangerous dog and is kept or maintained under conditions or circumstances creating an unacceptable risk of harm to physical persons or other domesticated animals; or

(7) For any other reason authorized by law.

(B) *Additional dogs subject to seizure.*

(1) Any dog found to be in circumstances, which, to a reasonable person, indicate that the dog has been or will be used, trained, or encouraged to fight with another animal, or any animal whose owner has in custody or possession any training apparatus, paraphernalia, or drugs used to prepare such dog to be fought with another animal is hereby declared to be a public nuisance and shall be immediately seized and held.

(2) Any dog may be seized and held to determine if rabid.

(3) Any dog which meets the definitions of dangerous dog or potentially dangerous dog found in §92.06 may be seized and held by the Animal Control Authority at a place designated by the Animal Control Authority pending a determination whether the animal is dangerous or potentially dangerous.

(C) *Reclaiming dogs.* A dog seized under this chapter may be released to the owner upon payment of impounding and boarding fees and upon presenting proof to the Animal Control Authority that all requirements of this chapter and state law have or will be met. A dog not reclaimed under this subdivision within five days may be disposed of as provided under M.S. § 35.71, subd. 3, and the owner is liable to the Animal Control Authority for costs incurred in confining and disposing of the dog.

(D) *Subsequent offenses.* If a person has been convicted of a misdemeanor for violating a provision of this chapter and the person is charged with a subsequent violation relating to the same dog, the dog shall be seized by the Animal Control Authority. If the owner is convicted of the crime for which the dog was seized, the court shall order the dog be destroyed in a proper and humane manner and order the owner to pay the cost of confining and destroying the dog. If the person is not convicted of the crime for which the dog was seized, the owner may reclaim the dog upon payment to the Animal Control Authority of a fee for the care and boarding of the dog. If the dog is not reclaimed by the owner within 30 days after the owner has been notified that the dog may be reclaimed, the dog may be disposed of as provided under M.S. § 35.71, subd. 3. The owner is liable to the Animal Control Authority for the costs incurred in confining, impounding, and disposing of the dog.

(Ord. 69-2010, passed 8-10-10) Penalty, see §92.99

### **§ 92.11 DESTRUCTION OF DOGS.**

(A) *Upon infliction of death or bodily harm.* A dog that, when unprovoked, inflicted death or substantial or great bodily harm on a human being on public or private property, or when unprovoked, bit multiple human victims on public or private property in the same attack may be destroyed in a proper and humane manner by the Animal Control Authority. The Animal Control Authority may not destroy the dog until the dog owner is provided the opportunity for a hearing before a Hearing Officer, as set forth in this chapter.

(B) *Suffering beyond cure.* Notwithstanding any other provision of this chapter, any dog taken into custody may be immediately disposed of when the dog is suffering and is beyond cure through reasonable care and treatment, upon a proper determination by a licensed doctor of veterinary medicine. The county shall recover from the dog's owner all costs incurred under this section.

(C) *Unclaimed dogs.* At the expiration of the time a dog is impounded as provided for in this chapter, if the dog has not been reclaimed in accordance with the provisions hereof, it shall be the duty of the Animal Control Authority to cause such dog to be destroyed according to the most humane and approved methods or otherwise disposed of pursuant to M.S. § 343.

(D) *No appeal.* If no appeal is filed, the dangerous dog designation will stand and the animal may be destroyed. The dog owner shall pay for the cost of the dog's destruction pursuant to M.S. § 347.56.

(Ord. 69-2010, passed 8-10-10)

### **§ 92.12 RESTRICTIONS.**

(A) *Dog ownership prohibited.* Except as otherwise provided by this statute or Minnesota law no person may own a dog if the person has:

(1) Been convicted of a third or subsequent violation of §92.08(G) or (L), or §92.09;

(2) Been convicted of a violation under section M.S. § 609.205, subd. 4;

(3) Been convicted of a gross misdemeanor under M.S. § 609.226, subd. 1;

(4) Been convicted of a violation under section M.S. § 609.226, subd 2; or

(5) Has a dog ordered destroyed under §92.11 and been convicted of one or more violations of §92.08(G) or (L), § 92.09, or M.S. § 609.226, subd. 2.

(B) *Household member.* If any member of a household is prohibited from owning a dog in division (A) of this section, unless specifically approved with or without restriction by an Animal Control Authority, no person in the household is permitted to own a dog.

(C) *Dog ownership prohibition review.* Beginning three years after a conviction listed in division (A) of this section that

prohibits a person from owning a dog, and annually thereafter, the person may request that the Animal Control Authority review the prohibition. The Animal Control Authority may consider such facts as the seriousness of the violation or violations that led to the prohibition, any criminal convictions, or other facts that the Animal Control Authority deem appropriate. The Animal Control Authority may rescind the prohibition entirely or rescind it with limitations. The Animal Control Authority also may establish conditions a person must meet before the prohibition is rescinded, including, but not limited to, successfully completing dog training or dog handling courses. If the Animal Control Authority rescinds a person's prohibition and the person subsequently fails to comply with any limitation imposed by the Animal Control Authority or the person is convicted of any animal violation involving unprovoked bites or dog attacks, the Animal Control Authority may permanently prohibit the person from owning a dog in this county.

(Ord. 69-2010, passed 8-10-10) Penalty, see §92.99

#### **§ 92.13 EXEMPTIONS.**

(A) The provisions of this section do not apply to police K-9 dogs used by law enforcement officials for police work.

(B) Dogs may not be declared dangerous or potentially dangerous if the threat, injury, or damage was sustained by a person:

(1) Who was committing, at the time, a willful trespass or other tort upon the premises occupied by the owner of the dog;

(2) Who was provoking, tormenting, abusing, or assaulting the dog or who can be shown to have repeatedly, in the past, provoked, tormented, abused, or assaulted the dog; or

(3) Who was committing or attempting to commit a crime.

(Ord. 69-2010, passed 8-10-10)

#### **§ 92.14 RABIES QUARANTINE.**

(A) Whenever any dog has bitten any person or domestic animal and the owner or custodian does not provide proof of current rabies vaccination, the owner or custodian of the dog, upon being notified by the Animal Control Authority or local law enforcement, will immediately cause the dog to be quarantined, in either a proper enclosure, as defined in § 92.06, or if the animal control officer feels it is needed, at a state licensed veterinarian, and in a manner that is in accord with all applicable Minnesota statutes, administrative rules, and Minnesota Department of Health guidelines, with the Animal Control Authority, or by a veterinarian licensed to practice in the State of Minnesota, for a period of ten days after the dog bite occurred.

(B) Within 24 hours of impoundment, the dog owner or custodian will have the dog examined by a state licensed veterinarian who will observe the animal and examine the animal if necessary to ascertain whether symptoms of rabies exist. At the end of the ten-day quarantine period, the dog will again be examined by a state licensed veterinarian. If the veterinarian diagnoses the dog to be free of the signs of rabies, the dog will be released from quarantine. If the dog becomes ill or dies during the period of quarantine, the owner shall immediately notify the Animal Control Authority for examination by a state licensed veterinarian. If the veterinarian determines that the dog has rabies, the dog shall immediately be euthanized in a humane manner. Upon the death of the dog, its head will be sent to the State Department of Health, the University of Minnesota, or another appropriate agency as designated by the State of Minnesota for examination for rabies.

(Ord. 69-2010, passed 8-10-10)

#### **§ 92.15 COST.**

The owner is responsible for the cost of seizures, impoundment, quarantine, examination by a veterinarian, veterinarian services, and disposal of the dog or any other cost incurred as a result of enforcement of this chapter, unless otherwise specified herein.

(Ord. 69-2010, passed 8-10-10)

#### **§ 92.99 PENALTY.**

(A) The owner of a dog declared dangerous or potentially dangerous who fails to comply with the requirements of this chapter shall be guilty of a misdemeanor with penalties as provided under Minnesota law.

(B) It is a misdemeanor to remove a microchip from a dangerous or potentially dangerous dog; to fail to renew the registration of a dangerous dog; to fail to account for a dangerous dog's death, transfer of ownership, or removal from the jurisdiction; to sign a false affidavit with respect to a dangerous dog's death, transfer of ownership, or removal from the jurisdiction; or to fail to disclose ownership of a dangerous or potentially dangerous dog to a property owner from whom the person rents property.

(Ord. 69-2010, passed 8-10-10)



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Section

- 93.01 Findings, purpose, and intent
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**§ 93.01 FINDINGS, PURPOSE AND INTENT.**

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

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

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

(Ord. 91-2019, passed 2-5-19)

### **§ 93.02 ELECTION TO MANAGE THE PUBLIC RIGHTS-OF-WAY.**

Pursuant to the authority granted to the county under state and federal statutory, administrative, and common law, the county hereby elects pursuant M.S. § 237.163, subd. 2(b), to manage the public rights-of-way under its jurisdiction.

(Ord. 91-2019, passed 2-5-19)

### **§ 93.03 DEFINITIONS.**

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

**ABANDONED FACILITY.** A **FACILITY** no longer in service or physically disconnected from a portion of the operating **FACILITY**, or from any other **FACILITY**, that is in use or still carries **SERVICE**. A **FACILITY** is not abandoned unless declared so by the **RIGHT-OF-WAY USER**.

**ACCESS.** Any physical connection to public or private property over right-of-way for residential, agricultural, commercial, or municipal highway purposes.

**ACCESS PERMIT.** The **PERMIT** which must be obtained from the **COUNTY** before any **PERSON** may make a physical connection to a **COUNTY** road or highway.

**APPLICANT.** Any **PERSON** requesting permission to **EXCAVATE** or **OBSTRUCT** a right- of-way.

**CHAPTER.** This Chapter 93.

**COLLOCATE** or **COLLOCATION.** To install, mount, maintain, modify, operate, or replace a **SMALL WIRELESS FACILITY** on, under, within, or adjacent to an existing **WIRELESS SUPPORT STRUCTURE** or **UTILITY POLE** that is owned privately or by the **COUNTY** or other governmental unit.

**COMMISSION.** The Minnesota Public Utilities Commission.

**CONGESTED RIGHT-OF-WAY.** A crowded condition in the subsurface of the **PUBLIC RIGHT-OF-WAY** that occurs when the maximum lateral spacing between existing underground **FACILITIES** does not allow for **CONSTRUCTION** of new underground **FACILITIES** without using hand digging to expose the existing lateral **FACILITIES** in conformance with M.S. § 216D.04, subd. 3, over a continuous length in excess of 500 feet.

**CONSTRUCTION.** The general **PERMIT** requirements established by the **DIRECTOR** for performance, materials, and workmanship in accordance with applicable design standards, consistent with the Transportation Plan, for the permitted work or **FACILITY** to preserve public health, safety, and welfare, and right-of-way aesthetics and flexibility.

#### **CONSTRUCTION PERFORMANCE BOND.**

(1) Any of the following forms of security provided at **PERMITTEE'S** option, in an amount that shall cover costs to reasonably **RESTORE** the right-of-way to the condition that existed before the excavation and costs that the **COUNTY** estimates will be incurred if the **RIGHT-OF-WAY USER** fails to perform under the bond:

- (a) Individual project bond;
- (b) Cash deposit;
- (c) Security of a form listed or approved under M.S. § 15.73, subd. 3;
- (d) Letter of credit, in a form acceptable to the **COUNTY**;
- (e) Self-insurance, in a form acceptable to the **COUNTY**; or
- (f) A blanket bond for projects within the **COUNTY**, or other form of **CONSTRUCTION BOND**, for a time specified and in a form acceptable to the **COUNTY**.

(2) The amount of the bond does not include the indirect costs of litigation and attorney fees.

**COUNTY.** The County of Carver, Minnesota. For purposes of §93.29, **COUNTY** means its elected officials, officers, employees, and agents.

**DEGRADATION.** A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did

not occur.

**DEGRADATION COST.** Subject to Minn. Rules Part 7819.1100, the cost to achieve a level of **RESTORATION**, as determined by the **COUNTY** at the time the **PERMIT** is issued, not to exceed the maximum **RESTORATION** shown in Plates 1 to 13, set forth in Minn. Rules Parts 7819.9900 to 7819.9950.

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

**DELAY PENALTY.** The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, **PATCHING**, or **RESTORATION** as established by **PERMIT**.

**DEPARTMENT.** The Carver County Division of Public Works.

**DEPARTMENT INSPECTOR.** Any **PERSON** authorized by the **COUNTY** to carry out inspections related to the provisions of this chapter.

**DIRECTOR.** The **DIRECTOR** of the **DEPARTMENT** or her or his designee.

**EMERGENCY.** A condition that:

- (1) Poses a danger to life or public health or of a significant loss of property; or
- (2) Requires immediate repair or replacement of **FACILITIES** in order to **RESTORE SERVICE** to a customer.

**EQUIPMENT.** Any tangible asset used to install, repair, or maintain **FACILITIES** in any right-of-way.

**EXCAVATE.** To dig into or in any way remove or physically disturb or penetrate any part of a **PUBLIC RIGHT-OF-WAY**.

**EXCAVATION PERMIT.** The **PERMIT** which, pursuant to this chapter, must be obtained before a **PERSON** may **EXCAVATE** in a right-of-way. An **EXCAVATION PERMIT** allows the holder to **EXCAVATE** that part of the right-of-way described in such **PERMIT**. The **DIRECTOR** will prescribe the appropriate **PERMIT** forms to be filed for the work type proposed to be undertaken by the **REGISTRANT**.

**EXCAVATION PERMIT FEE.** Money paid to the county by an **APPLICANT** to cover the costs as provided in §93.13.

**FACILITY** or **FACILITIES.** Any tangible asset in the right-of-way required to provide **UTILITY SERVICE** which includes, without limitation, any pipes, conduit, wires, cables, amplifiers, transformers, fiber optic lines, antennae, poles, ducts, fixtures and appurtenances, and other like **EQUIPMENT** used in connection with transmitting, receiving, distributing, offering, and providing broadband, utility, and other **SERVICES**, and including **SMALL WIRELESS FACILITIES**.

**FIVE-YEAR PROJECT PLAN.** Shows projects adopted by the **COUNTY** for **CONSTRUCTION** within the next five years.

**HIGH DENSITY CORRIDOR.** A designated portion of the **PUBLIC RIGHT-OF-WAY** within which **TELECOMMUNICATIONS RIGHT-OF-WAY USERS** having multiple and competing **FACILITIES** may be required to build and install **FACILITIES** in a common conduit system or other common structure.

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

**INCREMENTAL COST.** The additional cost only of upsizing additional materials (conduit, vaults, location tape, building materials) with no additional costs allowed for the labor (incremental engineering, incremental design, placement and assembly of incremental conduit, placement of incremental vaults, interconnection, testing, and documentation).

**INCREMENTAL COST** does not include roadway or sidewalk **RESTORATION** or paving beyond that which is specifically required for the placement of additional vaults within paved or concrete surfaces outside of the original project scope.

**LANDSCAPING.** Vegetative plantings, gardens, in-ground sprinkler systems, small field drains, and related features.

**LANDSCAPING PERMIT.** A **PERMIT** issued by the county authorizing the **PERMITTEE** to landscape or make **LANDSCAPING** improvements within the **COUNTY** right-of-way as specifically described in the **PERMIT**.

**LOCAL REPRESENTATIVE.** A local **PERSON** or **PERSONS**, or designee of such **PERSON** or **PERSONS**, authorized by a **REGISTRANT** to accept legal notice or service; accept communications; and make decisions for that **REGISTRANT** regarding all matters within the scope of this chapter.

**MANAGE THE PUBLIC RIGHT-OF-WAY.** The authority to do activities, including, but not limited to, any or all of the following activities:

- (1) Require registration;
- (2) Require **CONSTRUCTION PERFORMANCE BONDS** and insurance coverage;
- (3) Establish installation and **CONSTRUCTION** standards;
- (4) Establish and define location and relocation requirements for **EQUIPMENT** and **FACILITIES**;
- (5) Establish coordination and timing requirements;
- (6) Require **TELECOMMUNICATIONS RIGHT-OF-WAY USERS** to submit, henceforth required by the **COUNTY**,

project data reasonably necessary to allow the **COUNTY** to develop a right-of-way mapping system including GIS system information;

(7) Require **TELECOMMUNICATION RIGHT-OF-WAY USERS** to submit, upon request of the **COUNTY**, existing data on the location of the user's **FACILITIES** occupying the **PUBLIC RIGHT-OF-WAY** within the **COUNTY**. The data may be submitted in the form maintained by the user in a reasonable time after receipt of the request based on the amount of data requested;

(8) Establish right-of-way permitting requirements for excavation and obstruction;

(9) Establish removal requirements for abandoned **EQUIPMENT** or **FACILITIES**, if required in conjunction with other right-of-way repair, excavation, or **CONSTRUCTION**; and

(10) Impose reasonable penalties for unreasonable delays in **CONSTRUCTION**.

**MANAGEMENT COSTS.** The actual costs the **COUNTY** incurs in managing its **PUBLIC RIGHTS-OF-WAY**, including such costs, if incurred, as those associated with registering **APPLICANTS**; issuing, processing, and verifying **RIGHT-OF-WAY PERMIT** applications; inspecting job sites and **RESTORATION** projects; maintaining, supporting, protecting, or moving user **FACILITIES** during **PUBLIC RIGHT-OF-WAY** work; determining the adequacy of right-of-way **RESTORATION**; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking **RIGHT-OF-WAY PERMITS**. **MANAGEMENT COSTS** do not include payment by a **TELECOMMUNICATIONS RIGHT-OF-WAY USER** for the use of the right-of-way; unreasonable fees including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the **COUNTY**; the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; M.S. §§ 237.162 or 237.163; or any ordinance enacted under those sections; or the **COUNTY** fees and costs related to appeals taken pursuant to § 93.31 of this chapter.

**MAPPING INFORMATION.** The information required in §93.24(A).

**MICRO WIRELESS FACILITY.** A **SMALL WIRELESS FACILITY** that is no larger than 24 inches long, 15 inches wide, and 12 inches high, and whose exterior antenna, if any, is no longer than 11 inches.

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

**OBSTRUCTION PERMIT.** The **PERMIT** which, pursuant to this chapter, must be obtained before a **PERSON** may **OBSTRUCT** any part of a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way by placing any tangible object thereon for the duration specified therein. The **DIRECTOR** will prescribe the appropriate **PERMIT** forms to be filed for the work type proposed to be undertaken by the **REGISTRANT**. Obstructions include, but are not limited to, activities including special events, **UTILITY SERVICE** day to day operations, maintenance activities, tree trimming, and other miscellaneous activity in the **PUBLIC RIGHT-OF-WAY**.

**OBSTRUCTION PERMIT FEE.** Money paid to the **COUNTY** by a **PERMITTEE** to cover the costs as provided in §93.13 and required to obtain the **PERMIT**.

**PATCH or PATCHING.**

(1) A method of **PAVEMENT** replacement that is temporary in nature. A **PATCH** consists of:

(a) The compaction of the subbase and aggregate base; and

(b) The replacement, in kind, of the existing **PAVEMENT** for a minimum of two feet beyond the edges of the excavation in all directions.

(2) A **PATCH** is considered full **RESTORATION** only when the **PAVEMENT** is included in the county's **FIVE-YEAR PROJECT PLAN**.

**PAVEMENT.** Any type of improved surface that is within the **PUBLIC RIGHT-OF-WAY** and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

**PERMIT.** The same meaning given in **RIGHT-OF-WAY PERMIT** in M.S. § 237.162, and includes, but is not limited to, the various **PERMITS** defined in this chapter:

(1) **UTILITY PERMIT**;

(2) **OBSTRUCTION PERMIT**;

(3) Moving transportation **PERMIT**;

(4) **ACCESS PERMIT**, including residential or field and street or commercial;

(5) Excavation or grading **PERMIT**;

(6) Special event **PERMIT**; and

(7) **LANDSCAPING PERMITS**.

**PERMITTEE.** Any **PERSON** to whom a **PERMIT** to **EXCAVATE** or **OBSTRUCT** a right-of-way has been granted by the **COUNTY** under this chapter.

**PERSON.** An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political, including, but not limited to:

- (1) A business or commercial enterprise, however organized;
- (2) A social charitable organization; and
- (3) Any type or combination of political subdivision of a state or local government.

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

**PROBATIONARY PERIOD.** One year from the date that a **PERSON** has been notified in writing that they have been put on **PROBATION**.

**PUBLIC RIGHT-OF-WAY.** The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, or public sidewalk in which the **COUNTY** has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the **COUNTY**. A **PUBLIC RIGHT-OF-WAY** does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast **SERVICE**. The lands described by an easement, deed, dedication, title, law or occupation of a road, highway, street, cartway, bicycle lane, or sidewalk are included as **PUBLIC RIGHT-OF-WAY**.

**REGISTRANT.** Any **PERSON** who:

- (1) Has or seeks to have its **EQUIPMENT** or **FACILITIES** located within any **PUBLIC RIGHT-OF-WAY**; or
- (2) In any way, occupies or uses, or seeks to occupy or use, the **PUBLIC RIGHT-OF-WAY** or place its **FACILITIES** or **EQUIPMENT** in the **PUBLIC RIGHT-OF-WAY**.

**REGISTRATION FEE.** Money paid to the **COUNTY** by a **REGISTRANT** for obtaining and reviewing **REGISTRANT** information.

**RESTORATION COST.** The amount of money paid to the **COUNTY** by a **PERMITTEE** to achieve the level of **RESTORATION** according to Plates 1 to 13 of Minnesota Public Utilities Commission Rules.

**RESTORE OR RESTORATION.** The process by which an excavated **PUBLIC RIGHT-OF-WAY** and surrounding area, including **PAVEMENT** and foundation, and turf or vegetation, is returned to the same condition and life expectancy that existed before excavation.

**RIGHT-OF-WAY PERMIT.** A **PERMIT** to perform work in a **PUBLIC RIGHT-OF-WAY** as required by this chapter.

**RIGHT-OF-WAY PERMIT FEES.** Money paid to the **COUNTY** by an **APPLICANT** to cover the costs provided in §93.13 associated with the issuance of any **PUBLIC RIGHT-OF-WAY PERMIT**.

**RIGHT-OF-WAY USER.** Either:

- (1) A **TELECOMMUNICATIONS RIGHT-OF-WAY USER** as defined by M.S. § 237.162, subd. 4; or
- (2) A **PERSON** owning or controlling a **FACILITY** in the right-of-way that is used or intended to be used for providing **UTILITY SERVICE**, and who has a right under law, franchise, or ordinance to use the **PUBLIC RIGHT-OF-WAY**; or
- (3) Any **PERSON** or entity to whom a **PERMIT** to use the **PUBLIC RIGHT-OF-WAY** has been issued by the **COUNTY**.

**SERVICE** or **UTILITY SERVICE.** Includes:

- (1) Those **SERVICES** provided by a public utility as defined in M.S. § 216B.02, subds. 4 and 6;
- (2) **SERVICES** of a **TELECOMMUNICATIONS RIGHT-OF-WAY USER**, including transporting of voice or data information;
- (3) **SERVICES** of a cable communications system as defined in M.S. Chapter 238;
- (4) Natural gas or electric energy or telecommunications **SERVICES** provided by the **COUNTY**;
- (5) **SERVICES** provided by a cooperative electric association organized under M.S. Chapter 308A;
- (6) Water and sewer, including **SERVICE LATERALS**, steam, cooling or heating **SERVICES**; and
- (7) Privately-owned **UTILITY SERVICES**, including drain tiles.

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

**SMALL WIRELESS FACILITY.** Either:

- (1) A **WIRELESS FACILITY** that meets both of the following qualifications:
  - (a) Each antenna is located inside an enclosure of no more than six cubic feet in volume or in the case of an antenna

that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and

(b) All other wireless **EQUIPMENT** associated with the **SMALL WIRELESS FACILITY** provided such **EQUIPMENT** is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding **EQUIPMENT**, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other **SERVICES**, and any **EQUIPMENT** concealed from public view within or behind an existing structure or concealment; or

(2) A **MICRO WIRELESS FACILITY**.

**SUPPLEMENTARY APPLICATION.** An application made to **EXCAVATE** or **OBSTRUCT** more of the **PUBLIC RIGHT-OF-WAY** than allowed in, or to extend, a **PERMIT** that had already been issued.

**TELECOMMUNICATION RIGHT-OF-WAY USER.** A **PERSON** owning or controlling a **FACILITY** in the right-of-way, or seeking to own or control a **FACILITY** in the right-of-way that is used or is intended to be used for providing **WIRELESS SERVICE**, or transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under M.S. Chapter 238, and telecommunication activities related to providing natural gas or electric energy **SERVICES** whether provided by a public utility as defined in M.S. § 216B.02, a municipality, a municipal gas or power agency organized under M.S. Chapters 453 and 453A, or a cooperative electric association organized under M.S. Chapter 308A, are not **TELECOMMUNICATIONS RIGHT-OF-WAY USERS** for purposes of this chapter except to the extent such entity is offering **WIRELESS SERVICE**.

**TEMPORARY SURFACE.** The compaction of subbase and aggregate base and replacement, in kind, of the existing **PAVEMENT** only to the edges of the excavation. It is temporary in nature except when the replacement is of **PAVEMENT** included in the **COUNTY'S TWO-YEAR PLAN**, in which case it is considered full **RESTORATION**.

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

**TWO-YEAR PROJECT PLAN.** Shows projects adopted by the **COUNTY** for **CONSTRUCTION** within the next two years.

**UTILITY PERMIT.** A **PERMIT** issued by the **COUNTY** authorizing the **PERMITTEE** to place a **SERVICE** or **UTILITY SERVICE**, including a **SMALL WIRELESS FACILITY**, in the right-of-way as specifically described in the **PERMIT**.

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

**WIRELESS FACILITY.** **EQUIPMENT** at a fixed location that enables the provision of **WIRELESS SERVICES** between user **EQUIPMENT** and a **WIRELESS SERVICE** network, including:

- (1) **EQUIPMENT** associated with **WIRELESS SERVICE**;
- (2) A radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable **EQUIPMENT**, regardless of technological configuration; and
- (3) A **SMALL WIRELESS FACILITY**, but not including:
  - (a) **WIRELESS SUPPORT STRUCTURES**; or
  - (b) **WIRELESS BACKHAUL FACILITIES**; or
  - (c) Coaxial or fiber-optic cables:
    1. Between **UTILITY POLES** or **WIRELESS SUPPORT STRUCTURES**; or
    2. That are not otherwise immediately adjacent to and directly associated with a specific antenna.

**WIRELESS SERVICE.** Any **SERVICE** using licensed or unlicensed wireless spectrum, including the use of wi-fi, whether at a fixed location or by means of a mobile device, that is provided using **WIRELESS FACILITIES**. **WIRELESS SERVICE** does not include **SERVICES** regulated under Title VI of the Communications Act of 1934, as amended, including cable **SERVICE** under 47 USC 522, Clause (6).

**WIRELESS SUPPORT STRUCTURE.** A new or existing structure in a **PUBLIC RIGHT-OF-WAY** designed to support or capable of supporting **SMALL WIRELESS FACILITIES**, as reasonably determined by the **COUNTY**.

**WIRELINE BACKHAUL FACILITY.** A **FACILITY** used to transport communications data by wire from a **WIRELESS FACILITY** to a communications network.

(Ord. 91-2019, passed 2-5-19)

#### **§ 93.04 ADMINISTRATION.**

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

(Ord. 91-2019, passed 2-5-19)

#### **§ 93.05 UTILITY COORDINATION COMMITTEE.**

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

(Ord. 91-2019, passed 2-5-19)

#### **§ 93.06 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.**

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

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

(C) *Exceptions.*

(1) Nothing herein shall be construed to repeal or amend the provisions of a county ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter. However, plantings must not violate applicable clear zone requirements nor obstruct visibility on the roadway, nor affect the drainage of the roadway watershed, nor cause erosion in the right-of-way, and the county may remove such plantings, if necessary for maintenance, safety, or construction purposes, with no compensation due the property owner.

(2) Irrigation systems shall be allowed in the right-of-way without a permit and installers shall be exempt from registration, provided the irrigation systems are managed properly and do not cause erosion in the right-of-way. There shall be no compensation for removal necessary for any permitted utility project. No compensation shall be paid for any irrigation system if removal is required or if it is damaged by any county or municipal activity or by any permitted utility activity.

(3) Resident owned sewer and water service lines to a city main and resident owned drain tile lines shall not be required to register, unless requested by the county, but shall be required to obtain permits for excavation and obstruction.

(D) Nothing herein relieves a person from complying with the provisions of M.S. Chapter 216D, the Gopher State One-Call Law.

(E) Government agencies and non-profit organizations are exempt from registration, but are required to obtain the appropriate right-of-way permit.

(Ord. 91-2019, passed 2-5-19)

#### **§ 93.07 REGISTRATION INFORMATION.**

(A) *Information required.* The information provided to the county at the time of registration shall be on the form approved by the county or this chapter, and shall include, but not be limited to:

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

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

(3) A certificate of insurance or self-insurance:

(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self-insurance acceptable to the county;

(b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the:

1. Use and occupancy of the right-of-way by the registrant, its officers, agents, employees, and permittees; and

2. Placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property; and

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

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

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

(4) The county may require a copy of the actual insurance policies.

(5) If the person is a corporation, a copy of the certificate is required to be filed under M.S. § 302A.105 as recorded and certified to by the Secretary of State.

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

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

(Ord. 91-2019, passed 2-5-19)

### **§ 93.08 REPORTING OBLIGATIONS.**

(A) *Operations.*

(1) Each registrant who provides utility service shall, at the time of registration and by March 1 of each year, file a construction and major maintenance plan for underground facilities with the county. Such plan shall be submitted using a format designated by the county and shall contain the information determined by the county to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. The utility facility plans shall be kept up to date by the registrant. Facility plans which a utility identifies to the county as being trade secret information will be treated as general nonpublic data in accordance with M.S. § 13.37.

(2) The plan shall include, but not be limited to, the following information:

(a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and

(b) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

(3) The term "project" in this section shall include both next-year projects and five-year projects but does not include individual service line hookups and minor maintenance unless they are part of an area wide program.

(4) By April 1 of each year, the county will have available for inspection in the county's office a composite list of all projects of which the county has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list. Thereafter, by May 1, each registrant may change any project in its list of next-year projects, and must notify the county and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

(B) *Additional next-year projects.* Notwithstanding the foregoing, the county will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the county if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

(Ord. 91-2019, passed 2-5-19)

### **§ 93.09 PERMIT REQUIREMENT.**

(A) *Permit required.* Except as otherwise provided in this chapter, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the county to do so.

(1) *Specific permits.*

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

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

(2) A small wireless facility shall require an excavation or obstruction permit by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion or the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.

(B) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless:



(1) Such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and

(2) A new permit or permit extension is granted.

(C) *Delay penalty.* In accordance with Minn. Rules Part 7819.1000, subp. 3, and notwithstanding division (B) of this section, the county shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall not be imposed if the delay in project completion is due to circumstances beyond the control of the applicant, including, without limitation, inclement weather, acts of God, or civil strife. The delay penalty shall be established from time to time by County Board resolution.

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

(Ord. 91-2019, passed 2-5-19)

### **§ 93.10 PERMIT APPLICATIONS.**

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

(A) Registration with the county pursuant to this chapter;

(B) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities of the permittee in the project area;

(C) Payment of money due the county for:

(1) Permit fees, estimated restoration costs, and other management costs;

(2) Prior right-of-way or obstructions or excavation permits;

(3) Any undisputed loss, damage, or expense suffered by the county because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the county; and

(4) Franchise fees or other charges, if applicable;

(D) Payment of disputed amounts due the county by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing; and

(E) Posting of an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the county deems the existing construction performance bond inadequate under applicable standards.

(Ord. 91-2019, passed 2-5-19)

### **§ 93.11 ISSUANCE OF PERMIT; CONDITIONS.**

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, then the county shall issue a permit.

(B) *Conditions.*

(1) The county may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare, or, when necessary, to protect the right-of-way and its current and future use.

(2) The county may require, at its discretion, that an applicant install additional facilities at the county's incremental cost, for use by the county and its partners. Costs associated with roadway or sidewalk restoration or paving required for the placement of additionally requested vaults within paved or concrete surfaces outside of the original project scope are not part of incremental costs and are to be provided separately to the county at reasonable cost at the same time incremental costs are provided. The Director and the applicant shall collaboratively develop infrastructure specifications, additional incremental cost estimates, and documentation necessary to transfer right, title, and interest of any additional facilities to the county.

(C) *Small wireless facility conditions.* In addition to division (B), the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way shall be subject to the following conditions.

(1) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.

(2) No new wireless support structure installed within the right-of-way shall exceed 50 feet above ground level without the county's written authorization, provided that the county may impose a lower height limit in the applicable permit to protect the public health, safety, and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet above ground level with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.

(3) No wireless facility may extend more than ten feet above an existing wireless support structure.

(4) Where an applicant proposes to install a new wireless support structure in the right-of-way, the county may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.

(5) (a) Where an applicant proposes collocation on a decorative wireless support structure, sign, or other structure not intended to support small wireless facilities, the county may impose reasonable requirements to accommodate the particular design, appearance, or intended purpose of such structure.

(b) Due to the public health, safety, and welfare concerns associated with the design and function of county owned traffic control facilities, including, but not limited to, signal/semaphore poles and structures, such facilities shall not be defined or permitted as a wireless support structures.

(6) Where an applicant proposes to replace a wireless support structure, the county may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

(D) *Small wireless facility agreement and fees.*

(1) A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the county, or any other county asset in the right-of-way, after the applicant has executed a small wireless facility collocation agreement with the county. The standard collocation agreement may require payment of the following fees or charges:

(a) Up to \$150 per year for rent to occupy space on the wireless support structure owned or controlled by the county;

(b) Up to \$25 per year for maintenance associated with the space occupied on the wireless support structure; and/or

(c) A monthly fee for electricity used to operate the small wireless facility, if not purchased directly from a utility, at the rate of:

1. Seventy-three dollars per radio node less than or equal to 100 maximum watts;

2. One hundred eighty-two dollars per radio node over 100 maximum watts; or

3. The actual costs of electricity, if the actual costs exceed the amount in divisions (D)(1)(c)1. or (D)(1)(c)2.

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

(Ord. 91-2019, passed 2-5-19)

**§ 93.12 ACTION ON SMALL WIRELESS PERMIT APPLICATIONS.**

(A) *Deadline for action.* The county shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit and any associated building permit application, shall be deemed approved if the county fails to approve or deny the application within the review periods established in this section, unless the applicant and the county have mutually agreed in writing to extend the 90-day deadline.

(B) *Consolidated applications.*

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

(a) Are located within a two-mile radius;

(b) Consist of substantially similar equipment; and

(c) Are to be placed on similar types of wireless support structures.

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

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

(1) The county receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the county may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension;

(2) The applicant fails to submit all required documents or information and the county provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the county shall have ten days to notify the applicant in writing of any still-missing information; or

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

(Ord. 91-2019, passed 2-5-19)

### **§ 93.13 PERMIT FEES.**

(A) *Excavation permit fee.* The county shall establish an excavation permit fee in an amount sufficient to recover the following costs:

(1) The county's actual management costs; and

(2) Degradation costs, if applicable; and county engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

(B) *Conditions.* The county may impose conditions on the issuance of the permit and the performance of the applicant thereunder to protect the public's health, safety, and welfare, or when necessary to protect the right-of-way and its current use, including the recovery of any unusual management costs not recovered through the standard permit fee, including, the cost of assigning a police officer to provide traffic management or the cost of assigning a field observer.

(C) *Obstruction permit fee.* The county shall establish the obstruction permit fee and shall be in an amount sufficient to recover the county management costs and county engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

(D) *Payment of permit fees.* No right-of-way permit shall be issued without payment of right-of-way permit fees unless the county allows the applicant to pay such fees within 30 days of billing. Government agencies and non-profit organizations are exempt from right-of-way permit fees, but are required to obtain the appropriate right-of-way permit.

(E) *Non-refundable.* Permit fees that were paid for a permit that the county has revoked for a breach as stated in §93.23 are not refundable.

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

(Ord. 91-2019, passed 2-5-19)

### **§ 93.14 RIGHT-OF-WAY PATCHING AND RESTORATION.**

(A) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under § 93.17.

(B) *Temporary surfacing, patch, and restoration.* Permittee shall patch its own work. The county may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

(1) *Permittee restoration.* If the permittee restores the right-of-way itself, it shall, at the time of application for an excavation permit, post a construction performance bond in an amount determined by the county to be sufficient to cover the cost of restoration. If, within 24 months following the completion of the restoration of the right-of-way, the county determines the right-of-way has been properly restored, the surety on the construction performance bond shall be released.

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

(C) *Standards.* The permittee shall perform excavation, backfilling, patching, and restoration according to the standards and with the materials specified by the county, and shall comply with Minn. Rules Part 7819.1100.

(D) *Guarantees.* The permittee guarantees its work and shall maintain it for 24 months following its completion. The obligation is limited to one year for plantings and turf establishment. During this 24-month period, it shall, upon notification from the county, correct all restoration work to the extent necessary, using the method required by the county. Said work shall be completed within five business days of the receipt of the notice from the county, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under § 93.17.

(E) *Duty to correct defects.* The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee, upon notification from the county, shall correct all restoration work to the extent necessary, using the method required by the county. Said work shall be completed within five calendar days of the receipt of the notice from the county, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under § 93.17.

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

(Ord. 91-2019, passed 2-5-19)

### **§ 93.15 JOINT APPLICATIONS.**

(A) *Joint application.* Registrants may be required to jointly apply for permits to access, excavate/ grade, place a utility service, landscape, or obstruct the right-of-way at the same place and time.

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

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

(Ord. 91-2019, passed 2-5-19)

### **§ 93.16 SUPPLEMENTARY APPLICATIONS.**

(A) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must, before working in that greater area, make application for a permit extension and pay any additional fees required thereby, and be granted a new permit or permit extension. The county may orally waive the requirement for a permit extension or the payment of an additional fee. The county shall maintain a written record of any waivers granted.

(B) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date. The county may orally waive the requirement for a permit extension or the payment of an additional fee. The county shall maintain a written record of any waivers granted.

(Ord. 91-2019, passed 2-5-19)

### **§ 93.17 OTHER OBLIGATIONS.**

(A) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority, and to pay all fees required by the county or other appropriate jurisdiction, or other applicable rule, law, or regulation. A permittee shall comply with all requirements of local, state, and federal laws, including, but not limited to, M.S. §§ 216D.01 through 216D.09 (the Gopher State One-Call Excavation Notice System) and Minn. Rules Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

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

(C) *Interference with right-of-way.*

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

(2) Traffic control shall conform to the *Minnesota Manual on Uniform Traffic Control Devices* (MMUTCD) and its field manual, and any written directions of the county.

(D) *Trenchless excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including, but not limited to, horizontal directional drilling, shall follow all requirements set forth in M.S. Chapter 216D and Minn. Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the Director.

(Ord. 91-2019, passed 2-5-19)

### **§ 93.18 DENIAL OF PERMIT.**

(A) The county may deny a permit for failure to meet the requirements and conditions of this chapter or if the county determines that the denial is necessary to protect the public health, safety, and welfare, or when necessary to protect the right-of-way and its current and future use.

(B) The county may deny a permit if the applicant has failed to comply with conditions of a previous permit issued by the county. The county may withhold issuance of a permit until conditions of the previous permit are complied with.

(Ord. 91-2019, passed 2-5-19)

### **§ 93.19 INSTALLATION REQUIREMENTS.**

(A) The excavation, backfilling, patching, and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules Parts 7819.1100 and 7819.5000, and shall conform to MN/DOT standard specifications and other applicable local requirements, in so far as they are not inconsistent with the M.S. §§ 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minn. Rules Chapter 7560 and this chapter. Service lateral installation is further subject to those requirements and conditions set forth by the county in the applicable permits and/or agreements referenced in § 93.24(B).

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

(Ord. 91-2019, passed 2-5-19)

### **§ 93.20 INSPECTION.**

(A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate to the county showing the completion date for the work performed, identifying the installer and designer of record, and certifying the work was completed according to the county's requirements. The completion certificate shall be in accordance with Minn. Rules Part 7819.1300.

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

(C) *Authority of Director.*

(1) At the time of inspection, the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.

(2) The Director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, rules, laws, conditions, or codes, so long as the nonconformance constitutes a "substantial breach" as set forth in M.S. § 237.163, subs. 4(c)(1) through 4(c)(5). The order shall state that failure to correct the violation will be cause for revocation of the permit. Within a reasonable time after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to § 93.23.

(3) The cost of any action required by the Director shall be paid by the permittee.

(Ord. 91-2019, passed 2-5-19)

### **§ 93.21 WORK DONE WITHOUT A PERMIT.**

(A) *Emergency situations.*

(1) Each registrant shall immediately notify the county of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One-Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

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

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

(Ord. 91-2019, passed 2-5-19)

### **§ 93.22 SUPPLEMENTARY NOTIFICATION.**

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

(Ord. 91-2019, passed 2-5-19)

### § 93.23 REVOCATION OF PERMITS.

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

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the county or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to complete the work in a timely manner, unless a permit extension is obtained, or unless the failure to complete work is due to reasons beyond the permittee's control, or failure to relocate existing facilities as specified in § 93.25;
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 93.20;
- (6) Failure of the utility to pay the required costs, fees, or charges billed by the county; or
- (7) Failure to provide traffic control that conforms to the provisions of the *Minnesota Manual on Traffic Control Devices*, including the *Temporary Traffic Control Zones Field Manual*

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

(C) *Response to notice of breach.* Within 24 hours of receiving notification of the breach, permittee shall provide the county with a plan, acceptable to the county, that will cure the breach. Permittee's failure to so contact the county, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the county, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one full year. No plan will be unreasonably rejected.

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

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

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

(G) *Revoked permit.* If the county revokes a utility's permit for breach of this chapter, the utility will not be allowed to install any utility or to obstruct or excavate within the county right-of-way until the breach situation is corrected to the satisfaction of the county and the permit is reissued.

(Ord. 91-2019, passed 2-5-19)

### § 93.24 MAPPING DATA.

(A) *Information required.* Each registrant and permittee shall provide mapping information required by the Director in accordance with Minn. Rules Parts 7819.4000 and 7819.4100. Within 90 days following completion of any work pursuant to a permit, the permittee shall provide the Director accurate maps and drawings certifying the as-built location of all equipment installed, owned, and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the county's electronic mapping system, when practical, or as a condition imposed by the Director. Failure to provide maps and drawings pursuant to this division shall be grounds for revoking the permit holder's registration.

(B) *Service laterals.* All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. Rules Part 7560.0150, subp. 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the Director evidence satisfactory to the Director of the installed service lateral locations. Compliance with this division and with applicable Gopher State One-Call law and Minnesota Rules governing service laterals installed after December 31, 2005, shall be a condition of any Director approval necessary for payments to contractors working on a public improvement project including those under M.S. Chapter 429, and Director approval of performance under development agreements, or other subdivision or site plan approval under M.S. Chapter 462.

The Director shall reasonably determine the appropriate method of providing such information to the Director. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

(Ord. 91-2019, passed 2-5-19)

### **§ 93.25 LOCATION AND RELOCATION OF FACILITIES.**

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

(B) *Corridors.*

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

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

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

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

(E) *Relocation of existing facilities.*

(1) A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for the convenience of the local government unit, in connection with:

- (a) A present or future local government use of the right-of-way for a public project;
- (b) The public health or safety; or
- (c) The safety and convenience of travel over the right-of-way.

(2) A right-of-way user is not required to remove or relocate its facilities from a right-of-way that has been vacated in favor of a nongovernmental entity unless and until the reasonable costs to do so are first paid to the right-of-way user.

(Ord. 91-2019, passed 2-5-19)

### **§ 93.26 LOCATION OF FACILITIES DURING DESIGN PROCESS.**

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

(Ord. 91-2019, passed 2-5-19)

### **§ 93.27 DAMAGE TO OTHER FACILITIES.**

(A) When the county does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the county shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the county's response to an emergency occasioned by that registrant's facilities.

(B) The provisions of M.S. Chapter 216D, as amended, shall apply to all situations involving damages to facilities during

excavation operations.

(Ord. 91-2019, passed 2-5-19)

### **§ 93.28 RIGHT-OF-WAY VACATION.**

*Reservation of right.* If the county vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules Part 7819.3200 and other applicable laws

(Ord. 91-2019, passed 2-5-19)

### **§ 93.29 INDEMNIFICATION AND LIABILITY.**

(A) By registering with the county, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the county in accordance with the provisions of Minn. Rules Part 7819.1250.

(B) *Indemnification.*

(1) To the fullest extent permitted by law, a registrant or permittee shall defend, indemnify, keep, and hold the county, its officials, employees, and agents, free and harmless from any and all costs, specifically including attorney fees and other costs of defense, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair, or operation of its equipment and facilities, or out of any activity undertaken in or near a public right-of-way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a public right-of-way permit.

(2) The foregoing does not indemnify the county for its own negligence or other wrongful act or omission except for claims arising out of or alleging the county's negligence in issuing the permit or failing to properly or adequately inspect or enforce compliance with a term, condition, or purpose of a permit.

(3) All permits are granted subject to ownership rights the county may have in the property involved and to the extent that state, federal, local laws, rules, and regulations allow, and said permit is subject to all such laws and rules.

(C) *Limitation of liability.* By registering with the county, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the county for any liability for:

(1) Bodily injury or death of persons, for property damage, or loss of service claims by parties other than registrant or the county; or

(2) Claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment or facilities by registrants or permittees, or activities of registrants or permittees.

(D) This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant, permittee, or the county, and the registrant or permittee, in defending any action on behalf of the county, shall be entitled to assert in any action every defense or immunity that the county could assert in its own behalf. In defending the county, any registrant or permittee shall obtain the consent of the County Board before any settlement shall be enforced.

(Ord. 91-2019, passed 2-5-19)

### **§ 93.30 ABANDONED AND UNUSED FACILITIES.**

(A) *Discontinued operations.* A registrant who has determined to discontinue all or a portion of its operations in the county must provide information satisfactory to the county that the registrant's obligations for its facilities in the right-of-way under Minn. Rules Chapter 7819 and this chapter have been lawfully assumed by another registrant.

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

(Ord. 91-2019, passed 2-5-19)

### **§ 93.31 APPEAL.**

(A) A right-of-way user that has been denied registration, has been denied a permit, has had a permit revoked, believes that the fees imposed are not in conformity with M.S. § 237.163, subd. 6, or disputes a determination of the county regarding §§ 93.11, 93.13, 93.18, or 93.23 of this chapter may have the denial, revocation, fee imposition, or decision reviewed, upon written request, to the County Board. The County Board shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the County Board affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

(Ord. 91-2019, passed 2-5-19)

### **§ 93.32 RESERVATION OF REGULATORY POLICE POWER.**

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



(Ord. 91-2019, passed 2-5-19)

### **§ 93.33 SEVERABILITY AND FRANCHISE REQUIREMENTS.**

(A) If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(B) Nothing in this chapter precludes the county from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

(Ord. 91-2019, passed 2-5-19)

## **TITLE XI: BUSINESS REGULATIONS**

Chapter

**110. ALCOHOLIC BEVERAGES**

**111. TOBACCO REGULATIONS**

**112. CHARITABLE GAMBLING**

**113. ADULT USE BUSINESSES**

### **CHAPTER 110: ALCOHOLIC BEVERAGES**

Section

#### ***Sunday Liquor Sales***

110.01 Authority

110.02 Jurisdiction

110.03 Adoption of state licensing regulations

110.04 Organizational structure requirements

#### ***SUNDAY LIQUOR SALES***

### **§ 110.01 AUTHORITY.**

These regulations are adopted pursuant to M.S. § 340A.504, as it may be amended from time to time.

(Ord. 38, passed 8-16-94)

### **§ 110.02 JURISDICTION.**

The provisions of this subchapter shall apply to all land within the county which is not within the boundaries of an incorporated city.

(Ord. 38, passed 8-16-94)

### **§ 110.03 ADOPTION OF STATE LICENSING REGULATIONS.**

(A) M.S. §§ 340A.401 through 340A.510, as they may be amended from time to time, are hereby adopted by reference and made part of this subchapter as completely as if the statutes were full set forth herein, except as herein after modified.

(B) The hours of sale shall be from 8:00 a.m. to midnight on Sunday.

(C) Pursuant to M.S. §§ 340A.301, subd. 6d(a) and 340A.301, subd. 7(b), the county approves the off-sale of growlers, as defined by M.S. § 340A.285, on Sundays in accord with this chapter by holder of a small brewer license, issued pursuant to M.S. § 340A.301, subd. 6(c), (i) or (j).

(D) Pursuant to M.S. § 340A.26, subd. 5, the county approves on-sale business on Sundays at taprooms in accord with this chapter by the holder of a small brewer license, issued pursuant to M.S. § 340A.301, subd. 6(c), (i) or (j).

(Ord. 38, passed 8-16-94)

### **§ 110.04 ORGANIZATIONAL STRUCTURE REQUIREMENTS.**

Approval of applications and renewal applications for Sunday liquor hours pursuant to M.S. § 340A.504, subd. 3, as it may be amended from time to time, shall be granted by the County Board, upon approval of written application by each

organization.

(Ord. 38, passed 8-16-94)

## CHAPTER 111: TOBACCO REGULATIONS

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### Section

- 111.01 Purpose
- 111.02 Definitions and interpretations
- 111.03 License requirements
- 111.04 Fees
- 111.05 License; basis for denial
- 111.06 Prohibited sales
- 111.07 Vending machines
- 111.08 Self-service sales
- 111.09 Responsibility
- 111.10 Compliance checks and inspections
- 111.11 Other illegal acts
- 111.12 Violations
  
- 111.99 Penalty

### § 111.01 PURPOSE.

(A) Because the county recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products and tobacco related devices, and the sales, possession and use are violations of both state and federal laws; and because studies, which are hereby accepted and adopted have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government.

(B) This chapter shall be intended to regulate the sale, possession and use of tobacco, tobacco products and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products and tobacco related devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.

(1) "Cigarette Smoking - Attributable, Mortality and Years of Potential Life Lost - United States 1990," in MMWR, CDC, DHHS, 42(33):645-649.

(2) Centers for Disease Control and Prevention, "Preventing Tobacco Use Among Young People: A Report of the Surgeon General, U.S. Government Printing Office," Washington, D.C., 1994. Johnston L. Backman J. O'Malley P.

(3) "Cigarette smoking among American teens rises again in 1995," Ann Arbor, Michigan University of Michigan News and Information Services, December 11, 1995.

(4) "Minnesota Estimates of Mortality and Economic Costs Due to Smoking, Based on 1995 Data," Minnesota Department of Health, Center of Health Promotion, November 1996.

(5) The George H. Gallup International Institute, Teenage Attitudes and Behavior Concerning Tobacco, September 1992.

(Ord. 42, passed 2-10-98)

### § 111.02 DEFINITIONS AND INTERPRETATIONS.

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

**COMPLIANCE CHECKS.** The system the county uses to investigate and ensure that those authorized to sell tobacco, tobacco products and tobacco related devices are following and complying with the requirements of this chapter.

**COMPLIANCE CHECKS** shall involve the use of minors as authorized by this chapter. **COMPLIANCE CHECKS** shall also

mean the use of minors who attempt to purchase tobacco, tobacco products or tobacco related devices for educational research and training purposes as authorized by state and federal laws. **COMPLIANCE CHECKS** may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to tobacco, tobacco products and tobacco related devices.

**ELECTRONIC DELIVERY DEVICE.** Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. **ELECTRONIC DELIVERY DEVICE** includes any component part of a product, whether or not marketed or sold separately. **ELECTRONIC DELIVERY DEVICE** does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco- cessation product, as a tobacco-dependance product, or for other medical purposes, and is marketed and sold for such an approved purpose.

**INDIVIDUALLY PACKAGED.** The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this chapter shall not be considered **INDIVIDUALLY PACKAGED**.

**LOOSIES.** The common term used to refer to a single or individually packaged cigarette.

**MINOR.** Any natural person who has not yet reached the age of 18 years.

**MOVEABLE PLACE OF BUSINESS.** Any form of business operated out of a truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure.

**RETAIL ESTABLISHMENT.** Any place of business where tobacco, tobacco products or tobacco related devices are available for sale to the general public. **RETAIL ESTABLISHMENTS** include, but are not limited to grocery stores, convenience stores and restaurants.

**SALE.** Any transfer of goods for money, trade, barter or other consideration.

**SELF-SERVICE MERCHANDISING.** Open displays of tobacco products or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products or tobacco related devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product or tobacco related device between the customer and the licensee or employee. **SELF-SERVICE MERCHANDISING** shall not include vending machines.

**TOBACCO or TOBACCO PRODUCTS.** Any substance or item containing tobacco leaf, including but not limited to cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in a manner as to be suitable for chewing, sniffing or smoking.

**TOBACCO RELATED DEVICES.** Any tobacco product as well as a pipe, rolling papers, electronic delivery devices or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products.

**VENDING MACHINE.** Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products or tobacco related devices upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product or tobacco related device.

(Ord. 42, passed 2-10-98; Am. Ord. 82-2015, passed 1-5-16)

### **§ 111.03 LICENSE REQUIREMENTS.**

(A) No person shall sell or offer to sell any tobacco, tobacco products or tobacco related device without first having obtained a license to do so from the county.

(B) An application for a license to sell tobacco, tobacco products or tobacco related devices shall be made on a form provided by the county. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the county deems necessary. Upon receipt of a completed application, the County Auditor shall forward the application to the County Administrator for action at the next regularly scheduled county board meeting. If the County Auditor determines an application to be incomplete, the application shall be returned to the applicant with notice of the information necessary to make the application complete.

(C) The County Board may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant as it deems necessary. If the County Board approves the license, the County Auditor shall issue the license to the applicant. If the County Board denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision pursuant to § 111.12.

(D) All licenses issued under this chapter shall be valid for one calendar year from the date of issue.

(E) Any license issued under this chapter may be revoked or suspended as provided in §§111.12 and 111.99.

(F) All licenses issued under this chapter shall be valid only on the premises for which the license was issued and only for the person or entity to whom the license was issued. No transfer of any license to another location, person or entity shall be valid without the prior approval of the County Board.

(G) No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this chapter.

(H) All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

(I) The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license. The issuance of a license issued under this chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

(Ord. 42, passed 2-10-98) Penalty, see § 111.99

#### **§ 111.04 FEES.**

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The annual fee for a license under this chapter shall be established annually by the County Board of Commissioners.

(Ord. 42, passed 2-10-98; Am. Ord. 82-2015, passed 1-5-16)

#### **§ 111.05 LICENSE; BASIS FOR DENIAL.**

(A) If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section.

(B) The following shall be grounds for denying the issuance or renewal of a license under this chapter. Except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the county must deny the license:

(1) The applicant is under the age of 18 years;

(2) The applicant has been convicted within the past five years of any violation of federal, state or local law, ordinance provision or other regulation relating to tobacco or tobacco products or tobacco related devices;

(3) The applicant has had a license to sell tobacco, tobacco products or tobacco related devices revoked within the preceding 12 months of the date of application;

(4) The applicant fails to provide information required on the application, or provides false or misleading information;

(5) The applicant is prohibited by federal, state or other local law, ordinance or other regulation, from holding a license; and/or

(6) The real estate taxes for the land on which the retail establishment that is selling the tobacco, tobacco products and/or tobacco related devices is located are delinquent.

(Ord. 42, passed 2-10-98)

#### **§ 111.06 PROHIBITED SALES.**

It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product or tobacco related device:

(A) To any person under the age of 18 years;

(B) By means of any type of vending machine, except as may otherwise be provided in this chapter;

(C) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product or tobacco related device and whereby there is not a physical exchange of the tobacco, tobacco product or tobacco related device between the licensee or the licensee's employee and the customer;

(D) By means of "loosies," as defined in §111.02;

(E) Containing opium, morphine, jimsonweed, belladonna, strychnos, cocaine, marijuana or other deleterious, hallucinogenic, toxic or controlled substances, except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process; and/or

(F) By any other means, to any other person, in any other manner or form prohibited by federal, state or other local law, ordinance provision or other regulation.

(Ord. 42, passed 2-10-98) Penalty, see § 111.99

#### **§ 111.07 VENDING MACHINES.**

It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products or tobacco related devices by the means of a vending machine.

(Ord. 42, passed 2-10-98) Penalty, see § 111.99

#### **§ 111.08 SELF-SERVICE SALES.**

(A) It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products or tobacco related devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product or the tobacco related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products and tobacco related devices shall either be stored behind a counter or other area not freely accessible to customers. Any tobacco, tobacco products or tobacco related devices in a case, other storage unit or free standing, shall not be permitted on any counter accessible to customers.

(B) Any retailer selling tobacco, tobacco products or tobacco related devices at the time this chapter is adopted shall comply with this section within 60 days of enactment.

(C) A license holder who operates an establishment that sells only tobacco-related products is exempt from the self-service merchandising provision if the license holder prohibits anyone under 18 years of age from entering the establishment, unless accompanied by a parent, and the license holder conspicuously displays a notice prohibiting persons under 18 years of age from entering the establishment unless accompanied by a parent.

(Ord. 42, passed 2-10-98) Penalty, see § 111.99

#### **§ 111.09 RESPONSIBILITY.**

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco related devices on the licensed premises, and the sale of an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the county from also subjecting the employee to whatever penalties are appropriate under this chapter, state or federal law or other applicable law or regulation.

(Ord. 42, passed 2-10-98)

#### **§ 111.10 COMPLIANCE CHECKS AND INSPECTIONS.**

(A) All licensed premises shall be open to inspection by the County Sheriff's Department or other authorized official during regular business hours.

(B) From time to time, but at least once per year, the county shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years, to enter the licensed premise to attempt to purchase tobacco, tobacco products or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated county personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products or tobacco related devices when the items are obtained or attempted to be obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked.

(C) Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research or training purposes or required for the enforcement of a particular state or federal law.

(Ord. 42, passed 2-10-98)

#### **§ 111.11 OTHER ILLEGAL ACTS.**

Unless otherwise provided, the following acts shall be a violation of this chapter:

(A) It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product or tobacco related device to any minor.

(B) It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product or tobacco related device. This division shall not apply to minors lawfully involved in a compliance check.

(C) It shall be a violation of this chapter for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product or tobacco related device.

(D) It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product or tobacco related device. It shall be a violation of this chapter for any person to purchase or otherwise obtain the items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product or tobacco related device. This division shall not apply to minors lawfully involved in a compliance check.

(E) It shall be a violation of this chapter for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

(Ord. 42, passed 2-10-98) Penalty, see § 111.99

### **§ 111.12 VIOLATIONS.**

(A) Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard.

(B) Following receipt of a notice of denial issued under §111.03 or a notice of a violation and penalty issued under § 111.99, an applicant, license holder or employee of the license holder may request a hearing before a hearing officer appointed by the County Board or its designee. A request for a hearing shall be made by the applicant, license holder or employee of the license holder in writing and filed with the County Administrator within ten days of personal service or the mailing of the notice of denial or alleged violation. Following receipt of a written request for hearing, the applicant, license holder or employee of the license holder shall be afforded an opportunity for a hearing before the hearing officer.

(C) If after the hearing, the applicant or license holder is found ineligible for a license, or the license holder or employee of the license holder is in violation of this chapter, that decision, along with the hearing officer's reasons for the decision shall be in writing. A copy shall be provided to the applicant, license holder or employee of the license holder within ten days of the date of the decision.

(D) Appeals of any decision made by the hearing officer shall be filed in the district court for the county within 30 days of the decision of the hearing officer.

(E) If the applicant, license holder or employee of the license holder has been provided written notice of the denial or violation and if no request for a hearing is filed within the ten-day period, then the denial, penalty, suspension and/or revocation imposed pursuant to this chapter shall take effect by default. The County Sheriff's Office shall investigate compliance with the suspension or revocation.

(F) Nothing in this chapter shall prohibit the county from seeking prosecution as a misdemeanor for any alleged violation of this chapter. The county also has the right to seek prosecution as set forth in M.S. Chapter 609, as it may be amended from time to time, and any other applicable state criminal statutes.

(G) Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(Ord. 42, passed 2-10-98)

### **§ 111.99 PENALTY.**

(A) (1) Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$100 for a first violation; \$200 for a second offense at the same licensed premises within a 24-month period; and \$250 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

(2) Other individuals, other than minors regulated by division (A)(3) below, found to be in violation of this chapter shall be charged an administrative fine of \$50.

(3) Minors found in unlawful possession or who unlawfully purchase or attempt to purchase, tobacco, tobacco products or tobacco related devices, shall be issued a citation and processed through the Criminal Justice Intervention Project, as established by County Court Services.

(B) Nothing in this chapter shall prevent the providing of tobacco, tobacco products or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony. It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law.

(Ord. 42, passed 2-10-98)

## **CHAPTER 112: CHARITABLE GAMBLING**

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### Section

- 112.01 Authority
- 112.02 Adoption of Minnesota Statutes
- 112.03 Jurisdiction
- 112.04 Limitation on certain gambling sites
- 112.05 Limitation on certain leases
- 112.06 Organizational structure requirements

112.07 Reports

112.08 Non-compliance

### **§ 112.01 AUTHORITY.**

These regulations are adopted pursuant to M.S. § 349.213, as it may be amended from time to time.

(Ord. 29, passed 2-25-86)

### **§ 112.02 ADOPTION OF MINNESOTA STATUTES.**

M.S. §§ 349.11 through 349.22, as they may be amended from time to time, are hereby adopted by reference and made a part of this chapter as completely as if said statutes were fully set forth herein.

(Ord. 29, passed 2-25-86)

### **§ 112.03 JURISDICTION.**

The provisions of this ordinance shall apply to all land within the county which is not within the boundaries of an incorporated city.

(Ord. 29, passed 2-25-86)

### **§ 112.04 LIMITATION ON CERTAIN GAMBLING SITES.**

No more than one licensed organization may conduct lawful gambling on any premises at which there is a gambling site during the same period or periods of time that another licensed organization is conducting lawful gambling. All leases pertaining to lawful gambling shall state the days of the week during which a licensee may conduct a lawful gambling on said premises. This prohibition shall, however, not apply to the conduct of raffles.

(Ord. 29, passed 2-25-86)

### **§ 112.05 LIMITATION ON CERTAIN LEASES.**

Lawful gambling consisting of the use of pull tabs may only be conducted by a licensed organization on premises owned by said organization or upon space leased by said organization.

(Ord. 29, passed 2-25-86)

### **§ 112.06 ORGANIZATIONAL STRUCTURE REQUIREMENTS.**

Approval of applications and renewal applications for lawful gambling licenses pursuant to M.S. §§ 349.11 through 349.22, as they may be amended from time to time, shall be granted by the County Board only to those organizations which meet the following requirements:

(A) The organization is a qualified organization under M.S. § 349.14, as it may be amended from time to time;

(B) Either 50% or more of the active members of the organization reside within the county or the organization meets regularly at least once per month and at least 90% of such regularly scheduled meetings are conducted within the county; and

(C) The organization has been in existence for at least 24 consecutive months.

(Ord. 29, passed 2-25-86)

### **§ 112.07 REPORTS.**

Each licensee shall annually, at least 60 days prior to the close of each annual licensing period, file a report with the Carver County Auditor in such form as prescribed by the county, showing how the profits derived from lawful gambling conducted by such licensee have been spent for lawful purposes as defined by M.S. § 349.12, sub. 11, as it may be amended from time to time. At least 75% of said profits shall be spent for lawful purposes within the county or to benefit residents of the county.

(Ord. 29, passed 2-25-86)

### **§ 112.08 NON-COMPLIANCE.**

Failure to comply with any provision of this ordinance shall be sufficient cause for withholding approval by the County Board for issuing or renewing an organization license.

(Ord. 29, passed 2-25-86)

**General Provisions**

- 113.01 Statutory authorization
- 113.02 Findings and purpose
- 113.03 Title and short title
- 113.04 Jurisdiction
- 113.05 Compliance
- 113.06 Non-conforming uses
- 113.07 Enforcement
- 113.08 Interpretation
- 113.09 Inapplicability of M.S. § 617.242
- 113.10 Abrogation and greater restrictions
- 113.11 Referral to other laws
- 113.12 Definitions

**Administration**

- 113.25 Adult use license and conditional use permit required
- 113.26 License fees
- 113.27 Granting of adult use license
- 113.28 Persons ineligible for adult use license
- 113.29 Permitted locations for adult use; principal
- 113.30 Conditions of adult use license
- 113.31 Expiration and renewal
- 113.32 Suspension and revocation
- 113.33 Hearing; denial, suspension, revocation of license; Appeal

**Adult Use Operational Restrictions**

- 113.45 Adult use; principal
- 113.46 Adult use; accessory
  
- 113.99 Penalty

**GENERAL PROVISIONS**

**§ 113.01 STATUTORY AUTHORIZATION.**

This chapter is adopted pursuant to the authority delegated to Carver County by M.S. Chapter 394.

(Ord. 66-2010, passed 4-13-10)

**§ 113.02 FINDINGS AND PURPOSE.**

(A) This chapter is intended to regulate “adult uses”, those premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of “specified sexual activities” or “specified anatomical areas” which are capable of being seen by members of the public.

(B) The nature of adult uses is such that they are recognized as having adverse secondary effects, based upon studies of the effects that adult establishments have on the surrounding areas. These studies have been conducted by the Minnesota Attorney General, and cities such as St. Paul, Minnesota; Indianapolis, Indiana; Phoenix, Arizona; Los Angeles, California; Houston, Texas; Newport News, Virginia; and Seattle, Washington.

(C) The adverse secondary effects found in the studies include increased crime rates, decreased property values, increased transiency, neighborhood blight, and potential health risks. These effects are particularly apparent when they are accessible to minors and located near residential properties or residential uses such as schools, day care centers, libraries



or parks. The nature of the adult uses requires that they not be allowed within certain zoning districts, or set back a minimum distance from each other, or other residential uses. Special regulation of these uses is necessary to ensure that the adverse secondary effects will not contribute to or enhance criminal activity in the area of such uses, nor will it contribute to the blighting or downgrading of the surrounding property and lessening of its value.

(D) It is therefore in the best interest of the public health, safety and welfare of the citizens of Carver County that certain types of activities, as set forth in this chapter, are prohibited upon the premises of licensed liquor, wine and beer establishments so as to best protect and assist the owners and operators and employees of these premises, as well as patrons and the public in general. This chapter is intended to prevent harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Carver County Board of Commissioners also desires to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various acts of criminal conduct such as prostitution, sexual assault, and disorderly conduct.

(Ord. 66-2010, passed 4-13-10)

### **§ 113.03 TITLE AND SHORT TITLE.**

(A) *Title.* The title of this chapter is Carver County Code, Chapter 113, Carver County Adult Use Businesses.

(B) *Short title.* This chapter shall be known, and may be referred to, as Adult Use Businesses. When used herein, it shall be known as "this chapter."

(Ord. 66-2010, passed 4-13-10)

### **§ 113.04 JURISDICTION.**

The provisions of this chapter shall apply to all adult uses located in the unincorporated areas within the boundaries of Carver County.

(Ord. 66-2010, passed 4-13-10)

### **§ 113.05 COMPLIANCE.**

All adult uses shall be in full compliance with requirements of this chapter, the Carver County Zoning Code, the Carver County Subsurface Sewage Treatment System Ordinance, other applicable provisions of county, state or federal laws, and applicable fire, health, and/or safety codes.

(Ord. 66-2010, passed 4-13-10)

### **§ 113.06 NON-CONFORMING USES.**

Any adult use business existing on the effective date of the adoption of this chapter may be continued subject to the following provisions.

(A) No such adult use business shall be expanded or enlarged except in conformity with this chapter.

(B) A non-conforming adult use business shall be required to comply with this ordinance, and apply for and receive an adult use license and conditional use permit from the county within six months of the date of this chapter. The county does not require a public hearing before issuing a license for the non-conforming adult use business.

(Ord. 66-2010, passed 4-13-10) Penalty, see § 113.99

### **§ 113.07 ENFORCEMENT.**

The Carver County Board of Commissioners, the Carver County Sheriff, and the Carver County Land Management Department, or their designee, shall have authority to enforce this chapter.

(Ord. 66-2010, passed 4-13-10)

### **§ 113.08 INTERPRETATION.**

In the interpretation and application, the provisions of this chapter shall be interpreted to protect the public health, safety and welfare of the citizens of Carver County by providing for the regulation of adult uses in an effort to prevent or minimize adverse secondary effects associated with such adult uses. This chapter is not intended to limit or repeal any other powers granted to Carver County by the State of Minnesota.

(Ord. 66-2010, passed 4-13-10)

### **§ 113.09 INAPPLICABILITY OF M.S. § 617.242.**

Section 617.242 of the Minnesota Statutes does not apply to or in the unincorporated areas of Carver County. The section is also inapplicable to or in the unincorporated areas of Carver County as to any portion of the operations of sexually-oriented businesses that are not regulated by this chapter but which may otherwise have been subject to it.

(Ord. 66-2010, passed 4-13-10)

## § 113.10 ABROGATION AND GREATER RESTRICTIONS.

This chapter is not intended by this chapter to repeal, abrogate, or impair any existing ordinances, or laws. If this chapter is inconsistent with any other ordinance or law, that which imposes the greater restriction shall prevail.

(Ord. 66-2010, passed 4-13-10)

## § 113.11 REFERRAL TO OTHER LAWS.

If any section of this chapter references another ordinance, statute, rule or other provision of law, the reference shall be for that other provision of law as is currently enacted and as it may be amended or re-codified in the future.

(Ord. 66-2010, passed 4-13-10)

## § 113.12 DEFINITIONS.

(A) *Word usage.* 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 purposes of this chapter, the words "must" and "shall" are mandatory and not permissive. All distances, unless otherwise specified, shall be measured horizontally.

(B) *Permitted uses.* Permitted uses of land or buildings as hereinafter listed shall be permitted only in the districts indicated, and under the conditions specified.

(C) *Definitions.* Any words not defined in this section shall have the meanings given them in Merriam-Webster's Collegiate Dictionary, Tenth Edition or most recent edition. The following words and terms, whenever they occur in this chapter are defined as follows.

**ADULT USE; BODY PAINTING STUDIO.** A business or establishment if such building or portion of a building excludes minors by virtue of age, and which provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body's specified anatomical areas are displayed, or the application of paint or other substance by a patron to the body of another person if such body's specified anatomical areas are displayed.

**ADULT USE; BOOKSTORE.** A building or portion of a building, establishment, or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film if such building or portion of a building excludes any minor by reason of age, and if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the presentation, display, depiction, or description of "specified sexual activities" or "specified anatomical areas".

**ADULT USE; CABARET.** A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age and if such dancing or live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction, or description of "specified sexual activities" or "specified anatomical areas".

**ADULT USE; COMPANIONSHIP ESTABLISHMENT.** A companionship establishment which excludes minors by reason of age and which provides the service of listening to or engaging in conversation, talk, or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

**ADULT USE; CONVERSATION/RAP PARLOR.** A conversation/rap parlor which excludes minors by reason of age and which provides the service of listening to or engaging in conversation, talk, or discussion, if such service is distinguished by or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

**ADULT USE; HEALTH/SPORT CLUB.** A health/sports club which excludes minors by reason of age and such club is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

**ADULT USE; HOTEL/MOTEL.** A hotel or motel which excludes minors by reason of age and wherein material is presented which is distinguished or characterized by an emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

**ADULT USE; MASSAGE PARLOR, HEALTH CLUB.** A massage parlor or health club which excludes minors by reason of age, and which regularly provides the service of massage if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

**ADULT USE; MINI MOTION PICTURE THEATER.** A building or portion of a building with a capacity of less than 50 persons used for presenting material if such building or portion of a building excludes minors by reason of age and if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

**ADULT USE; MODELING STUDIOS.** An establishment which excludes minors by reason of age and whose major business is the provision to customers of figure models who are provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in "specified sexual activities" or exhibit "specified anatomical areas" while being observed, painted, painted upon, sketched, drawn, sculpted, photographed, or otherwise depicted by such customers.

**ADULT USE; MOTION PICTURE ARCADE.** Any place to which the public is permitted or invited wherein minors are excluded by reason of age, and where coin operated or slug operated or electronically, electrically or mechanically controlled or operated still or motion 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".

**ADULT USE; MOTION PICTURE THEATER.** A building or portion of a building with a capacity of more than 50 persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by reason of age or if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observations by patrons therein.

**ADULT USE; NOVELTY BUSINESS.** A business which excludes minors by reason of age, and which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation.

**ADULT USE; SAUNA/STEAM ROOM/BATHHOUSE FACILITY.** A building or portion of a building used for providing a sauna, steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing, or reducing agent, if such building or portion of a building excludes minors by reason of age or if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

**ADULT USES.** Adult uses include, but are not limited to, adult bookstores, adult motion picture theaters, adult picture rental, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas" which are capable of being seen by members of the public. This definition does not apply to the practice of medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry by state licensed registered persons. Activities classified as obscene are defined by M.S. § 617.241 and are not lawful and are not included in the definitions of adult uses.

**ADULT USES; ACCESSORY.** A use, business, or establishment having 10% or less of its stock in trade or floor area allocated to, or 20% or less of its gross revenues derived from, the sale or rental of adult merchandise.

**ADULT USES; PRINCIPAL.** A use, business, or establishment meeting any of the definitions of *adult uses* excepting those uses that meet the definition of *adult use; accessory*.

**COUNTY.** The County of Carver, Minnesota, or any department or representative of the county who is authorized by this chapter or otherwise by the County Board to represent the county in the administration or enforcement of this chapter.

**COUNTY BOARD.** The Carver County Board of Commissioners or its designee.

**DEPARTMENT.** The Carver County Land Management Department.

**LIQUOR LICENSE.** Any of the following licenses issued or approved pursuant to M.S. Chapter 340A.

**MINOR.** Person(s) under 18 years of age.

**SPECIFIED ANATOMICAL AREAS.**

(a) Human genitals, pubic region, buttocks, anus, or female breast(s) below a point immediately above the top of the areola, unless completely and opaquely covered.

(b) Erect penis, even if completely and opaquely covered.

**SPECIFIED CRIMINAL ACTIVITY.**

(a) Prostitution or promotion of prostitution; dissemination of obscenity or illegal pornography; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; lewdness; sexual battery; rape; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; or distribution of a controlled substance; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses in other jurisdictions that, if the acts would have constituted any of the foregoing offenses if the acts had been committed in Minnesota; for which:

1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a gross misdemeanor or felony offense; or

3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24 month period.

**SPECIFIED SEXUAL ACTIVITIES.**

(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 sexual-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty;

(b) Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence;

(c) Use of human or animal ejaculation or ejaculate, sodomy, oral copulation, coitus, or masturbation;

(d) Fondling or touching of nude human genitals, pubic region, buttocks, or female breast(s);

(e) Situations involving a person or person, any of whom are nude, clad in undergarments, or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical constraint of any such persons;

(f) Erotic or nude touching, fondling or other sexually oriented contact with an animal by a human being; and/or

(g) Human erection, urination, menstruation, vaginal or anal irrigation.

(Ord. 66-2010, passed 4-13-10)

## **ADMINISTRATION**

### **§ 113.25 ADULT USE LICENSE AND CONDITIONAL USE PERMIT REQUIRED.**

(A) No person shall own or operate an adult use; principal without first having secured an adult use license and a conditional use permit from Carver County pursuant to this chapter and Chapter 152 of the Carver County Code.

(B) *Application.* The application for issuance of an adult use license (and renewal) shall be submitted on forms provided by Carver County Land Management and shall include:

(1) If the applicant is an individual: the name, residence, phone number and birth date of the applicant. If the applicant is a partnership: the name, residence, phone number, and birth date of each general and limited partner. If the applicant is a corporation: the name, residence, phone numbers, and birth dates of all persons holding more than 5% of the issued outstanding stock of the corporation;

(2) The name, address, phone number, and birth date of the operator and manager of such operation, if different from the owner(s);

(3) The address and legal description of the premises where the adult establishment is to be located;

(4) Proof of ownership interest in the land or premises where the adult establishment is to be located or a signed purchase agreement or other authorization from the owner(s) of the land or premises;

(5) A statement detailing each specified criminal activity, as defined in this chapter, for which persons required to be disclosed in division (B)(1) of this section, operator, or manager above have been convicted and whether or not the applicant has ever applied for or held a license to operate a similar type business in any other community(s);

(6) The activities and types of business to be conducted;

(7) The hours of operation;

(8) Provisions to be utilized to restrict access by minors; and

(9) A building plan of the premises detailing all internal operations and activities.

(C) *Responsibility to obtain other permits/licenses.* The granting of any permit or license pursuant to the requirements of this chapter, or other applicable Carver County ordinances, shall not relieve the applicants of their responsibility to obtain any required state or federal permits.

(Ord. 66-2010, passed 4-13-10) Penalty, see § 113.99

### **§ 113.26 LICENSE FEES.**

(A) *Submittal of fees.* Each application for an adult use license shall be submitted to the Land Management Department and shall be accompanied by payment in full of the required fee for the adult use license.

(B) *Fee.* The fee for the adult use license application and adult use license renewal application shall be as detailed in the fee schedule established by the County Board. The fee may be adjusted from time to time by Board action.

(C) *Refund of fee.* If any application for a license is rejected, the license fee shall not be refunded. No part of the fee paid for any license issued under this chapter shall be refunded.

(Ord. 66-2010, passed 4-13-10) Penalty, see § 113.99

### **§ 113.27 GRANTING OF ADULT USE LICENSE.**

(A) *Investigation by sheriff.* The Carver County Sheriff and the Department have authority to investigate all facts set out in

the application. The applicant(s), operator, and each owner of the establishment shall be subject to a criminal history background investigation by the Sheriff or his or her designee. Cost of the criminal history investigations shall be borne by the applicant according to the Carver County fee schedule. The application for the adult use license shall not be considered complete until all required information has been furnished, the investigation has been completed by the Sheriff, and a report provided to the Department by the Sheriff.

(B) *Granting of adult use license.* Upon receipt of a completed application pursuant to division (A) of this section, the Department shall forward its findings on the application to the County Board. The County Board shall grant or deny the application in a timeframe so as to comply with M.S. § 15.99. The County Board shall deny the application if any of the ineligibility conditions in § 113.28 exist, or if the proposed location does not meet the requirements set forth in § 113.29. If the application is granted, a provisional adult use license will be issued by the County Board. The issuance of a provisional adult use license does not automatically result in a conditional use permit being issued, and the applicant must follow the procedures set forth in Chapter 152 in order to obtain a conditional use permit. The County Board shall change the provisional adult use license to an adult use license immediately following the granting of the conditional use permit if all requirements have been met.

(C) *Expiration of provisional adult use license.* A provisional adult use license shall expire 120 days from the date the license is granted unless an extension is granted by the County Board.

(D) *Adult use license is non-transferable.* The provisional adult use license and adult use license shall be issued only to the applicant and only for the premises described in the application. No more than one adult use premises may be listed on each application. No license may be transferred to another premises or person without the written approval of the County Board. If the licensee is a partnership or corporation, a change in the identity of any of the general or limited partners or a change in persons holding more 5% or more of the issued and outstanding stock of the corporation shall be deemed to be a transfer of the license.

(Ord. 66-2010, passed 4-13-10) Penalty, see § 113.99

#### **§ 113.28 PERSONS INELIGIBLE FOR ADULT USE LICENSE.**

A license shall not be issued to any person:

- (A) Under 21 years of age;
- (B) Who is overdue in payments to a city, county, state, or federal government of taxes, fees, fines or penalties, or charges for municipal services and utilities assessed against him/her or imposed upon him or her;
- (C) Who has been convicted of a specified criminal activity, as defined in this chapter;
- (D) Who is not the owner of the establishment for which the license is issued;
- (E) To any applicant who is acting as an agent for an individual who would be disqualified pursuant to the criteria in this section;
- (F) Who has not paid the required investigation/licensing fees required by this chapter;
- (G) No license shall be granted for an adult use business on any premises where a licensee has been convicted of a violation of this chapter, or where any license hereunder has been revoked for cause, until one year has elapsed after such conviction or revocation; or
- (H) No adult use license shall be granted for any adult use business which is not in compliance with the county's land use regulations, or fire, health, and safety codes and all provisions of federal and state law.

(Ord. 66-2010, passed 4-13-10) Penalty, see § 113.99

#### **§ 113.29 PERMITTED LOCATIONS FOR ADULT USE; PRINCIPAL.**

- (A) Adult use; principal shall only be allowed in the rural service districts as defined in Chapter 152.
- (B) Adult use; principal shall be located at least 1,000 lineal feet as measured in a straight line from the nearest point of the business premises and associated parking lot of the adult use; principal to the nearest structure associated with:
  - (1) Any single or multiple family residence or farmstead;
  - (2) Any licensed daycare facility;
  - (3) Any public or private educational facility classified as an elementary, junior high, or senior high school;
  - (4) Any hotel or motel;
  - (5) Any public park or trails system;
  - (6) Any nursing home;
  - (7) Any church or church related organization;
  - (8) Another adult use business. No adult use; principal shall be located in the same building or upon the same property

as another adult use; principal; or

(9) Any establishment that has a liquor license or serves alcoholic beverages.

(C) All adult uses shall meet the required access, parking, screening, lighting, and other relevant site related criteria as set forth in the Carver County Code of Ordinances.

(Ord. 66-2010, passed 4-13-10) Penalty, see § 113.99

### **§ 113.30 CONDITIONS OF ADULT USE LICENSE.**

(A) All licensed premises shall have the license posted in a conspicuous place at all times.

(B) No minor shall be permitted on the premises.

(C) Any designated inspection officer of the county shall have the right to enter, inspect, and search the premises of a licensee during business hours. A licensee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this section for purposes of license denial, suspension, and/or revocation. This section shall be narrowly construed by the county to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize an excessive pattern of inspections or violations of constitutional rights.

(D) No adult goods or material shall be offered, sold, transferred, conveyed, given, displayed, or bartered to any minor.

(E) The licensee must keep itemized written records of all transactions involving the sale or rental of all items or merchandise for at least one year after the transaction. At a minimum, those records must describe the date of the transaction, a description of the transaction, the purchase or rental price, and a detailed description of the item or merchandise that is being purchased or rented. These written records must be provided to the Department or the Department's designee(s) upon request.

(F) The licensee must cover or otherwise arrange all windows, doors, and apertures to prevent any person outside the licensed premises from viewing any items or merchandise inside the premises depicting "specified sexual activities" or "specified anatomical areas".

(G) All adult use businesses shall prominently display a sign at the entrance and located within two feet of the door opening device of the adult use business or section of the establishment devoted to adult use which states: "This business sells or displays material containing adult themes. Persons under eighteen (18) years of age shall not enter".

(Ord. 66-2010, passed 4-13-10) Penalty, see § 113.99

### **§ 113.31 EXPIRATION AND RENEWAL.**

(A) *Expiration.* Each license shall expire one year from the date the license is granted and may be renewed only by making application as provided in §§ 113.25 through 113.27. Application for renewal must be submitted to the Department at least 60 days before the expiration date.

(B) *Denial of renewal.* When the County Board denies the renewal of a license, the applicant shall not be issued a license for one year from the date of denial. The license applicant may appeal the decision to a court of law within 30 days of the final decision of the County Board or its designee. Any decision adverse to the licensee shall be deemed final immediately upon its issuance, but shall not take effect for 30 days. If, subsequent to denial, the County Board finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

(Ord. 66-2010, passed 4-13-10) Penalty, see § 113.99

### **§ 113.32 SUSPENSION AND REVOCATION.**

(A) *Suspension.* The County Board may issue a letter of intent to suspend, for up to 30 days, an adult use license if a licensee knowingly commits, or allows an employee to commit, a violation of this chapter.

(B) *Revocation.* The County Board may issue a letter of intent to revoke an adult use business license, if a licensee knowingly commits, or allows an employee to commit, three or more violations of this chapter within a one year period, or if one or more of the following occurs:

(1) A licensee or an employee of the licensee has committed fraud, or a material misrepresentation in securing the adult use license;

(2) A licensee or an employee of the licensee has knowingly allowed possession, use, or sale of controlled substances, including alcohol, on the premises;

(3) A licensee or an employee of the licensee has engaged in or allowed prostitution on the premises;

(4) A licensee or an employee knowingly operated the adult use business during a period of time when the licensee's license was suspended; and/or

(5) A licensee has been convicted of a specified criminal activity.

(Ord. 66-2010, passed 4-13-10)

### § 113.33 HEARING; DENIAL, SUSPENSION, REVOCATION OF LICENSE; APPEAL.

(A) *Written notice.* Denial, revocation or suspension shall be preceded by written notice to the applicant or licensee and a public hearing before the County Board or its designee. The notification shall be directed to the most current business address or other mailing address on file with the Department for the applicant or licensee and shall state the grounds for which a denial, revocation, or suspension is being requested. The notice shall be delivered by certified mail or personal service.

(B) *Hearing.* Within 20 days of the written notice to the applicant or licensee, the County Board shall conduct a hearing for the purpose of determining whether to deny, revoke, or suspend the license. Applicant or licensee may be represented by counsel and may submit all relevant evidence or arguments. The County Board or its designee shall issue a written decision within ten days after the hearing, which decision shall deny, suspend, revoke, or grant the license, and state the reasons for such action. Any decision adverse to the applicant or licensee shall be deemed final immediately upon its issuance, but shall not take effect for 30 days.

(C) *Appeal of suspension or revocation.* If the County Board or its designee orders the suspension or revocation, the applicant or licensee may appeal the decision to a court of law within 30 days of the final decision of the County Board or its designee and the licensee may continue in business until the conclusion of the action.

(D) *Appeal of denial.* If the County Board or its designee orders the denial of a new adult use license, the license applicant may appeal the decision to a court of law within 30 days of the final decision of the County Board or its designee. The applicant may not commence doing business unless the action is concluded in its favor.

(Ord. 66-2010, passed 4-13-10) Penalty, see § 113.99

### ADULT USE OPERATIONAL RESTRICTIONS

#### § 113.45 ADULT USE; PRINCIPAL.

(A) *General provisions.* Adult uses as defined in §113.12(C) shall be subject to the following general provisions.

(1) An adult use which does not qualify as an accessory use pursuant to §113.46 shall be classified as an adult use; principal.

(2) No person(s) under 18 years of age shall be permitted in any adult use; principal premises, enterprise, establishment, business or place.

(3) No liquor license shall be issued to any adult use; principal.

(4) No adult use related premises, enterprise, establishment, business or place shall allow or permit the sale or service of set ups to mix alcoholic drinks. No alcoholic beverages shall be consumed on the premises of such premises, enterprise, establishment, business, or place.

(5) Activities classified as obscene as defined in M.S. § 617.241 are not permitted and are prohibited. In no instance shall the application or interpretation of this chapter be construed to allow an activity otherwise prohibited by law.

(6) Adult use; principal shall be prohibited from locating in any building which is also utilized for residential purposes.

(7) Any adult use; principal having available for customers, patrons, or employees, a booth, room or cubicle for the private viewing of any "specified anatomical areas" or "specified sexual activities" must comply with the following requirements:

(a) Each booth, room or cubicle shall be without doors and the occupant must be visible at all times;

(b) Only one person may be in a booth, room, or cubicle at a time;

(c) Walls separating booths, rooms, or cubicles must be such that the occupants cannot engage in sexual activity;

(d) Each booth, room, or cubicle must be kept clean and sanitary; and

(e) Minimum lighting requirements in accordance with the Carver County Code of Ordinances must be maintained;

(8) Illumination of the premises exterior shall be adequate to observe the location and activities of all persons on the exterior premises; and

(9) The owner/operator shall hire and employ their own security personnel who shall maintain orderly conduct at such adult use; Principal. These employees are not required to be licensed peace officers.

(B) *Hours of operation.* No adult use shall be open to the public from the hours of 12:00 midnight to 10:00 a.m. weekdays and Saturday, nor between 12:00 midnight and 12:00 noon on Sunday.

(C) *Sign regulation.* Adult use; principal shall adhere to the following sign regulations in addition to those set forth in Chapter 154 of the Carver County Code:

(1) Sign messages shall be generic in nature and shall only identify the name and type of business;

(2) Signs shall not be obscene and/or graphic depictions of "specified anatomical areas" or "specified sexual activities"

as defined by this chapter; and

(3) Signs shall be limited to the size, location, and number of signs permitted in the district in which the use is located.

(D) *Adult use; cabaret regulations.* The following additional restrictions apply to adult use; cabarets.

(1) No person, firm, partnership, corporation or other entity shall advertise, or cause to be advertised, an adult cabaret without a valid adult use license.

(2) An adult use licensee shall maintain and retain for a period of two years the names, addresses, and ages of all persons engaged, hired, or employed as dancers or performers by the licensee.

(3) No owner, operator, or manager of an adult cabaret shall permit or allow any dancer or other live entertainer to perform nude unless as provided in divisions (D)(6) and (7) of this section.

(4) No patron or other person other than a dancer or live entertainer, as provided in divisions (D)(6) and (7) of this section, shall be nude in an adult cabaret.

(5) No dancer, live entertainer, or performer shall be under 18 years of age.

(6) All dancing shall occur on a platform intended for that purpose which is raised at least two feet above the level of the floor.

(7) No dancer or performer shall perform or dance closer than ten feet from any patron unless such dancer or performer is enclosed behind a floor to ceiling glass.

(8) No dancer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.

(9) No person under 18 years of age shall be admitted to an adult cabaret.

(10) No patron shall pay or give any gratuity directly to any dancer or performer.

(Ord. 66-2010, passed 4-13-10) Penalty, see § 113.99

#### **§ 113.46 ADULT USE; ACCESSORY.**

(A) *Permitted locations for accessory adult uses.* Adult use; accessory shall be permitted in the rural service districts as defined in Chapter 152 at establishments where there is an existing permitted retail establishment. Adult use; accessory shall conform to the following provisions:

(1) A use, business, or establishment having 10% or less of its stock in trade or floor area allocated to, or 20% or less of its gross revenues derived from, the sale or rental of adult merchandise;

(2) Not include any adult use activity except the sale or rental of adult merchandise; and

(3) Adult use; accessory shall be prohibited from locating in any building which is also utilized for residential purposes.

(B) *Separation of areas.* Adult use; accessory shall be restricted from, and prohibit access to minors, by physically separating the following and similar items from areas of general public access.

(1) Movie rental display areas shall be restricted from general view and shall be located within a separate room, the access of which is in clear view of, and under the control of, the person(s) responsible for the operation. All adult use; accessory shall prominently display a sign at the entrance and located within 2 feet of the door opening device of the adult use; accessory establishment or section of the establishment devoted to adult use which states: "Persons under eighteen (18) years of age shall not enter".

(2) Magazines or publications containing "specified anatomical areas" or "specified sexual activities" shall not be physically accessible to minors and shall be covered with a wrapper or other means to prevent display of any material other than the publication title.

(C) *Advertising.* Adult use; accessory shall be prohibited from both internal and external advertising and signing of adult materials and products.

(Ord. 66-2010, passed 4-13-10) Penalty, see § 113.99

#### **§ 113.99 PENALTY.**

(A) *Violation a misdemeanor.* Any person who fails to comply with the terms of this chapter is guilty of a misdemeanor. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

(B) *Injunctive relief.* In the event of a violation or threat of a violation of this chapter, the county may institute appropriate actions or proceedings, including injunctive relief to prevent, restrain, correct or abate such violations or threatened violations. If a person fails to comply with the provisions of this chapter, the county may recover fees and costs, including costs incurred by the county for corrective action. Such fees and costs may be certified by the court as a special tax against the real property.

(Ord. 66-2010, passed 4-13-10)



# TITLE XIII: GENERAL OFFENSES

Chapter

## 130. CURFEW

### CHAPTER 130: CURFEW

Section

130.01 Purpose and findings

130.02 Authority

130.03 Definitions

130.04 Prohibited acts

130.05 Exceptions

130.06 Enforcement

130.99 Penalty

#### § 130.01 PURPOSE AND FINDINGS.

(A) The Board of Commissioners finds that there has been an increase in juvenile violence and crime by juveniles in recent years.

(B) Juveniles are particularly susceptible by their lack of maturity and experience to participate in unlawful activities and to be victims of older perpetrators of crime.

(C) Because of the foregoing, special and extenuating circumstances presently exist within the county that require special regulation of juveniles within the county in order to protect them and other persons during the nighttime hours, to aid in crime prevention, to promote parental supervision and authority over minors and to decrease juvenile crime rates.

(D) In accordance with prevailing community standards, this chapter serves to regulate the conduct of minors in public places during nighttime hours, to be effectively and consistently enforced for the protection of juveniles from each other and from other persons, in public places during nighttime hours, for the enforcement of parental control of, authority over and responsibility for their children, for the protection of the general public from nighttime mischief by juveniles, for the reduction in the incidents of juvenile criminal activities, for the furtherance of family responsibility and for the public good, safety and welfare.

(E) It is the intent of the County Board to review and evaluate the need and effect of nighttime curfew for juveniles set forth in this chapter on the incidents of juvenile criminal activity and protection of juveniles against criminal activity.

(Ord. 25, passed 2-1-96)

#### § 130.02 AUTHORITY.

This chapter is enacted pursuant to M.S. § 145A.05(7)(a), as it may be amended from time to time.

(Ord. 25, passed 2-1-96)

#### § 130.03 DEFINITIONS.

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

**AUTHORIZED ADULT.** Any person who is at least 18 years of age and authorized by a parent or guardian to have custody and control of a juvenile.

**COUNTY BOARD.** The Board of Commissioners of the county.

**EMERGENCY.** An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to a fire, a natural disaster or automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.

**JUVENILE.** A person under the age of 18 years. The term does not include persons under 18 who are married or have been legally emancipated.

**PARENT.** Any person having legal custody of a juvenile:

- (1) As natural, adoptive parent or step-parent;
- (2) As a legal guardian; or
- (3) As a person to whom legal custody has been given by order of the court.

**PUBLIC PLACE.** Any place to which the public or a substantial group of the public has access and includes, but is not limited to streets, highways, roadways, parks, public recreation, entertainment or civic facilities, schools and the common areas of hospitals, apartment houses, office buildings, transport facilities and shops.

**SERIOUS BODILY INJURY.** Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(Ord. 25, passed 2-1-96)

#### **§ 130.04 PROHIBITED ACTS.**

(A) It is unlawful for a juvenile under the age of 12 to be present in any public place within the county:

(1) Any time between 9:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday and 5:00 a.m. of the following day; and/or

(2) Any time between 10:00 p.m. on any Friday or Saturday and 5:00 a.m. the following day.

(B) It is unlawful for any juvenile age 12 to 14 years to be present in any public place within the county:

(1) Any time between 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday and 5:00 a.m. of the following day; and/or

(2) Any time between 11:00 p.m. on any Friday or Saturday and 5:00 a.m. on the following day.

(C) It is unlawful for any juvenile age 15 to 17 years to be in any public place within the county:

(1) Any time between 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday and 5:00 a.m. of the following day; and/or

(2) Any time between 12:01 a.m. and 5:00 a.m. on any Saturday or Sunday.

(D) It is unlawful for a parent or authorized adult of a juvenile to knowingly, or through negligent supervision, to permit the juvenile to be in any public place within the county during the hours prohibited by this section under circumstances not constituting an exception to this chapter. The term **KNOWINGLY** includes knowledge which a parent or authorized adult shall reasonably be expected to have concerning the whereabouts of a juvenile under the person's care.

(E) It is unlawful for any person operating or in charge of any place of amusement or refreshment which is open to the public to knowingly permit any juvenile to be in the place during the hours prohibited by this section under circumstances not constituting an exception to this chapter. The term **PERSON OPERATING** shall mean any individual, firm, association, partnership or corporation operating, managing or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

(Ord. 25, passed 2-1-96) Penalty, see § 130.99

#### **§ 130.05 EXCEPTIONS.**

(A) The following constitute valid exceptions to the operation of the curfew:

(1) If a juvenile is accompanied by his or her parent or an authorized adult;

(2) If a juvenile is involved in, or attempting to remedy, alleviate or respond to an emergency;

(3) If the juvenile is engaged in a lawful employment activity, or is going to or returning home from his or her place of employment;

(4) If the juvenile is attending an official school, religious or other social or recreational activity supervised by adults and sponsored by a city or the county, a civic organization or another similar entity that takes responsibility for the juvenile;

(5) If the juvenile is going to or returning home from, without any detour or stop, the official school, religious or other recreational activity supervised by adults and sponsored by a city or the county, a civic organization or another similar entity that takes responsibility for the juvenile;

(6) If the juvenile is on an errand as directed by his or her parent, without any detour or stop;

(7) If the juvenile is engaged in interstate travel;

(8) If the juvenile is on the public right-of-way, boulevard or sidewalk abutting the juvenile's residence or abutting the neighboring property, structure or residence;

(9) If the juvenile is exercising First Amendment rights protected by the United States Constitution, or those similar rights protected by Article I of the State Constitution, such as free exercise of religion, freedom of speech and the right of

assembly; or

(10) If the juvenile is homeless or uses a public or semi-public place as his or her usual place of abode.

(B) It is an affirmative defense to prosecution under § 130.04 that:

(1) The owner, operator or employee of an establishment promptly notified the Police Department or Sheriff's Department that a juvenile was present on the premises of the establishment during curfew hours; and/or

(2) The owner, operator or employee reasonably and in good faith relied upon a juvenile's representations of proof of age. Proof of age may be established pursuant to M.S. § 340A.503(6), as it may be amended from time to time, or other verifiable means, including, but not limited to school identification cards and birth certificates.

(Ord. 25, passed 2-1-96)

#### **§ 130.06 ENFORCEMENT.**

(A) Before taking any enforcement action under this section, a police officer or Sheriff's Deputy shall ask the apparent offender's age and reason for being in a public place.

(B) The officer/deputy shall not issue a citation or make an arrest under this section unless the officer/deputy reasonably believes that an offense has occurred and that no exception set forth in § 130.05 is applicable.

(Ord. 25, passed 2-1-96)

#### **§ 130.99 PENALTY.**

(A) Violation of this chapter will be prosecuted and will be subject to penalties.

(B) Violation of § 130.04(D) or (E) is a misdemeanor.

(Ord. 25, passed 2-1-96)

## **TITLE XV: LAND USAGE**

Chapter

**150. BUILDING REGULATIONS**

**151. SUBDIVISIONS**

**APPENDIX: ROAD STANDARDS**

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**153. WATER RESOURCE MANAGEMENT**

**APPENDIX A: VOLUME AND WATER QUALITY CALCULATIONS**

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## **CHAPTER 150: BUILDING REGULATIONS**

Section

### ***Building Code***

150.01 State Building Code adopted

150.02 Application, administration, and enforcement

150.03 Fees

150.04 Violations and penalties

150.05 Separability; supremacy

### ***Conveyance of Titles***

- 150.30 Purpose
- 150.31 Instruments requiring approval
- 150.32 Procedure
- 150.33 Recording prohibited
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## **BUILDING CODE**

### **§ 150.01 STATE BUILDING CODE ADOPTED.**

(A) The Minnesota State Building Code, established pursuant to M.S. §§ 16B.59 to 16B.75, as amended from time to time, is hereby adopted as the building code (hereinafter "code") for the county. The Minnesota State Building Code is hereby incorporated in this subchapter as if fully set out herein.

(B) The Minnesota State Building Code includes the following chapters of Minnesota Rules as may be amended from time to time, which are also incorporated in this subchapter as if fully set out herein:

- (1) 1300 – Administration of the *Minnesota State Building Code*;
- (2) 1301 – Building Official Certification;
- (3) 1302 – State Building Construction Approvals;
- (4) 1303 – Minnesota Provisions;
- (5) 1305 – Adoption of the *2000 International Building Code*;
- (6) 1307 – Elevators and Related Devices;
- (7) 1309 – Adoption of the *2000 International Residential Code*;
- (8) 1311 – Adoption of the *2000 Guidelines for the Rehabilitation of Existing Building*;
- (9) 1315 – Adoption of the *2002 National Electrical Code*;
- (10) 1325 – Solar Energy Systems;
- (11) 1330 – Fallout Shelters;
- (12) 1341 – *Minnesota Accessibility Code*;
- (13) 1346 – Adoption of the *Minnesota State Mechanical Code*;
- (14) 1350 – Manufactured Homes;
- (15) 1360 – Prefabricated Structures;
- (16) 1361 – Industrialized/Modular Buildings;
- (17) 1370 – Storm Shelters (Manufactured Home Parks);

(18) 4715 – Minnesota Plumbing Code. Commercial plumbing permits. Prior to installation of a system of plumbing other than for a single-family dwelling, with independent plumbing service, complete plumbing plans and specifications, together with any additional information that the Building Official may require, shall be submitted in triplicate and approved by the Building Official. No construction shall proceed except in accordance with the approved plans. Any alteration or extension of any existing plumbing system shall be subject to these same requirements;

- (19) 7670, 7672, 7674, 7676, and 7678, *Minnesota Energy Code*.

(Ord. 52, passed 11-25-03; Am. Ord. 63-2008, passed 2-26-08)

### **§ 150.02 APPLICATION, ADMINISTRATION, AND ENFORCEMENT.**

This code shall be effect in the unincorporated areas of the county. The Land & Water Services Division shall be the Building Code Department of the county. This code shall be enforced by a Minnesota Certified Building Official designated by the county to administer the code.

(Ord. 52, passed 11-25-03; Am. Ord. 62-2007, passed 12-11-07)

### **§ 150.03 FEES.**

The issuance of permits and the collection of fees shall be as follows.

(A) Fees shall be assessed for work governed by this code in accordance with the fee schedule adopted by the county. In addition, a surcharge fee shall be collected on all permits issued for work governed by this code.

(B) An investigation fee, in addition to the permit fee, shall be collected whenever any work for which a permit is required by this code has been commenced without first obtaining the permit. The payment of the investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

(C) A reinspection fee may be assessed in the following situations:

- (1) For each reinspection when the portion of work for which inspection is called is not complete;
- (2) When corrections called for are not made;
- (3) When the inspection record card is not readily available at the time of inspection;
- (4) Approved plans are not readily available;
- (5) Failure to provide access on the date for which inspection is requested;
- (6) Deviating from plans requiring the approval of the building official.

(D) Fee refunds may be authorized by the Building Official of any fee paid hereunder which was erroneously paid or collected. The Building Official may authorize refunding of not more than 80% of the permit fee paid when no work has been done under a permit issued in accordance with this code. The Building Official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment. All plan review fees shall be paid by the applicant whether the project is to be completed or not.

(Ord. 52, passed 11-25-03)

#### **§ 150.04 VIOLATIONS AND PENALTIES.**

(A) Any person, firm, or corporation who shall violate any of the provisions hereof or who shall make any false statement in any document required to be submitted under the provisions of this code shall be guilty of a misdemeanor. Each day that the violation continues shall constitute a separate offense.

(B) Injunctive relief and other remedies. In the event of a violation or threat of a violation of this code, the county may institute appropriate actions or proceedings, including injunctive relief, to prevent, restrain, correct, or abate such violations or threat of violations.

(Ord. 52, passed 11-25-03)

#### **§ 150.05 SEPARABILITY; SUPREMACY.**

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

(B) *Supremacy.* When any condition imposed by any provision of this subchapter on the use of land or building or on the bulk of buildings is either more restrictive or less restrictive than similar conditions imposed by any provision of any other community ordinance or regulation, the more restrictive conditions shall prevail.

(Ord. 52, passed 11-25-03)

### **CONVEYANCE OF TITLES**

#### **§ 150.30 PURPOSE.**

The county has adopted rules by which it regulates the platting or subdivision of lands outside of municipalities as authorized by M.S. § 505.11, as it may be amended from time to time. The purpose of this subchapter is to facilitate the uniform application and enforcement of the regulations and is adopted pursuant to the authority granted by state law.

(Ord. 6, passed 5-16-89; Am. Ord. 6A, passed 5-16-89)

#### **§ 150.31 INSTRUMENTS REQUIRING APPROVAL.**

All instruments by which the legal title to real estate situated in the county is conveyed from one owner to a new owner shall be submitted to the Zoning Officer before the same is recorded in the Office of the County Recorder.

(Ord. 6, passed 5-16-89; Am. Ord. 6A, passed 5-16-89)

#### **§ 150.32 PROCEDURE.**

(A) The Zoning Officer shall examine all instruments to determine that the proposed conveyance complies with county regulations, as the same may be amended from time to time. If the Zoning Officer is satisfied that the proposed conveyance complies with the regulations, he or she shall affix his or her stamp to the deed, which stamp shall be in the following form: "I certify that this instrument complies with Carver County Ordinance No. 33 and is eligible for recording or registration."

(B) If the Zoning Officer shall have any doubt concerning any proposed conveyance, he or she shall refer the same to the County Surveyor and shall not approve the same for recording or registration until the instrument has also been approved by

the County Surveyor.

(Ord. 6, passed 5-16-89; Am. Ord. 6A, passed 5-16-89)

**§ 150.33 RECORDING PROHIBITED.**

The County Recorder shall not record or register any of the instruments referred to in §150.31 until the instrument has been approved for recording or registration by the Zoning Officer.

(Ord. 6, passed 5-16-89; Am. Ord. 6A, passed 5-16-89)

**§ 150.34 EXCLUSIONS.**

(A) Real estate mortgages and leases for a period of 20 years or less shall not require approval prior to recording.

(B) Contracts for deed and other executory contracts for the sale of land shall be deemed an instrument of conveyance hereunder.

(Ord. 6, passed 5-16-89; Am. Ord. 6A, passed 5-16-89)

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## **CHAPTER 151: SUBDIVISIONS**

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### **GENERAL PROVISIONS**

#### **§ 151.001 SHORT TITLE.**

This chapter shall be known as the Carver County Subdivision Ordinance, and will be referred to herein as this chapter.  
(Ord. 33, § 1.1, passed 1-21-92)

#### **§ 151.002 POLICY.**

(A) It is hereby declared to be the policy of the county to consider the subdivision of land and the subsequent development of the plat as subject of the control of the county pursuant to the comprehensive plan of the county for the orderly, planned, efficient and economical development of the county.

(B) Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, or other menace, and land shall not be subdivided unless proper provisions have been made for drainage, water, sewage, and capital improvements such as schools, parks, recreation facilities, transportation facilities and any other necessary improvements.

(C) Each lot created through subdivision must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis 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 community.

(D) The existing and proposed public improvements shall conform to and be properly related to the county and township comprehensive plans, official map, and the capital budget and program of the county, and it is intended that these regulations shall supplement and facilitate the enforcement of the provisions and standards contained in the building code, zoning code, the comprehensive plan, official map, and capital budget and program of the county.

(Ord. 33, § 1.2, passed 1-21-92)

#### **§ 151.003 PURPOSES.**

These regulations are adopted for the following purposes:

- (A) To protect and provide for the public health, safety, and general welfare of the county;
- (B) To guide the future growth and development of the county, in accordance with the comprehensive plan;
- (C) To preserve prime and good agricultural land in tracts large enough for viable commercial agricultural operations;
- (D) To provide for adequate light, air, and privacy, to secure safety from fire, flood, and other danger, and to prevent overcrowding of the land and undue congestion of population;
- (E) To protect the character and the social and economic stability of all parts of the county and to encourage the orderly and beneficial development of all parts of the county;
- (F) To protect and conserve the value of land throughout the county and the value of buildings and improvements upon the land, and to minimize the conflicts among the uses of land and buildings;
- (G) To guide public and private policy and action in order to provide adequate and efficient transportation, water, sewage, schools, parks, playgrounds, recreation, and other public requirements and facilities;
- (H) To provide the most beneficial relationship between the uses of land and buildings and the circulation of traffic throughout the county, having particular regard to the avoidance of congestion in streets and highways, and the pedestrian traffic movements appropriate to the various uses of land and buildings, and to provide for the proper location and width of streets and building lines;
- (I) To establish reasonable standards of design and procedures for subdivisions and resubdivisions, in order to further the orderly layout and use of land and to insure proper legal descriptions and monumenting of subdivided land;



(J) To insure that adequate public facilities are available and will have a sufficient capacity to serve the proposed subdivision;

(K) To prevent the pollution of air, streams, and ponds; to assure the adequacy of drainage facilities; to safeguard the water table and to encourage the wise use and management of natural resources throughout the county in order to preserve the integrity, stability, and beauty of the community and the value of the land;

(L) To preserve the natural beauty and topography of the county and to insure appropriate development with regard to these natural features; and

(M) To provide for open spaces through the most efficient design and layout of the land, including the use of average density in providing for minimum width and area of lots, while preserving the density of land as established in the zoning code of the county.

(Ord. 33, § 1.3, passed 1-21-92)

#### **§ 151.004 JURISDICTION.**

These rules and regulations shall apply to all plats and subdivisions of land, including registered land surveys, within the unincorporated areas of the county, except within orderly annexation areas or other areas where there is an agreement between the township, the city and the county for the subdivision of land.

(Ord. 33, § 1.4, passed 1-21-92)

#### **§ 151.005 PLATTING AUTHORITY.**

The County Board shall serve as the platting authority of the county in accordance with M.S. Chapters 394 and 505, as they may be amended from time to time. No plat, replat, subdivision of land or registered land survey, excluding minor subdivisions, shall be filed or accepted for filing by the County Recorder/Registrar of Titles of Carver County unless it is accompanied by a certified copy of a resolution adopted by the affirmative vote of the majority of the members of the County Board approving such plat, replat, subdivision of land or registered land survey except as provided in §§ 151.095*et seq.*

(Ord. 33, § 1.5, passed 1-21-92; Am. Ord. 70-2010, passed 1-25-11)

#### **§ 151.006 INTERPRETATION AND SCOPE.**

All subdivisions of land within Carver County shall equal or exceed the standards set forth in this chapter. The standards established by this chapter are not intended to repeal, abrogate, annul or impair private agreements or restrictive covenants running with the land which are equal to or more restrictive than the standards hereby established, except that the most restrictive shall apply.

(Ord. 33, § 1.6, passed 1-21-92)

#### **§ 151.007 DEFINITIONS.**

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

**ALLEY.** A public right-of-way which affords a secondary means of access to abutting property.

**BLOCK.** An area of land within a subdivision which is entirely bounded by streets or by a combination of streets, railroad right-of-way, public parks, or cemeteries, the exterior boundary or boundaries of the subdivision, or the shoreline of the above with a river or lake.

**BLUFF.** Refer to the Zoning Code regulations, Chapter 152 of this code of ordinances.

**BOULEVARD.** That portion of the street right-of-way between the curb line and the property line.

**BUILDING.** Refer to the Zoning Code regulations, Chapter 152 of this code of ordinances.

**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.

**BUTT LOT.** A lot at the end of a block and located between two corner lots.

**CAPITAL IMPROVEMENT PROGRAM (CIP).** An itemized program setting forth the schedule and details of specific contemplated public improvements by fiscal year, together with their estimated cost, the justification for each improvement, the impact that such improvements will have on the current operating expense of the government, and such other information on capital improvements as may be pertinent.

**COMPREHENSIVE PLAN.** Refer to the Zoning Code regulations, Chapter 152 of this code of ordinances.

**CROSSWALK or PEDESTRIAN WAY.** A publicly owned right-of-way which crosses a block and furnishes pedestrian access to adjacent streets or properties.

**CUL-DE-SAC.** A local street with only one outlet and having an appropriate terminus for the safe and convenient reversal of traffic movement.

**DEPARTMENT.** Refer to the Zoning Code regulations, Chapter 152 of this code of ordinances.

**EASEMENT.** A grant or authorization by a property owner for the use of a designated part of his or her property, by the public, a corporation, or persons for a specific purpose such as the construction of utilities, drainage ways and roadways.

**ENGINEER.** The County Engineer or a consultant engineer employed by the county.

**ESCROW.** The deposition of funds in an account maintained by the governmental unit specifically for the purpose of ensuring fulfillment of certain obligations assumed pursuant to this chapter.

**FLEXIBLE ZONING TECHNIQUES.** Zoning which permits the use of land and density of buildings and structures different from those which are allowed by right in the zoning district in which the land is situated. Some examples are planned unit developments, group housing projects, average or density zoning projects.

**FRONTAGE, HAVE FRONTAGE ON, FRONT ON.** Abut, immediately adjacent to.

**GOVERNING BODY.** County Board of Carver County.

**GRADE, PERCENTAGE OF.** The rise or fall of a street in feet and tenths of a foot for each 100 feet of horizontal distance measured at the center line of the street.

**IMPROVEMENT, LOT.** Any building, structure, work of art, or other object, or improvement of the land on which they are situated constituting a physical betterment of real property, or any part of such betterment. Certain lot improvements may require bonding under the provisions of this chapter.

**IMPROVEMENT, PUBLIC.** Any drainage facility, roadway, parkway, park, sidewalk, pedestrian way, tree, lawn, off-street parking area, lot improvement or other facility for which the local government may ultimately assume the responsibility for maintenance and operation, or which may affect an improvement for which county responsibility is established.

**LOT.** The smallest unit of a subdivision individually numbered or designated on the plat for purposes of description, recording, conveyance, development and taxation. The terms **LOT**, **PARCEL**, and **TRACT** are synonymous.

**LOT, CORNER.** A lot situated at the intersection of two streets.

**LOT DEPTH.** The mean horizontal distance between a street right-of-way line and the opposite rear line of the lot measured in the general direction of the side lot lines.

**LOT, DOUBLE FRONTAGE.** A lot having frontage on two parallel or approximately parallel streets.

**LOT LINE.** A lot line is a property line bounding a lot except that where any portion of a lot extends into or abuts the public right-of-way or a proposed public right-of-way, the nearest line of such public right-of-way shall be the lot line for applying this chapter.

**LOT WIDTH.** The horizontal distance between the side lot lines of a lot measured at the location of the principal building and at the road right-of-way line or ordinary high water level.

**MINIMUM SUBDIVISION DESIGN STANDARDS.** The guides, principles and specifications for the preparation of subdivision plans indicating among other things, the minimum and maximum dimensions of the various elements set forth in the preliminary plat.

**OFFICIAL MAP.** Refer to the Zoning Code regulations, Chapter 152 of this code of ordinances.

**ORDINARY HIGH WATER LEVEL.** Refer to the Zoning Code regulations, Chapter 152 of this code of ordinances.

**OUTLOT.** A parcel of land shown on a subdivision plat as an outlot, and designated alphanumerically, for example - Outlot A. Outlots are used to designate one of the following: land that is part of the subdivision but is to be subdivided into lots and blocks at a later date; land that is to be used for a specific purpose as designated in a development contract or other agreement between the county and the subdivider; or for a public purpose.

**OWNER.** Any individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under these regulations.

**PERSON.** Shall include both female and male and shall also extend and be applied to bodies politic and corporate and partnerships and other unincorporated associations.

**PLAT.** The drawing or map of a subdivision prepared for filing of record pursuant to M.S. Chapter 505, as it may be amended from time to time, and containing all elements and requirements set forth in applicable local regulations adopted pursuant to M.S. § 562.358 and Chapter 505, as they may be amended from time to time.

**PLAT, FINAL.** The final map, drawing or chart on which the subdivider's plan or subdivision is presented to the County Board for approval and which, if approved, will be submitted to the County Recorder/Registrar of Titles.

**PLAT, PRELIMINARY.** The preliminary map, drawing or chart indicating the proposed layout of the subdivision to be submitted to the Planning Commission and County Board for their consideration for compliance with the county plan and these regulations along with required supporting data.

**PLATTING OFFICER.** The manager of the Department assigned to perform the duties so outlined in this chapter.

**PROTECTIVE/RESTRICTIVE COVENANTS.** Documents filed in the office of the County Recorder/Registrar of Titles which constitute a restriction on the property in the subdivision.

**REGISTERED ENGINEER.** An engineer properly licensed and registered in the state.

**REGISTERED LAND SURVEYOR.** A land surveyor properly licensed and registered in the state.

**RESPONSIBLE AUTHORITY.** The unit of government or other organization as designated in a developer's agreement that will be responsible for the operation and/or maintenance of an improvement within a subdivision plat.

**RESUBDIVISION.** A change in a map of an approved or recorded subdivision plat if such change affects any street layout on such map or area reserved thereon for public use, or any lot line or if it affects any map or plan legally recorded prior to the adoption of any regulations controlling subdivisions.

**RIGHT-OF-WAY.** A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, watermain, sanitary or storm sewer main, shade trees, or for another special use. The usage of the term **RIGHT-OF-WAY** for land platting purposes shall mean that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels. Rights-of-way intended for streets, crosswalks, watermain, sanitary sewers, storm drains, shade trees, or any other use involving maintenance by a public agency shall be dedicated to public use by the make of the plat on which such right-of-way is established.

**ROAD RIGHT-OF-WAY WIDTH.** The distance between property lines measured at right angles or radially to the centerline of the street.

**SETBACK.** The minimum horizontal distance between a structure, sewage treatment system, or other facility, and an ordinary high water level, sewage treatment system, top of bluff, road, highway, property line, or other facility.

**SHORELAND.** Land located within the following distance from public waters: 1,000 feet from the ordinary high water level of a lake, pond or flowage and 300 feet from a river or stream as shown on the Carver County Zoning Map; or the landward extent of a floodplain designated by ordinance of such a river or stream, whichever is greater. The practical limits of shorelands may be less than statutory limits wherever the waters involved are bounded by natural topographic divides which extend landward from the waters for lesser distances and when approved by the Commissioner of Natural Resources.

**STREET, ARTERIAL.** A street of considerable continuity, which is used primarily for heavy through traffic between major traffic generation areas. Arterial streets are designated in the comprehensive plan.

**STREET, COLLECTOR.** A feeder street as designated in the comprehensive plan which provides connection primarily between arterial streets or arterial streets and minor streets. Collector streets include the principal entrance streets of a residential development and the principal streets for circulation within such development.

**STREET, CUL-DE-SAC.** A comparatively short minor street having one end open to traffic and the other end permanently terminated by a vehicular turn-around.

**STREET, LOCAL.** A minor street, the principal function of which is to provide access to individual parcels of property. Culs-de-sac and marginal access streets are to be considered local streets.

**STREET, MARGINAL ACCESS SERVICE STREET OR FRONTAGE ROAD.** A minor street which is parallel and adjacent to a highway or an arterial street and which provides access to abutting properties and protection from through traffic.

**STREET WIDTH.** The width of the improved surface of the street as measured at right angles or radially to the centerline of the street from curb face to curb face, or on a street without curbs from the outside edge of the improved shoulder to outside edge of improved shoulder.

**SUBDIVIDER.** A person, owner, applicant, or developer who submits a plat for the purpose of land subdivision as defined herein. The subdivider may be the owner or authorized agent of the owner of the land to be subdivided.

**SUBDIVISION.** The separation of an area, parcel, or tract of land 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:

(1) Where all the resulting parcels, tracts, or interests will be 20 acres or larger in size and 500 feet in width for residential or agricultural uses and 5 acres or larger in size for commercial and industrial uses;

(2) Creating cemetery lots;

(3) Resulting from court orders, or the adjustment of a lot line by the relocation of a common boundary.

**ZONING CODE.** The ordinance so named, and any amendments thereto, adopted by the county regulating the use of land within the unincorporated areas of the county.

(Ord. 33, § 13.0, passed 1-21-92; Am. Ord. 70-2010, passed 1-25-11)

## **§ 151.008 RESTRICTIONS ON BUILDING PERMIT, IMPROVEMENTS, ACCEPTANCE, MAINTENANCE.**

No subdivision shall be entitled to be recorded in the office of the County Recorder/Registrar of Titles nor shall it have any

validity unless approved as provided in this chapter. The county shall not issue any building permits for any structure in any lot in a subdivision that has not received final approval pursuant to this chapter. The County Board shall not permit any improvements to be installed unless the preliminary plat is approved and shall expend no public monies for street or utility maintenance services until the approval of the final plat. The County Board shall not accept the dedication of any improvements prior to the approval of the final plat.

(Ord. 33, § 1.7, passed 1-21-92)

#### **§ 151.009 REGISTERED LAND SURVEYS.**

All registered land surveys under the jurisdiction of this chapter shall be filed with the Platting Officer and shall be subject to the same procedure as required for the filing and approval of a plat. The standards and requirements in this chapter shall apply to registered land surveys and all the restrictions contained in this section shall apply to registered land surveys.

(Ord. 33, § 1.8, passed 1-21-92)

#### **§ 151.010 METES AND BOUNDS.**

Except as otherwise specifically provided in this chapter, no land shall be conveyed or subdivided by a metes and bounds description.

(Ord. 33, § 1.9, passed 1-21-92)

#### **§ 151.011 COMPLIANCE WITH COMPREHENSIVE PLAN, ZONING CODE, OFFICIAL MAP.**

No subdivision of land shall conflict with the provisions of the county or affected township comprehensive plan, zoning code, or official map.

(Ord. 33, § 1.10, passed 1-21-92)

#### **§ 151.012 ADOPTION OF A MANUAL OF STANDARD PROCEDURES.**

The county is hereby authorized to adopt by resolution a manual of standards for the subdivision of land and the design and installation of public improvements associated with the subdivision of land.

(Ord. 33, § 1.11, passed 1-21-92)

#### **§ 151.013 FEES.**

The Carver County Board is hereby authorized to adopt by resolution a schedule of fees for the subdivision and development of land as provided by this chapter.

(Ord. 33, § 1.12, passed 1-21-92)

### **GENERAL PROCEDURES FOR THE SUBDIVISION OF LAND**

#### **§ 151.025 PLATTING REQUIRED.**

With the exception of those divisions of land specifically provided for in §§ 151.095*et seq.*, all subdivisions of land regulated by this chapter shall be platted in accordance with the procedures of §§ 151.040*et seq.*, 151.055*et seq.*, and 151.075*et seq.*

(Ord. 33, § 2.1, passed 1-21-92)

#### **§ 151.026 REQUIRED STEPS.**

Whenever any subdivision of land is proposed, regardless of whether the land has been previously subdivided, before any contract is made for the sale of any part thereof, and before any permit for the erection of a structure on such proposed subdivision shall be granted, the subdividing owner or his or her authorized agent shall apply for and secure approval of such proposed subdivision in accordance with the procedures set out in §§ 151.040*et seq.*, 151.055*et seq.*, and 151.075*et seq.*

(Ord. 33, § 2.2, passed 1-21-92)

#### **§ 151.027 RE-SUBDIVISION OF LAND.**

Whenever a parcel of land is subdivided and the subdivision plat shows one or more lots that may eventually be resubdivided into smaller building sites, the County Board may require that the land be platted so as to allow for the future opening of streets and the ultimate extension of adjacent streets. Easements providing for the future opening and extension of such streets may be made a requirement of the plat. The plat shall provide for the location of structures so as to permit future subdivision into smaller lots.

(Ord. 33, § 2.3, passed 1-21-92)

#### **§ 151.028 BOARD OF ADJUSTMENT/VARIANCES.**

A plat or subdivision shall not be approved where a variance will subsequently be required in order to use the lot(s) for their intended use. But, where the Board of Adjustment finds that extraordinary hardship(s) or practical difficulty(s) may result from strict compliance with these regulations and/or the purposes of these regulations may be serviced to a greater extent by an alternative proposal, the Board of Adjustment may approve variances from these subdivision regulations, provided that such variances shall not have the effect of nullifying the intent and purpose of this chapter, the Zoning Code, or the Comprehensive Plan, and further provided the Board of Adjustment shall not approve or disapprove variances unless it shall make findings based upon the evidence presented in the Zoning Code regulations, Chapter 152 of this code of ordinances.

(Ord. 70-2010, passed 1-25-11)

#### **§ 151.029 PUBLIC HEARING NOTICE.**

In all cases where a public hearing is required, official notice of said hearing shall be published in a newspaper of general circulation in the area at least 10 days but no more than 30 days prior to the date of said hearing. Mailed notice of the hearing shall be provided to all property owners within 1,320 feet of the boundaries of the affected land. Timing of the notice shall be the same as that for the published notice. Defects in the public notices shall not abrogate or annul subsequent proceedings provided a good faith attempt was made to give proper notice.

(Ord. 33, § 2.5, passed 1-21-92)

### **SKETCH PLAN**

#### **§ 151.040 PURPOSE.**

Subdividers shall prepare, for review and approval by the Department, a sketch plan depicting a subdivision proposal. In addition, the subdivider shall prepare, for review and approval by the Planning Commission, a sketch plan depicting a subdivision proposal if a conditional use permit is required. The sketch plan and accompanying information shall serve as the basis for discussions between the subdivider, the Planning Commission and the staff, and is intended to provide the developer with an advisory review of the subdivision without incurring major costs. This step may not be necessary if another action, typically a zoning action, accomplishes the same purpose as the sketch plan review.

(Ord. 33, § 3.1, passed 1-21-92; Am. Ord. 70-2010, passed 1-25-11)

#### **§ 151.041 INFORMATION REQUIRED.**

The following information shall be supplied at a minimum:

- (A) A sketch plan showing proposed lot, density, use acreage, and relationship to the surrounding land, location within the county, and generalized natural features;
- (B) Any required zoning changes;
- (C) Proposed timing and staging of development;
- (D) Documents demonstrating the applicant's interest in the property.

(Ord. 33, § 3.2, passed 1-21-92)

#### **§ 151.042 SUBMISSION.**

The sketch plan and associated information shall be submitted to the Platting Officer no later than 12 calendar days prior to a regularly scheduled Planning Commission meeting. The Platting Officer shall review the application and determine if the proposed division is under the jurisdiction of this chapter. If the Officer determines that the division is not under the jurisdiction of this chapter, the Platting Officer shall execute a certification to that fact within 10 days. If it is determined that this chapter applies, the Platting Officer shall place the sketch plan review on the Planning Commission agenda.

(Ord. 33, § 3.3, passed 1-21-92)

#### **§ 151.043 ACTION BY THE PLANNING COMMISSION.**

If applicable, the Planning Commission shall recommend to the County Board the conformity of the subdivision with the comprehensive plan, the subdivision regulations, potential variances that may be required, and of other applicable official controls. Any comments or recommendations for modifications made and/or approval at this point by the Planning Commission are recommendations only from the Planning Commission, and shall not constitute approval or commitment to approve. If the subdivider determines to proceed with the subdivision as proposed or revised, he or she may proceed with the preparation of the preliminary plat as provided in §§ 151.055*et seq.*

(Ord. 33, § 3.4, passed 1-21-92; Am. Ord. 70-2010, passed 1-25-11)

#### **§ 151.044 DETERMINATION OF REQUIREMENT FOR ENVIRONMENTAL REVIEW DOCUMENTS.**

The Platting Officer shall review the sketch plan and shall determine if environmental review documents must be completed pursuant to Minn. Rules Parts 4410.0200 through 4410.7800, as they may be amended from time to time. If such documents are required, the Platting Officer shall notify the subdivider of the requirement.

## **PRELIMINARY PLAT**

### **§ 151.055 REQUIREMENT FOR APPLICATION.**

After the completion of the sketch plan process if required, the owner or subdivider shall file with the Platting Officer an application for preliminary plat approval which shall consist of the following:

(A) A completed application form and documents demonstrating sufficient ownership or control in the applicant to apply for the subdivision;

(B) Six copies of the preliminary plat, plus any additional copies deemed necessary by the Platting Officer plus one reproducible copy reduced to 8½ inches x 11 inches. The application shall contain at a minimum the information required in § 151.056 and any additional information required by the county;

(C) Application fee. Refer to the Carver County Fee Schedule. This fee will be used for the expenses of the county in connection with approval or disapproval of said plat.

(D) If the subdivider requests that any existing special assessments which have been levied against the premises described in the subdivision be divided and allocated to the respective lots in the subdivision plat, the county shall estimate the clerical cost of preparing the revised assessment roll, filing the same with the County Taxpayers Services Department, and making such division and allocation, and upon approval by the Board of such estimated cost the same shall be paid to the County Finance Department in addition to the fee mentioned above to cover the cost of preparing and filing such revised assessments.

(E) Completed environmental review documents required pursuant to §151.044.

(Ord. 33, § 4.1, passed 1-21-92; Am. Ord. 70-2010, passed 1-25-11)

### **§ 151.056 INFORMATION TO BE FURNISHED WITH PRELIMINARY PLAT.**

(A) The preliminary plat stage is the point in the process that all information pertinent to the proposed development is furnished by the developer for review by county staff, the Planning Commission, the County Board, and the public. The information provides a basis for approval/denial of the application. The information submitted in the application should address both existing conditions and changes that will occur during and after development. The preliminary plat is a plan of how property will be developed. Changes may be required by the Planning Commission or County Board and additional information may be requested during the review process. In certain cases some information required by these standards may not be appropriate or may need to be modified in order to provide an adequate basis for making a decision. The staff, Planning Commission, and County Board may request additional information. Modifications to the informational requirements may be made by the County Board, the Planning Commission and authorized staff.

(B) Preliminary plat information is typically furnished on the plat map, however, some information is more appropriately submitted in other forms. The plat and associated information should be submitted in a form that is legible, organized and understandable. The following information should be submitted as the preliminary plat application:

(1) *General information.* The application shall consist of a map and accompanying documents. The map and documents shall contain the following general information:

(a) The proposed name of the plat;

(b) Name, address, phone number of the owner, developer, agent, applicant, engineer, surveyor, planner, attorney or other principle involved in the development of the plat;

(c) Proof of ownership or sufficient interest in the property to legally make application;

(d) School district, watershed, or other special purpose of government in which the proposed plat is located;

(e) Existing zoning or any zoning changes needed, reference to any zoning or similar land use actions that have already occurred that are pertinent to the proposed development;

(f) Total acreage of the land to be subdivided;

(g) Boundary line survey and legal description;

(h) North arrow and scale of 1:200 to 1:50 depending upon the size of the plat and the detail of the information to be shown;

(i) Existing covenants, liens, or encumbrances.

(2) *Existing features to be shown.*

(a) Existing property lines and property lines extending 100 feet from the exterior boundaries of the parcel to be subdivided, the names of the adjacent property owners shall be indicated and their addresses provided.

(b) Existing roads both public and private, showing width of road, types of construction, any associated easements.

(c) Any and all existing easements with purpose of easement and types and location of any facility or installation that is located in the easement.

(d) Location, size, capacity, of all existing drainage storm sewer and agricultural tiles, abandoned wells, sewer, water, and utility facilities including utility poles and utilities stubbed to the property.

(e) Permanent buildings or other substantial land uses.

(f) Topography at 2-foot intervals, to include at least 100 feet beyond the limits of the property.

(g) Existing wooded areas - the location and species of all trees with a trunk diameter of 6 inches or greater shall be shown in areas planned to be disturbed during the development.

(h) Waterways, watercourses, lakes, and wetlands with ordinary high water level and/or 100-year flood elevations shown.

(i) The toe and top of any bluffs present.

(j) In shoreland areas, information shall be submitted regarding near-shore aquatic conditions including depths, types of bottom sediments and aquatic vegetation.

(k) The information submitted shall also include an analysis of the soils in the area to be platted. Areas with soils that will present problems for development shall be shown and any measures taken to alleviate problems shall be outlined. The comprehensive plan and the Carver County Soils Survey are the primary information sources for this information. Representative soil borings are advised, in some cases they may be required.

(3) *Proposed features to be shown.* The following information is required for the preliminary plat. Additional information that will aid in decision-making should also be submitted:

(a) Proposed lot lines, dimensions, and acreage of all new lots;

(b) Proposed uses and densities including parks, ponding areas, areas of common ownership;

(c) Location, grade, and width of proposed streets, pedestrian ways, sidewalks, bicycle paths, trails, walking paths and provision for extending streets to serve adjacent areas;

(d) General plans for the connection/installation of sewer, water, electricity, telephone, gas, and drainage facilities;

(e) Location of two sites suitable for on-site sewer systems with the method of protecting the unused site for future use outlined;

(f) Grading plans showing how the site will be graded and showing the final contours into the existing contours;

(g) Proposed easements for drainage, slope protection, flood protection, and protection of wetlands and waterbodies including storm-water storage areas, easements for the installation of utilities and street trees;

(h) The minimum setbacks and resulting building lines;

(i) Documents outlining the content of proposed restrictions, covenants, and establishment of homeowners' associations in sufficient detail to review for content;

(j) Information or easements showing how utilities, drainage, and roads can be extended to serve adjacent property;

(k) Erosion control measures to be taken to prevent erosion and sedimentation both during and after development;

(l) If the entire parcel is not being proposed for subdivision, a sketch indicating how the remaining property could be subdivided;

(m) Other information not specifically required in this section may be supplied by the applicant. Examples of other information that could be supplied include sample site plans and artist's conceptions of the final development.

(Ord. 33, § 4.2, passed 1-21-92)

#### **§ 151.057 FILING AND REVIEW OF APPLICATION.**

(A) The preliminary plat application shall be considered to be officially filed when the Platting Officer has received and examined the application and has certified that the application is complete.

(B) If the determination has not been previously made, the Platting Officer shall then determine if the proposed subdivision is within the scope of these regulations.

(C) If the determination is made that this chapter does not apply, the county shall execute a certification to that fact within ten days and refund any fees that may have been paid.

(D) Within a reasonable time after receiving and certifying the preliminary plat application, the Platting Officer shall:

(1) Set a public hearing on the preliminary plat, such hearing to be held by the Planning Commission within 45 days. Public notice shall be in accordance with § 151.029. The Planning Commission shall report its findings and recommendations to the governing body. The recommendation may be conditional, and may recommend approval or denial

of all or part of the preliminary plat. Notice of said hearing shall be published once in the official newspaper at least ten days prior to the hearing.

(2) Refer copies of the preliminary plat to the Planning Commission, and other staff, advisory boards, committees, commissions, consultants, or agencies as appropriate.

(Ord. 33, § 4.3, passed 1-21-92)

#### **§ 151.058 SUBMISSION.**

The Platting Officer shall submit copies of the preliminary plat together with reports and other relevant materials to the Planning Commission within ten days of the public hearing.

(Ord. 33, § 4.4, passed 1-21-92)

#### **§ 151.059 REPORT OF THE PLANNING COMMISSION.**

The Platting Officer shall prepare a report of the Planning Commission findings and recommendations and transmit same to the County Board within 30 days subsequent to the close of the public hearing on said preliminary plat.

(Ord. 33, § 4.5, passed 1-21-92)

#### **§ 151.060 BOARD ACTION.**

The County Board shall act on the preliminary plat within 120 days of the date of receipt by the county of an application completed in accordance with this chapter. If the report of the Planning Commission has not been received in time to meet this requirement, the Board may act on the preliminary plat without such a report. The County Board may make such changes or revisions as it deems necessary for the health, safety, general welfare and convenience of the county. Should the County Board fail to act within the 120-day period, the preliminary plat shall be deemed approved and the county shall upon demand furnish certification to that effect. The 120-day period may be extended upon agreement with the applicant.

(Ord. 33, § 4.6, passed 1-21-92)

#### **§ 151.061 APPROVAL OR DENIAL.**

Approval or denial shall be by resolution, including findings of fact, and shall be entered in the proceedings of the Board and transmitted to the applicant. If the preliminary plat is approved, such approval shall not constitute final approval of the subdivision.

(Ord. 33, § 4.7, passed 1-21-92)

#### **§ 151.062 QUALIFICATIONS GOVERNING APPROVAL OF THE PRELIMINARY PLAT.**

(A) The preliminary plat shall conform such standards and specifications as adopted by the county.

(B) The approval of a preliminary plat by the County Board is an acceptance of the general layout as submitted, and indicates to the subdivider that he or she may proceed toward fulfilling the necessary steps for approval of the final plat in accordance with the County Board's approval.

(C) Subsequent approval of the engineering proposals required by this chapter pertaining to water supply, storm drainage, sewerage and sewage disposal, sidewalks, gas and electric service, grading, gradients and roadway widths and the surfacing of streets shall be necessary by the public officials having jurisdiction, prior to the approval of the final plat by the county.

(D) No plat will be approved for a subdivision which does not conform to applicable floodplain regulations.

(E) A plat or subdivision shall not be approved unless there is provision for two on-site sewer systems, streets as required by the township, and provisions for the proper disposal of storm water.

(F) A plat or subdivision shall not be approved where a variance will subsequently be required in order to use the lots for their intended purpose.

(Ord. 33, § 4.8, passed 1-21-92)

### ***FINAL PLAT***

#### **§ 151.075 FILING OF APPLICATION AND REQUIREMENTS FOR APPLICATION.**

(A) The owner or subdivider shall file five copies of the final plat no later than six months after the date of approval of the preliminary plat or as provided in a developer's agreement, otherwise, the preliminary plat approval shall be considered void unless an extension is requested in writing by the subdivider and for good cause granted by the County Board. In the case of a final plat filed for only a portion of the preliminary plat, the remaining preliminary plat may be extended as above. The owner or subdivider shall also submit at the same time an up-to-date certified abstract of title or registered property report, and such other evidence, as the County Attorney or Platting Officer may require, showing sufficient title or control in the applicant. Any restrictive covenants, developer's agreement, be submitted for review by the County Attorney unless such



agreements or contracts have already been reviewed and executed. The applicant shall also submit one copy of the final plat to the County Surveyor for mathematical checking, conformance with §§ 151.155*et seq.*, subdivision plats and registered land surveys, and conformance with state statute. Required fees shall be paid at the time of filing.

(B) The final plat shall have incorporated all changes or modifications required by the County Board. In all other respects it shall conform to the preliminary plat. It may constitute only that portion of the approved preliminary plat which the subdivider proposes to record and develop at the time, provided that such portion conforms with all the requirements of these regulations.

(C) The final plat shall be considered officially filed after the Platting Officer has examined it and certified that all requirements have been met.

(Ord. 33, § 5.1, passed 1-21-92)

#### **§ 151.076 REVIEW, APPROVAL, OR DENIAL.**

Within a reasonable time after the final plat is filed with the county, the Platting Officer shall refer copies of the final plat to the township and private utility companies as appropriate. The report by the County Attorney and the County Surveyor shall be considered by the Planning Commission and the County Board. Final action on the plat shall not be taken until such time as these reports are available and have been reviewed. The procedure and timing for the reports of the County Planning Commission and action by the County Board are the same as for preliminary plat except that no public hearing is required in processing the final plat. The County Board shall act on the final plat within 60 days of official filing with the Platting Officer, unless an extension of the deadline is mutually agreed to by the County Board and the applicant. Action shall consist of resolutions passed by the Planning Commission and the County Board approving or denying the plat. The resolutions shall include appropriate findings and any conditions or requirements of approval. The County Board resolution shall authorize the chairman to sign the plat if the plat is to be approved. Failure to act shall constitute approval provided all requirements and conditions upon which preliminary approval are based are met.

(Ord. 33, § 5.2, passed 1-21-92)

#### **§ 151.077 FORM AND CONTENT.**

The final plat shall be of the form and content as prescribed in the §§151.155*et seq.*

(Ord. 33, § 5.3, passed 1-21-92)

#### **§ 151.078 COMPLETION OF IMPROVEMENTS.**

A final plat shall not be approved or signed unless:

(A) All of the required improvements, including improvements required on individual lots, are completed in accordance with the requirements of this chapter, and such completion is certified by the County Engineer, and all improvements to be dedicated to the county are free and clear of all encumbrances and liens; or

(B) The applicant shall post a financial guarantee pursuant to §§151.175*et seq.* at the time of application for final subdivision approval in an amount estimated by the County Engineer as sufficient to secure to the county the satisfactory construction, installation and dedication of the uncompleted portion of required improvements. The financial guarantee shall also secure all lot improvements on the individual lots of the subdivision.

(1) Such financial guarantee shall comply with all statutory requirements and shall be satisfactory to the County Attorney as to form, sufficiency, and manner of execution as set forth in these regulations. The period within which required improvements must be completed shall be specified by the County Board in the resolution approving the final subdivision plat and shall be incorporated in the financial guarantee and shall not in any event exceed two years from date of final approval.

(2) Such guarantee shall be approved by the County Board as to amount, surety, and conditions. The Planning Commission may, upon proof of difficulty, recommend to the County Board extension of the completion date set for in such financial guarantee for a maximum period of one additional year.

(Ord. 33, § 5.4, passed 1-21-92)

#### **§ 151.079 APPROVAL/DENIAL.**

The County Board shall approve or deny the final plat by resolution. The resolution shall include the appropriate findings of fact supporting the approval or denial. The applicant shall be notified of the action.

(Ord. 33, § 5.5, passed 1-21-92)

#### **§ 151.080 RECORDING.**

If the final plat is approved by the County Board, the subdivider shall record it within the office of the County Recorder/Registrar of Titles within six months after the date of approval otherwise the approval of the final plat shall be considered void.

(Ord. 33, § 5.6, passed 1-21-92)

#### **§ 151.081 PRINT TO COUNTY.**

The subdivider shall, immediately upon recording, furnish the county with one print of the final plat showing evidence of the recording. No building permits shall be issued until these conditions have been complied with.

(Ord. 33, § 5.7, passed 1-21-92)

#### **§ 151.082 PARTIAL APPROVAL - EXTENSION OF PRELIMINARY PLAT APPROVAL.**

Upon receiving approval of a final plat for a portion of the approved preliminary plat the subdivider shall be required to request a continuation of the county's recognition of the preliminary plat so as to maintain its approval.

(Ord. 33, § 5.8, passed 1-21-92)

#### **§ 151.083 RECORD PLANS.**

The subdivider shall make a set of record plans indicating thereon all changes in the work and including accurate as built locations, dimensions, elevations, grades, slopes and all other pertinent information concerning the completed work. The subdivider shall submit to the county one complete set of reproducible MYLAR record plans and two sets of prints of the record plan.

(Ord. 33, § 5.9, passed 1-21-92)

### **MINOR SUBDIVISION APPROVAL**

#### **§ 151.095 APPLICATION OF PROVISIONS.**

Notwithstanding the requirements of §§ 151.025*et seq.*, the provisions of this subchapter shall apply only to those subdivisions classified as minor subdivisions.

(Ord. 33, § 6.1, passed 1-21-92)

#### **§ 151.096 MINOR SUBDIVISIONS.**

The following shall be considered minor subdivisions:

(A) *Residential.* Any subdivision of land creating not more than one new residential lot in which the lot to be subdivided conforms to all the following:

- (1) The subdivision meets the zoning code requirements for frontage on an existing road.
- (2) The subdivision does not require the construction of any new public facilities, public improvements or new roads.
- (3) The subdivision complies with the comprehensive plan, zoning code, and any official map.

(B) *Minor boundary adjustments.* The relocation of the boundary line between two abutting existing parcels of property shall be considered a minor subdivision provided such relocation shall not cause the creation of an additional parcel or parcels and the resulting parcels comply with the zoning code.

(C) *Agricultural.* Any division of agricultural land for the purpose of transfer of ownership for agricultural purposes shall be considered a minor subdivision provided all of the requirements of the zoning code are fulfilled.

(D) *Subdivisions resulting from the issuance of a conditional use permit.* Any division of land creating not more than two new lots and required for a use permitted through the issuance of a conditional use permit shall be considered a minor subdivision upon issuance of a conditional use permit.

(E) *Land exchanges and additions to existing lots.* Exchanges of abutting land between owners, and the addition of land to an existing lot shall be considered a minor subdivision provided the new lot and the remaining lot meet the zoning code requirements.

(Ord. 33, § 6.2, passed 1-21-92)

#### **§ 151.097 MAJOR SUBDIVISION.**

Any subdivision of land regulated by this chapter shall be considered a major subdivision unless specifically defined as a minor subdivision in this subchapter.

(Ord. 33, § 6.3, passed 1-21-92)

#### **§ 151.098 APPLICATION PROCEDURE.**

(A) Whenever any subdivision of land as outlined in §151.095 is proposed, before any contract is made for the sale of any part thereof, and before any permit for the erection of a structure in such proposed subdivision shall be granted, the subdividing owner or his or her authorized agent, shall apply for and secure approval of such proposed subdivision in accordance with the following procedures.

(B) Prior to subdividing land, an owner of the land or his or her agent, shall file an application for approval of a minor

subdivision. The application shall be made on forms available from the Department and include:

- (1) A map or sketch drawn to scale and showing:
  - (a) All contiguous property and all roads and their proper name;
  - (b) Proposed new property lines with dimensions noted;
  - (c) Proposed driveway location and location of existing driveways on the same side of the road, if these are not shown on existing aerial half section maps;
  - (d) Citation and location of any existing legal rights-of-way or easements affecting the property;
  - (e) Name and address, including telephone number, of legal owner and/or agent of property;
  - (f) Proposed legal description of the parcel to be subdivided, if available;
  - (g) General location, purpose and dimensions of all existing buildings. Location shall note distance of those buildings closest to property lines from the existing and proposed property lines;
  - (h) General location of any existing tile lines, abandoned wells, drainage ways, waterways, watercourses, lakes, wetlands and the toe and top of any bluffs present. When applicable, the ordinary high water level and 100-year flood elevations must be shown;
  - (i) Location of a primary and a secondary area for an on-site sewer system on parcels of less than 20 acres.
- (2) A survey of the proposed lots or parcels showing the location of all existing buildings thereon which has been prepared and signed by a licensed land surveyor when:
  - (a) The parcel to be created is less than five acres or has less than 500 feet of frontage on a public road and could be used or is being used for a residential building site;
  - (b) The parcel is to be used for a non residential or non-agricultural purpose for which a conditional use permit has been issued; or
  - (c) The parcel is to be used solely for agricultural purposes, will be attached to an adjoining parcel and has no road frontage.
  - (d) Boundary adjustments unless this requirement is waived by the Department.

(Ord. 33, § 6.4, passed 1-21-92; Am. Ord. 70-2010, passed 1-25-11)

#### **§ 151.099 PROCEDURES FOR APPROVAL/DENIAL.**

- (A) Within a reasonable time after certification of completion of the application, the Platting Officer shall review the documents demonstrating ownership or control or refer the documents to the County Attorney for review.
- (B) The Carver County Platting Officer or designee has authority to approve the minor subdivision when:
  - (1) The subdivision is not in conflict with the comprehensive plan, the zoning code, or any other official controls of the county; or
  - (2) A variance has been granted by the Carver County Board of Adjustment.
- (C) Approval shall be signified by the signature of the Platting Officer on the application and the deed of conveyance in accordance with Ordinance No. 6.
- (D) In cases where the parcels to be conveyed or retained are not eligible residential sites under the provisions of the zoning code any instrument of conveyance and all Department records of the parcels shall be marked "not an eligible building site".

(Ord. 33, § 6.5, passed 1-21-92; Am. Ord. 70-2010, passed 1-25-11)

#### **§ 151.100 RESERVED.**

#### **§ 151.101 RECORDING.**

If the subdivision is approved, the subdivider shall record the deeds in the office of the County Recorder/Registrar of Titles within 90 days after the date of approval otherwise the approval of the subdivision shall be considered null and void.

(Ord. 33, § 6.7, passed 1-21-92)

### **IMPROVEMENTS**

#### **§ 151.135 RESPONSIBILITY.**

All required improvements are to be installed and furnished by subdivider including all costs of inspection by the county, at the sole expense of the subdivider and at no expense to the county. If any improvement installed within the boundaries of

the subdivision is determined to be of substantial benefit to lands beyond the boundaries of the subdivision, the County Board may make provisions for causing a portion of the cost of the improvement, representing the benefit to such lands, to be assessed against the same and in such case the subdivider will be required to pay only for such portion of the whole cost of said improvements that represents the benefit to the property within the subdivision.

(Ord. 33, § 8.1, passed 1-21-92)

#### **§ 151.136 STANDARDS AND REQUIREMENTS.**

Engineering requirements, standards for plans, the required improvements, and the standards for design and installation thereof shall conform to such standards and specifications as adopted by the county and any additional or more restrictive standards adopted by the township in which the subdivision is located.

(Ord. 33, § 8.2, passed 1-21-92)

#### **§ 151.137 DEVELOPMENT CONTRACT.**

(A) Prior to installation of any required improvements and prior to approval of the final plat, the subdivider shall enter into a contract in writing with the county and the township requiring the subdivider to furnish and construct said improvements at his or her sole cost and in accordance with plans and specifications and usual contract conditions and/or pay appropriate costs for improvements or other costs associated with the plat. Further, the contract shall provide for the development of any restrictions, covenants, easements, or other conditions of the approved preliminary plat and provide for the proper execution, recording or other action required.

(B) Approval of the development contract shall be by County Board resolution and town board resolution.

(1) The development contract shall include provisions for the supervision of the details of construction by the County Engineer or someone acting in that capacity, and grant to the County Engineer or his or her agent, authority to correlate the work to be done under said contract by any subcontractors authorized to proceed thereunder, and with any other work being done or contracted by the county in the vicinity.

(2) The development contract shall require the subdivider to provide a financial guarantee to ensure completion of all improvements as provided in § 151.140 and § 151.175.

(3) Upon the request of the subdivider, the contract may provide for completion of part or all of the improvements covered thereby prior to acceptance of the final plat. In such event the amount of the guarantee shall be reduced in a sum equal to the estimated cost of the improvements so completed prior to acceptance of the final plat.

(4) The time for completion of the work and the several parts thereof shall be determined by the County Board and/or town board upon recommendation of the County Engineer after consultation with the subdivider and shall be reasonable in relation to the work to be done, the seasons of the year, and proper correlation with construction activities in the subdivision.

(5) The development contract shall state that the subdivider agrees that the county is authorized to automatically draw from the financial guarantee account should it find the subdivider to be in violation of county code and/or the conditions set forth in this contract.

(6) One copy of the development contract which was signed by the applicant, Town Board, and the county shall be submitted to the Department at time of final plat approval. The County Board shall ensure that the development contract and all attachments, exhibits, easements, and other associated documents are recorded in the County Recorder's Office with the final plat. All recording costs shall be the responsibility of the developer.

(Ord. 33, § 8.3, passed 1-21-92; Am. Ord. 70-2010, passed 1-25-11)

#### **§ 151.138 CONSTRUCTION PLANS.**

Construction plans for the required improvements shall conform in all respects with the ordinances and standards of the county. Construction documents shall be prepared at the subdivider's expense by a professional engineer who is registered in the State of Minnesota, and said plans shall contain his or her certification. Such plans together with the quantities of construction items shall be submitted to the County Engineer for his or her approval and for his or her estimate of the total cost of the required improvements. Upon approval they shall become a part of the contract required by § 151.137. One set of the reproducible MYLAR of the plans approved by the County Engineer plus two copies shall be furnished to the county.

(Ord. 33, § 8.4, passed 1-21-92)

#### **§ 151.140 INSPECTION.**

All required improvements on the site that are to be installed under the provisions of this chapter shall be inspected during the course of construction by the County Engineer or his or her agent at the subdivider's expense.

(Ord. 33, § 8.5, passed 1-21-92)

#### **§ 151.141 COMPLETION OF IMPROVEMENTS.**

(A) *Temporary improvement.* The applicant shall build and pay for all costs of temporary improvements required by the County Board and shall maintain same for the period specified by the County Board. Prior to construction of any temporary

facility or improvement, the developer shall file with the county a separate suitable financial guarantee for temporary facilities, which guarantee shall ensure that the temporary facilities will be properly constructed, maintained, and removed.

(B) *Governmental units.* Governmental units to which these guarantee and contract provisions apply may file in lieu of said contract or financial guarantee a certified resolution or ordinance from officers or agencies authorized to act in their behalf, agreeing to comply with the provisions of this section.

(C) *Failure to complete improvement.* For a subdivision for which no financial guarantee has been posted, if the improvements are not completed within the period specified by the County Board in the resolution approving the plat, the approval shall be deemed to have expired. In those cases where a financial guarantee has been posted and required improvements have not been installed within the terms of such development contract, the county may thereupon declare the development contract to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the financial guarantee is declared to be in default.

(D) *Acceptance of dedication offers.* Acceptance of formal offers of dedication of improvements required pursuant to this chapter shall be by resolution of the responsible authority. The approval by the County Board of a subdivision plat shall not be deemed to constitute or imply the acceptance by the responsible authority of any improvements required pursuant to this chapter. The County Board may require said plat to be endorsed with appropriate notes to this effect.

(E) *Release or reduction of financial guarantee*

(1) *Certification of satisfactory completion.* The County Board shall not release nor reduce a financial guarantee until the County Engineer has certified that all required improvements have been satisfactorily completed and until the applicant's engineer or surveyor has certified to the Engineer, through submission of detailed record plans, survey plat of the subdivision, indicating location, dimensions, materials, and other information required by the County Board or Engineer, that the layout of the line and grade of all public improvements is in accordance with construction plans for the subdivision and that the improvements are completed, are ready for acceptance by the responsible authority and are free and clear of any and all liens and encumbrances. Upon such approval and recommendation, the County Board in the name of the responsible authority shall thereafter accept the improvements for dedication in accordance with the established procedure.

(2) *Reduction of financial guarantee.* A financial guarantee shall be reduced upon actual acceptance of public improvements and then only to the ratio that the cost of public improvement dedicated bears to the total cost of public improvements for plat. In the event that the financial guarantee is reduced below 125% of the cost of the work to be completed, the county may stop work on the subdivision until the guarantee deposit is replenished to the amount of 125% of the cost of the remaining development work.

(Ord. 33, § 8.6, passed 1-21-92; Am. Ord. 70-2010, passed 1-25-11)

#### **§ 151.142 MAINTENANCE OF IMPROVEMENTS.**

(A) The subdivider shall be required to maintain all improvements on the individual subdivided lots and provide for snow removal on streets and sidewalks, if required, until acceptance of said improvements by the responsible authority. If there are any certificates of occupancy on a street not dedicated to the responsible authority, the responsible authority may on 12 hours' notice plow the street or effect emergency repairs and charge same to applicant.

(B) The subdivider shall be required to file a guarantee with the responsible authority prior to acceptance in an amount considered adequate by the County Engineer and in a form satisfactory to the County Attorney, in order to assure the satisfactory condition of the required improvements, including all lot improvements on the individual subdivided lots for a period of two years after the date of their acceptance by the responsible authority and dedication of same to the responsible authority.

(Ord. 33, § 8.7, passed 1-21-92)

#### **§ 151.143 DEFERRAL OR WAIVER OF REQUIRED IMPROVEMENTS.**

(A) The County Board may defer or waive at the time of final plat approval subject to appropriate conditions, the provision of any or all such improvements that, in its judgment, are not requisite in the interests of the public health, safety, and general welfare, or which are inappropriate because of inadequacy or lack of connecting facilities.

(B) Whenever it is deemed necessary by the County Board to defer the construction of any improvement required herein because of incompatible grades, future planning, inadequate or lack of connecting facilities, or for other reasons, the applicant shall pay his or her share of the costs of the future improvements to the county prior to signing of the final subdivision plat, or the applicant may post a financial guarantee ensuring completion of said improvements upon demand of the county.

(Ord. 33, § 8.8, passed 1-21-92)

#### **§ 151.144 ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY PRIOR TO THE COMPLETION OF IMPROVEMENTS.**

As provided for elsewhere in this chapter, building permits shall not be issued prior to the approval of the final plat. The developer's agreement may provide further restrictions on the issuance of building permits. Certificates of occupancy shall not be issued until such time as adequate improvements have been made and accepted on the site. Minimum improvements shall be functioning sewer, water, electricity, provision for heating, and sufficient improvement of the street to

provide all weather access by the prospective occupant and by police and fire equipment. Adequacy of improvements shall be determined by the County Engineer and responsible authority. No building permit shall be issued for the final 10% of lots in a subdivision or if 10% be less than two, for the final two lots of a subdivision, until all public improvements required by the County Board for the plat have been fully completed and dedicated to the responsible authority. However, this provision does not require the county to issue any building permits until all improvements required by the county have been fully completed and accepted by the county.

(Ord. 33, § 8.9, passed 1-21-92)

## **SUBDIVISION DESIGN AND PUBLIC IMPROVEMENT/INSTALLATION STANDARDS**

### **§ 151.155 GENERAL PROVISIONS.**

(A) *Compliance with statutes, ordinances, regulations, plans.* In addition to the standards and guidelines established herein, all subdivisions and plats shall comply with all applicable statutory regulations, this subchapter, the zoning code, building and housing codes, the comprehensive plan including the comprehensive sewer policy plan and the capital improvement program, the official map, all applicable state rules and Metropolitan Waste Control Commission regulations.

(B) *Plats straddling local government boundaries.* In cases where a plat straddles two or more local governmental boundaries, lot lines shall be laid out so as not to cross corporate limits. If access is required across land in another local government or county, the Planning Commission may request assurance from the local County Board's Attorney and/or Engineer that the access is legally established and adequately improved or that a performance bond has been executed and is in sufficient amount to assure construction of the access road.

(C) *Land unsuitable for development.* Land which is unsuitable for urban development due to flooding, improper drainage, inadequate water supply, land unsuitable for on-site sewers, topography or other features shall not be subdivided or developed unless adequate methods to solve the problems are formulated by the developer and approved by the County Board.

(D) *No duplication of names.* The proposed name of the subdivision shall not duplicate nor approximate the name of any other subdivision within the county.

### **§ 151.156 LOT STANDARDS.**

(A) *Lot arrangement.* Lots shall be arranged such that they comply with the zoning code and obtain driveway access from a public road or private access road. Orientation for solar access is encouraged.

(B) *Lot dimensions.* Lot dimensions and overall size shall meet the minimum standards of the zoning code. Lot lines shall be at right angles or radial to the road right-of-way. Variations may be permitted when the subdivision is designed to maximize solar access.

(C) *Corner lots.* Dimensions of corner lots shall be sufficient to permit the erection of buildings observing the minimum front yard setback requirement for both streets. The width shall in any case be increased a minimum of 20 feet over the minimum standard for the interior lots.

(D) *Double frontage lots.* Double frontage lots shall not be permitted except where necessary to provide the separation of residential development from traffic arterials or to overcome specific disadvantages of topography and orientation. Double frontage lots shall have an additional depth of 50 feet for screen plantings or other buffer.

(E) *Butt lots.* The use of butt lots shall be discouraged.

(F) *Access.* All lots created shall have access to a public road either via a public road, a private road or a driveway. All private access roads must intersect with a public road. Developments occurring under provisions of flexible zoning techniques shall provide for equivalent access. Single-family residential lots and similar uses shall utilize no more than one access to a public road, with the exception of the case where alleys are installed, one access to the alley may also be established. Access to non-single-family type residential developments and to commercial or industrial developments shall be determined during the development review. Traffic safety and protection of the carrying capacity of the street shall be the primary consideration. Access to lots shall comply with the zoning code and the comprehensive plan. Where a lot can be subdivided so as to have a choice of access on streets of different functional classifications as designated in the comprehensive plan, the lot shall be subdivided so as to derive access from the street of lower functional classification. Where accesses are combined in order to meet separation or other requirements, separate accesses shall not be granted in the future.

(G) *Lot remnants.* Lot remnants which are less than the standard area and/or dimensional requirements must be added to adjacent or surrounding lots unless it can be demonstrated that the remnant can be combined with future contiguous development, in which case it shall be designated an outlet.

(Am. Ord. 70-2010, passed 1-25-11)

### **§ 151.157 BLOCKS.**

(A) *Length.* Blocks in residential subdivisions shall be a minimum of 400 feet long and normally not exceed 1,000 feet in length except where topography or other conditions justify a departure from this maximum. In blocks longer than 800 feet, the County Board may require that pedestrian ways be located near the center of the block.

(B) *Width.* With the exception of lots abutting a major street to which access is not permitted, residential lots shall be of sufficient size to permit two tiers of lots of appropriate depth. Commercial or industrial lots shall be of sufficient width to accommodate structures and required off-street parking, access and loading facilities.

#### **§ 151.158 ROADS AND ALLEYS.**

(A) *Topography and arrangement.* All streets shall be arranged to set the finish floor elevations of structures above the street elevation or so as to prevent the flow of water from the street and driveway into the residence. Proposed streets shall be properly integrated with existing streets and proposed thoroughfares.

(B) *Access to an improved street.* Lots to be subdivided shall have frontage on a private access road or a public road.

(C) *Grading and improvements.* Roads shall be graded and improved in a manner in conformance with township plans and specifications, the standards in this subchapter, and in accordance with construction plans as approved by the County Engineer.

(D) *Access to principal, intermediate, and minor arterials.* Where a subdivision borders on or contains an existing or proposed arterial street, direct access to individual lots from such street shall be in accordance with § 151.156(G). Service roads parallel to arterials shall be permitted with access occurring at points as shown or specified in the comprehensive plan.

(E) *Street names.* Street names shall be determined by the county upon recommendation of the developer and consistent with the county street naming plan. Roads which are continuations of existing and/or planned streets shall have the same name.

(F) *Dead-end streets.* Permanent dead-end streets are discouraged. Temporary dead end streets may be permitted providing that the right-of-way is extended to the property line, a T or L turn-around or a temporary cul-de-sac is provided and length is the same as the cul-de-sac standard.

(G) *Minor streets.* Minor streets shall be designed to discourage use by non-local traffic.

(H) *Half streets.* Half streets are not permitted.

(I) *Continuation of existing streets.* New street alignments shall permit and encourage continuation of existing street.

(J) *Projection of streets.* When a plat includes only a portion of the subdivider's total land holding, the County Board shall require a tentative projection of the proposed future street system for the balance of the property and to connect with adjacent property.

(K) *Alleys.* Alleys or other acceptable service areas not less than 24 feet in width shall be provided in all commercial and industrial areas. Public streets shall not be used as alleys or service areas. Alleys shall not be permitted in residential areas except as a continuation of an existing alley. In such cases, the minimum width of the alley continuation shall be 16 feet or shall be the same as the existing alley whichever is greater.

(L) *Reserve strips.* The creation of reserve strips, also known as spite strips, shall not be permitted abutting or at the end of a proposed street in such a manner as to deny access from adjacent property to such a street.

(M) *Street signs.* The developer shall be required to furnish street signs, regulatory signs, warning signs and posts in accordance with county standards.

(N) *Street lighting.* The developer shall be responsible for the electric bill for street lighting until 50% of the total units in the project are constructed and occupied. In the case of multi-phase developments, the developer shall be responsible for all electric charges until 50% of the first phase is constructed and occupied with all subsequent phases in the same manner.

#### **§ 151.159 SUBSURFACE SEWAGE TREATMENT SYSTEMS.**

(A) *Location.* Refer to the subsurface sewage treatment system regulations, Chapter 52 and zoning code regulations, Chapter 152 of this code of ordinances.

(B) *Design.* Drainfields must be designed so that there is a three-foot separation between the first instance of mottling shown in the soil borings and the bottom of the drainfield trench. Design must be in accordance with the Carver County On-site Sewer Ordinance.

(Ord. 70-2010, passed 1-25-11)

#### **§ 151.160 NATURAL FEATURES AND AMENITIES.**

(A) *General.* Existing features which add value to a proposed development or to the local government as a whole such as trees, watercourses, waterbodies, areas of historic significance and similar irreplaceable features, shall be preserved in the design of the subdivision. No trees shall be removed from any subdivision nor any change of grade of the land effected until approval of the preliminary plat has been granted. All trees on the plat required to be retained shall be reserved, and all trees where required shall be welled and protected against change of grade. The preliminary plat shall show the number, species, size and location of all proposed shade trees along the street side of each lot.

(B) *Trees.*

(1) *Shade trees to be planted by developer.* If trees are to be planted in a subdivision they shall conform to these standards. Any trees are to be planted at least within five feet outside of the planned right-of-way of the road or roads within and abutting the subdivision. As a condition of subdivision approval the developer may be required to provide new trees.

(2) *Species/size.* New trees to be provided shall be approved by the county and shall be planted in accordance with the requirements of the county. Such trees shall have a minimum trunk diameter as determined by the county, but shall not be seedlings. Only long-lived shade trees, of varying species, acceptable to the county shall be planted, in accordance with the local tree plan if applicable.

(C) *Steep slopes.* Subdivision design shall be consistent with limitations presented by steep slopes and any restrictions on development on slopes in the zoning code. Subdivision design and construction on slopes of 12% to 18% shall provide for control of erosion, sedimentation, and slippage both during the construction/installation of improvements and utilities and of structures. If the subdivision includes the development of land with slopes greater than 18%, the development contract and/or a restriction of the deed/title shall provide to the design of the site and structure by a certified, registered engineer. In cases where the design of the subdivision provides for a prohibition or limitation of development on steep slopes or other sensitive area, the prohibition or limitation may be enforced as a restriction or an easement to be filed as covenants, dedication to the unit of government, or other suitable method implementing the prohibition or limitation.

(D) *Soils.*

(1) The design of the subdivision and the design and installation of improvements shall take into account the nature of the soils on the land to be subdivided. The comprehensive plan and the Carver County Soils Survey identify the areas that have constraints for development due to soil conditions and identify the type of constraint. Areas with severe constraints as identified by the soil survey are generally developable, but may need drainage, erosion control, special building or site design, grading, fill or other action to solve soils problems. Any action taken to alleviate soils problems shall require the specific review and approval of the County Engineer. Areas identified as having very severe constraints for development should generally be considered as undevelopable for residences or other urban development and should be planned for uses that can be accommodated given the soil conditions.

(2) The County Engineer or Platting Officer may request soil borings to determine soil conditions in any subdivision. Soil borings may be required in any areas indicated as having severe or very severe constraints for development. The location, depth and number of borings required shall be determined upon recommendation of the County Engineer or Platting Officer.

(E) *Watercourses and waterbodies.*

(1) For the purposes of these regulations, waterbodies and watercourses shall be those waterbodies and watercourses shown on the MN/DNR inventory of protected waters map as protected waters or wetlands and shall also include any similar areas as designated in the comprehensive plan or by floodplain maps.

(2) In areas where flood information is unavailable, structures shall have a floor elevation a minimum of three feet above the ordinary high water level or the outlet level, whichever is higher. Ordinary high water level shall be determined by DNR data, vegetation analysis or other method as approved by the County Engineer.

(3) The county shall require the dedication of an easement to the elevation of the ordinary high water level for waterbodies not otherwise protected and an easement at least to the 100-year flood protection elevation of any waterbody or watercourse having a flood potential. The county may require the further dedication of easements around wetlands, watercourses, and waterbodies in order to protect and preserve them and/or for the storage and flow of storm water run-off.

(F) *Land in the floodplain district.*

(1) *Review criteria.* All lots within the floodplain districts as designated in the Carver County Zoning Code shall contain a building site as defined in the zoning code at or above the regulatory flood protection elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this subchapter and the Carver County zoning and on-site sewer provisions. All lots intended for human habitation or occupation shall 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 floodplain, the floodway and flood fringe boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.

(2) *Floodway/flood fringe determinations in the General Floodplain District.* In the General Floodplain District, applicants shall provide the information required in § 152.149 to determine the 100-year flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.

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

(Am. Ord. 70-2010, passed 1-25-11)

## **§ 151.161 ENGINEERING REQUIREMENTS.**

(A) *General.*



(1) As set forth in various sections of the county's ordinances and these standards, developers of property within the jurisdiction of the governmental unit's subdivision provisions are required to submit certain plans and specifications for review and approval by the County Engineer. These include such items as grading plans, drainage plans, topographic surveys, plats, street and utility plans and specifications, and any other plans or specifications deemed necessary by the County Engineer. These plans and specifications shall be prepared by competent professionals registered in Minnesota.

(2) The professional services required of the developer might include an architect, land surveyor, planner and engineer. The engineering services shall include not only preparation of plans and specifications but field staking and inspection certification in order to ensure the County Engineer that the completed project is in conformance with the approved plans and specifications.

(B) *Procedure.* When the development contract provides that the developer shall install any or all improvements, the following procedures shall be followed. When the county or township is to install all or part of the improvements, substantially the same procedure shall be followed, as appropriate, and any contractors employed by the county shall abide by these procedures.

(1) Developer shall submit plans, specifications and copies of all design calculations to the County Engineer for review and approval. Copies of approved permits required by all regulatory agencies shall be furnished to the County Engineer prior to construction. These plans are to be prepared by a registered professional engineer as defined by the appropriate state statutes and shall be in accordance with these standards as outlined herein. The comprehensive plan shall be adhered to in design considerations. All sanitary sewer and watermain testing shall be completed and copies of service ties submitted to the County Engineer prior to issuance of any service connection permits.

(2) Developer shall submit a stormwater pollution prevention plan (SWPPP) and/or appropriate applications as required by the watershed district or Water Management Organization (WMO) to the governing body for review and approval, and to the watershed district, or similar agency, if one exists for review and, if required, approval.

(3) The developer shall be responsible for not only plans and specifications preparation, but also for providing staking and inspection of said improvement. The developer shall be responsible for all costs related to plan and specification preparation, staking and inspection.

(4) Copies of all bids, change orders, and the like, shall be forwarded to the County Engineer.

(5) Developer shall furnish to the county a list of contractors being considered for retention by the developer for the performance of the work required of this contractor along with a list of all subcontractors performing work on the project. The developer shall also require his or her contractor to furnish to the county a certified copy of a financial guarantee in favor of the developer, in a form and amount acceptable to the county, for all proposed work and shall maintain the financial guarantee for the period of one year commencing on the date of final payment for purposes of a warranty.

(6) *Guaranty period.* If within the time prescribed by law or by the terms of any applicable special guarantees required by the contract documents, any of the work is found to be defective or not in accordance with the contract documents, the contractor shall correct it promptly after receipt of written notice from the owner to do so unless the owner has previously given the contractor a specific written acceptance of the particular defective or nonconforming condition. The owner shall give prompt notice after discovery of the condition.

(7) The development contractor shall take out and maintain in full force for the duration of the contract the insurance designated below. Further, the contractor shall submit certificates of insurance coverage to the county. If any section of the work entails special hazards, the contractor shall provide riders to the public liability and property damage insurance to provide appropriate coverage.

(a) *Worker's compensation.* The contractor shall take out and maintain during the life of the contract worker's compensation insurance for all his or her employees employed at the work site and shall require all his or her subcontractors to maintain insurance similarly. If any employees are engaged in hazardous work not covered by worker's compensation insurance, the contractor shall provide, and shall require his or her subcontractors to provide, adequate protection from employers' liability insurance for protection of employees not otherwise protected.

(b) *Public liability and property damage.* The contractor shall take out and maintain during the life of the contract, public liability insurance and property damage insurance covering personal injury (as determined by the development contract), including death, and claims for property damage which may arise out of work or the work of his or her subcontractors, or by one directly or indirectly employed by either of them.

(c) *Automobile liability.* The contractor shall take out and maintain during the life of the contract, automobile liability insurance (as determined by the development contract) on all used in connection with the contract, whether owned, non-owned, or hired.

(d) *Fire.* The contractor shall carry full insurance against loss by fire and wind damage upon all materials in place or stored at the site for installation. This provision does not exclude materials partially paid for by the owner. This insurance shall be for the full insurable value of this material and shall be kept in full force until final acceptance and payment for the work by the owner.

(e) *Proof of coverage.* The contractor shall submit certification of the required coverages to the county. If any section of the work entails special hazards, the contractor shall provide riders to the public liability and property damage insurance to provide protection from these special hazards.

(8) The developer may furnish and erect a project identification sign on the project site in a location to be approved by the county. The sign may be erected prior to construction and may remain until the development is complete. The sign shall be removed by the developer upon completion of the development. The sign shall meet the requirements of Chapter 154, Sign Regulations of this code of ordinances.

(9) Any changes to the approved plans and specifications shall be approved by the County Engineer in writing before they are made.

(10) The County Engineer will provide periodic inspections of improvements and shall be notified of all tests required so its representatives can be present at the time tests are made.

(11) Upon completion of all the work required, the County Engineer and any other designated representative of the county, a representative of the township, a representative of the contractor and a representative of the developer's engineer, will make a final inspection of the work. Before the final payment is made to the contractor by the developer, all work shall be completed to the satisfaction of the County Engineer and in accordance with the approved plans and specifications, the developer's engineer shall submit a written statement attesting to same. Acceptance of said work shall be made by resolution of the County Board upon the recommendation of the County Engineer.

(Am. Ord. 70-2010, passed 1-25-11)

## **§ 151.162 STANDARD PLANS.**

In order to standardize the construction and record drawings, the following set of guidelines were developed to make all plans or drawings uniform. The guidelines are to be adhered to insofar as they are practical, but may be altered by the Platting Officer depending upon the project.

### *(A) General requirements.*

(1) Incorporated in the set of plans shall be a sheet indicating the entire project with corresponding sheet numbers on each separate sheet and index.

(2) All record plans are to be mylar sepias from inked and clearly legible drawings with unnecessary construction information removed.

(3) All sheets are to be 22 x 34.

(4) Scale: horizontal scale- 1 inch = 50 feet; vertical scale- 1 inch = 10 feet.

(5) The following are preferred locations for utilities:

(a) Sanitary sewer: On center line of street right-of-way or easement.

(b) Watermain: When the watermain is to be placed at the same level as the sewer line, 10 feet north or west of the street right-of-way or easement centerline. When the watermain will be at least 18 inches in elevation above the sanitary sewer, the watermain are to be shown 5 feet west or north of the street right-of-way or easement centerline.

(c) Storm sewer: On the south or east side of street right-of-way or center line of easement.

(6) A title block in the lower right corner of each plan sheet indicating project description and sheet information clearly labeled.

(7) Construction details are to be on one separate plan sheet and referenced to the proper sheet or combined in one section in the specifications.

(8) The profile is to be directly below the plan with the stationing aligned as closely as practical. Stationing is to be shown on the plan view as well as the profile.

(9) All parcels are to be properly labeled with lot and block numbers and plat name, or parcel number in unplatted areas. Developed parcels are to have their address shown on the plan.

(10) All streets are to be clearly labeled.

(11) All match-line breaks are to be clean with reference points clearly marked. All plans which are broken by a match-line are to be on the same or consecutive sheets.

(12) Existing utilities are to be shown, stationed, and labeled as existing.

(13) Approximate locations of gas, electric and telephone lines are to be shown.

(14) Right-of-way and pavement or curb and gutter alignment data are to be shown.

(15) All plans are to have properly placed north arrows and bar scale (graphic scale) for each plan on the sheet.

(16) Bench marks are to be placed on all sheets.

### *(B) Specific requirements.*

(1) Stationing of sanitary sewer wyes are to be indicated as in front of the stationing.

- (2) All sanitary services are to be drawn on the plan to the constructed length and length noted. Indicated if jacked.
- (3) If sanitary sewer wye only is constructed, it is to be noted as wye only after the stationing.
- (4) The approximate invert elevation of all sanitary sewer services are to be shown on the plans. If risers are placed, the height of each is to be indicated on the plans and each are to be drawn on the profile, and indicate height of risers.
- (5) All manholes are to be numbered in both plan and profile.
- (6) All hydrants are to be stationed on the bottom of the profile.
- (7) Stationing of water corporation cock is to be indicated by "w" in front of stationing.
- (8) All water services are to be drawn to constructed length and length noted if other than to property line. Indicate if jacked.
- (9) All gate valves are to be tied with at least two ties using the following priority:
  - (a) Fire hydrants;
  - (b) Manholes;
  - (c) Catch basins, if curb and gutter is installed;
  - (d) Buildings or other permanent structures;
  - (e) Power poles, trees, other semi-permanent items;
  - (f) Stationing from hydrants, manholes, catch basins, if over 100 feet.
- (10) The size and type of all sanitary sewer and water services are to be noted on the plans.
- (11) On combination sewer and water projects, services may be placed in the same trench with sanitary sewer services three feet downstream from water services. This shall be noted on the plans and "s & w" are to be placed before the stationing.
- (12) All services are to be tied with at least two ties using the following priority:
  - (a) The served structure with address noted;
  - (b) Neighboring structures with address noted;
  - (c) Fire hydrants;
  - (d) Manholes, catch basins, if curb and gutter is installed;
  - (e) Other permanent structures, bridges, and the like;
  - (f) Power poles, trees, other semi-permanent items;
  - (g) Stationing from hydrant, manhole, catch basins. These may be used with back of curb distance.
- (13) All sewer and watermains are to be shown in profile with the appropriate information such as size, material, grades, invert elevations, and the like. Watermain profiles may be omitted if watermain is in existing or proposed street, if the street grade is indicated, and if the depth is noted.

(Am. Ord. 70-2010, passed 1-25-11)

### **§ 151.163 ROADWAY AND UTILITY DESIGN REQUIREMENTS.**

(A) *Application.* The following standards are generally accepted design standards and in some cases are standards mandated by the state. These standards are applicable to the typical situation. However, there are situations where these standards may not be appropriate due to unique topography, environmental factors, or a non-typical development proposal. In response to these situations, other standards may be appropriate. These standards are to be deviated from only upon the approval of the County Engineer, and watershed district or Water Management Organization (WMO) as deemed appropriate.

(B) *Right-of-way and road width.* Right-of-way and road width shall conform to the standards in the county and township comprehensive plans, all applicable ordinances and these standards. Roadways shall be considered in their relation to existing and planned roads, to reasonable circulation of traffic, to topographical conditions, to run-off of storm water, to public convenience and safety and in their appropriate relation to the proposed uses of the area to be served.

(1) *Right-of-way.* Right-of-way width shall conform to the widths in the table found in the appendix to this chapter. If there are conflicts, the widths as in the comprehensive plan shall govern. Cul-de-sac configurations are to have a minimum 70-foot radius for rural parcels and a minimum 60-foot radius for urban parcels.

(2) *Road width.* Road width shall conform to the standards in the table in the appendix to this chapter. If there are conflicts, the widths as in the comprehensive plan shall govern.

(3) *Road grades.*

(a) All center line gradients must be in accordance with the grade percent in the table in the appendix to this chapter. Wherever feasible, road grades within 50 feet at the curb line or shoulder line of an intersection shall be between .05% and 3.0%, and the cross-road grade shall be between 0.5% and 3.0%.

(b) Road grades may exceed the maximums presented above only upon demonstration that the grade standards cannot reasonably be complied with, the proposed grade will not cause a traffic hazard, impede the normal flow of traffic, and upon approval of the County Engineer.

(4) *Road alignment.* Horizontal and vertical alignment for principal, intermediate, minor arterials and collectors are to conform to the guidelines in the Minnesota Department of Transportation Road Design Manual and the State Aid Manual where applicable. All other roads are to be as follows:

(a) *Horizontal alignment.* Center line deflections are to be connected by a radius of not less than 100 feet.

(b) *Sag vertical curves.* Minimum length shall be 25 times the algebraic difference in percent of the intersecting grades.

(c) *Crest vertical curves.* Minimum length shall be 17 times the algebraic difference in percent of the intersecting grades.

(d) *Road jogs.* Road jogs shall have a center line offset of 150 feet or more when applied to local roads and 300 feet or more when applied to collector roads. Road jogs are to be avoided for arterial roads.

(e) *Minimum tangent length.* Minimum tangent length between curves are to be 75 feet.

(5) *Road design loads.* Roads classified as principal, intermediate or minor arterial are to be designed to a minimum nine-ton loading. All local residential roads are to be designed to a minimum five-ton loading. A seven-ton loading is recommended on local roads and is required on all collector roads. Roads serving or connecting to commercial and industrial areas are to be designed to a minimum nine-ton load. The designs are to be in accordance with the current MNDOT flexible pavement design standards. All calculations along with a soils report are to be submitted with the plans for review and approval by the County Engineer.

(6) *Road intersections.*

(a) The angles formed by the intersecting roads are to be at 90 degrees. A maximum 15-degree deviation may be permitted when circumstances will not allow a 90-degree angle. All other situations are to be avoided.

(b) Intersections of more than four corners are prohibited.

(c) Road intersection radii are to be a minimum 30 feet. Road and alley intersections are to be rounded by a radius of not less than 6 feet. The intersection of the straight section with the turn-around of a cul-de-sac road are to be rounded by a radius of not less than 30 feet. Center islands are to be prohibited in all cul-de-sac turnarounds.

(7) *Private roads.* Private roads may be permitted for access to PUDs, townhouses or other such development where an association or other suitable mechanism is provided to ensure maintenance and upkeep. The requirements for private roads shall be the same as the requirement for public roads.

(C) *Drainage facilities and erosion control.*

(1) *General requirements.* The following shall apply, in addition to the stormwater pollution prevention plan (SWPPP), watershed district or Water Management Organization (WMO), or similar agency, if one exists for review and, if required, approval. Detailed plans and calculations are to be submitted along with the road plans for all drainage works. The plans are to address the drainage for the entire area to be subdivided and demonstrate how the drainage related to the drainage of the surrounding lands. The drawings are to show location, capacity, type and size of any culverts and storm sewers or other drainage facilities. Storm water and sedimentation retention basins may be required.

(2) *Surface water runoff systems.* Surface water runoff systems are to be as follows:

(a) Consider future expansion to undeveloped areas.

(b) Base design on current adopted comprehensive plan.

(c) Minimum culvert size of 18 inches on rural sections.

(3) *Storm water retention and sedimentation ponds.* Storm water retention and sedimentation ponds are to be as follows: the pond or ponds are to be constructed with initial phases of site grading or road construction and are to be excavated one foot below finished bottom elevation for sediment storage during construction.

(4) *Erosion control barriers.* Erosion control barriers are to be as follows: the developer shall be responsible for maintaining barriers in a functional condition until such time as the barriers are deemed no longer necessary by the governing body.

(5) *Drainage easement.*

(a) Easements are to be a minimum of 20 feet in width centered above the pipe on the storm sewer system outside of

right-of-way areas.

(b) Easements for above ground drainage are to be a minimum of ten feet on either side of the projected high water level.

(c) Easements around storage ponds are to include the 100-year high water level.

(d) All these easements are to be dedicated to the public unless otherwise requested by the county.

(6) *Buildings adjacent to storage ponds.* Buildings shall not be constructed within 50 feet of the 100-year high water level.

(D) *Facilities - other than sewer, water, drainage.*

(1) *Location.* All utility facilities, excepting those addressed in divisions (B) and (C), and including but not limited to gas, electric, telephone, and cable television are to be located underground throughout the subdivision. General location and the location of junction boxes, transformers, and similar structures are to be located as specified by the County Engineer.

(2) *Easements.* Easements centered on all lot lines are to be provided for utilities/facilities and said easements are to be at least 10 feet wide on either side of the lot line. Where topographical or other conditions or the design of the subdivision makes impractical the inclusion of the utilities within the rear lot line easements, perpetual, unobstructed easements at least 20 feet in width centered on the lot line are to be provided along the side lot lines with satisfactory access either to the road or rear lot line.

(Am. Ord. 70-2010, passed 1-25-11)

## **§ 151.164 ROADWAY, UTILITY AND GENERAL CONSTRUCTION AND RESTORATION.**

(A) *Roadways.*

(1) *General requirements.* All grading, gravel base, concrete curb and gutter, bituminous curb and bituminous paving shall conform to the current requirements of the Minnesota Department of Transportation Standard Specifications for Highway Construction.

(2) *Excavation and embankment.*

(a) All operations are to be done in accordance with MNDOT Specifications No. 2105. All compaction will be done by the ordinary compaction method except as follows at the County Engineer's option, density tests may be taken to evaluate the compaction achieved. Where density tests are taken to evaluate the compaction, the fill shall meet the requirements of MNDOT Specification No. 2105 for embankment compaction by the specified density methods. In areas of cut where no utility construction is proposed, the top 12 inches below the finished subgrade shall be excavated and recompacted to a density of not less than 100% of maximum density.

(b) Granular borrow and select granular borrow are to be the requirements of MNDOT Specification No. 3149, maximum particle size to be six inches in diameter.

(3) *Gravel surface, gravel base, bituminous base, bituminous wearing course and bituminous seal coat.*

(a) Gravel surface and base shall be class 5 or class 2 aggregate meeting the requirements of MNDOT Specification No. 3138 unless otherwise approved by the County Engineer.

(b) Bituminous base and wearing course construction is to meet the requirements of MNDOT Specification Nos. 2331 and 2341, respectively. Recycled bituminous base MNDOT Specification No. 2332 is also permitted.

(c) Bituminous seal coat shall be constructed in accordance with MNDOT Specification No. 2356. The bituminous material and aggregate type are to be determined based on traffic volumes and service conditions.

(4) *Staged construction.*

(a) All roads constructed in conjunction with sanitary sewer, watermain and/or storm sewer improvements are to be completed over the course of two construction seasons. The initial phase of construction shall include the complete installation of the underground utilities, gravel base, curb and gutter and bituminous base course within the roadway areas. The bituminous wearing course shall be completed after at least one winter but before the third winter.

(b) The minimum thickness of bituminous base MNDOT 2331 shall be two inches during the interim period.

(c) All manholes and valve boxes are to be installed in the bituminous base course and left ½-inch below the surface throughout the winter and then raised to ½-inch below the final surface prior to placing the bituminous wearing course.

(B) *Utility construction restoration.*

(1) *General requirements.* The utilities being referred to pertain to sanitary sewers, storm sewers and watermains. The following requirements are to pertain to each utility unless specifically noted.

(2) *Backfilling and compaction.*

(a) Utility trenches are to be backfilled in lifts approximately eight inches in thickness and mechanically compacted to

100% of maximum density in the upper three feet and 95% of maximum density below the upper three feet in all roadway areas. Soil compaction shall be in accordance with MNDOT Specification No. 2105 for compaction by the specified density method. The zone around the pipe shall be bedded and compacted to industry standards depending upon the pipe material and depth of installation.

(b) Where utilities are installed in easement areas, the top 12 inches shall be compacted to 100% maximum density and the area below the top 12 inches to 95% maximum density.

(c) The compaction requirements for the utilities include all branch services and stubs as outlined above.

(C) *General restoration.*

(1) *General requirements.* All areas disturbed by construction are to be restored to a condition equal to or better than what existed prior to construction.

(2) *Sod.* Sod shall be required where improved lawn areas are disturbed. Sod shall be densely rooted blue grass or other approved grasses free of noxious weeds and objectionable grasses. After placement, sod shall be pressed into the underlying soil by rolling or tamping. Pegging of sod shall be required in ditches and drainage channels and on steeper slopes.

(3) *Seed.*

(a) Seed shall be required where construction activities disturb unimproved areas. Seed and application are to conform to mixture #700 under Minnesota Department of Transportation Specification Nos. 2575 and 3876. Seed shall be applied uniformly at 75 pounds per acre.

(b) In certain areas, seed and mulching may be required. All mulching shall be done in accordance with MNDOT Specification Nos. 2575 and 3882 for Type 1 mulch.

(c) In areas of steep slopes, seeding with wood fiber blankets may be substituted for sod. All such work shall be done in accordance with MNDOT Specification Nos. 2575, 3876 and 3885 for wood fiber blankets.

(4) *Topsoil.* Topsoil shall be applied to the restoration areas prior to sod or seed. Topsoil shall be pulverized black dirt acceptable to the Engineer and shall be spread to a compacted thickness of three inches.

(5) *Maintenance of sodded and seeded areas.* All sodded and seeded areas are to be watered and maintained in a satisfactory condition until acceptance of that portion of the work. Sod and seed that dies, or washes out, prior to acceptance are to be replaced by the developer.

(D) *Debris and waste.* Waste materials of any kind shall not be buried in any land or left deposited on any lot or road.

## **FINANCIAL GUARANTEE**

### **§ 151.175 FINANCIAL GUARANTEE.**

The development contract provided in § 151.137 requires the developer to provide a financial guarantee. The financial guarantee shall take one of the following forms:

(A) *Escrow deposit or appropriate surety.* An escrow deposit in cash, certificate of deposit, time certificate or other approved form, shall be made to the county in the sum equal to 125% of the total cost as estimated by the County Engineer, including cost of inspection and legal and administrative costs incurred by the county, of all of the improvements to be furnished and installed by the subdivider pursuant to the contract and which have not been installed by the subdivider prior to the approval of the final plat. A separate guarantee shall be required by the subdivider as part of Chapter 153, Water Resource Management, to ensure erosion and sediment control and installation of practices intended to meet the filtration/bioretenion/infiltration requirements.

(1) The county shall be entitled to reimburse itself out of said deposit for any cost and expense incurred by the county for completion of work in a case of default of the subdivider under said contract, and for any damages sustained by the county on account of any breach thereof. Upon completion of the work and termination of any liability to the county of the subdivider under said contract the balance remaining in said deposit shall be refunded to the subdivider.

(2) Immediately upon completion of said work the county shall submit to the developer an itemized bill in detail, setting forth the actual cost of inspection by the county; said bill shall be paid prior to the acceptance of said work by the county.

(B) In lieu of guarantee, the agreement between the county and the subdivider may provide that the county and/or township shall provide the engineering services and construct all or any portion of said improvements and that payment for said improvements will be made to the county as follows:

(1) Prior to final plat approval, the county may require payment to the county in cash, certified check or cashier's check in an amount of at least 125% of the total estimated cost of said improvements, exclusive of amounts provided in division (B)(2).

(2) The remainder of the total cost thereof shall be assessed against the benefitted property as determined by the county and shall be payable in equal annual installments of not to exceed five such annual installments. Assessments on any lot, which are not fully paid at the time of transfer, shall be paid in full on or before such time of transfer, or transferred to the new owner.

(C) However, depending upon economic conditions, the total amount of improvements requested, the area of land to be subdivided and any other relevant factors, the county shall determine what portion, if any, of said improvements may be installed and constructed under the terms of this provision.

(Ord. 33, § 9.0, passed 1-21-92; Am. Ord. 70-2010, passed 1-25-11)

**APPENDIX: ROAD STANDARDS**

<b>RURAL UNDIVIDED 2 LANE ROAD</b>						
<b>MINIMUM R-O-W WIDTHS</b>						
<b>FUNCTIONAL CLASSIFICATION</b>	<b>DESIGN SPEED - mph</b>					
	<b>20</b>	<b>30</b>	<b>40</b>	<b>50</b>	<b>60</b>	<b>70</b>
<b>RURAL UNDIVIDED 2 LANE ROAD</b>						
<b>MINIMUM R-O-W WIDTHS</b>						
<b>FUNCTIONAL CLASSIFICATION</b>	<b>DESIGN SPEED - mph</b>					
	<b>20</b>	<b>30</b>	<b>40</b>	<b>50</b>	<b>60</b>	<b>70</b>
<b>ARTERIAL - (Volumes to be based on projections)</b>						
ADT < 750	–	–	–	100	100	100
ADT 750-1000	–	–	–	110	110	110
ADT > 1000	–	–	–	120	120	120
DHV 100-400	–	–	–	120	120	120
DHV > 400	–	–	–	120	120	120
<b>COLLECTOR - (Volumes to be based on projections)</b>						
ADT < 750	–	100	100	100	100	100
ADT 750 - 1000	–	110	110	110	110	110
ADT > 1000	–	120	120	120	120	120
DHV 100 - 400	–	120	120	120	120	120
DHV > 400	–	120	120	120	120	120
<b>LOCAL - (Volumes to be based on projections)</b>						
ADT < 100	66	66	66	66	66	–
ADT 100 - 200	66	66	66	66	66	–
ADT 201 - 750	100	100	100	100	100	–
ADT 750 - 1000	110	110	110	110	110	–
ADT > 1000	120	120	120	120	120	–
DHV 100 - 400	120	120	120	120	120	–
DHV > 400	120	120	120	120	120	–
ADT - Average Daily Traffic						
DHV - Design Hourly Volume (Usually 13-17% of Rural ADT and 8-12% of Urban ADT)						
<b>RURAL UNDIVIDED 2 LANE ROAD</b>						
<b>STANDARD SURFACE WIDTHS</b>						
(Outside shoulder to outside shoulder)						
<b>FUNCTIONAL CLASSIFICATION</b>	<b>DESIGN SPEED - mph</b>					
	<b>20</b>	<b>30</b>	<b>40</b>	<b>50</b>	<b>60</b>	<b>70</b>
<b>RURAL UNDIVIDED 2 LANE ROAD</b>						
<b>STANDARD SURFACE WIDTHS</b>						
(Outside shoulder to outside shoulder)						
<b>FUNCTIONAL CLASSIFICATION</b>	<b>DESIGN SPEED - mph</b>					
	<b>20</b>	<b>30</b>	<b>40</b>	<b>50</b>	<b>60</b>	<b>70</b>
<b>ARTERIAL - (Volumes to be based on projections)</b>						
ADT < 750	–	–	32	32	32	32

ADT 750 - 1000	–	–	36	36	36	36
ADT > 1000	–	–	40	40	40	40
DHV 100 - 400	–	–	40	40	40	40
DHV > 400	–	–	44	44	44	44
<b>COLLECTOR</b> - (Volumes to be based on projections)						
ADT < 750	–	32	32	32	32	32
ADT 750 - 1000	–	36	36	36	36	36
ADT > 1000	–	40	40	40	40	40
DHV 100 - 400	–	40	40	40	40	40
DHV > 400	–	40	40	40	40	40
<b>LOCAL*</b> - (Volumes to be based on projections)						
ADT < 100	24	24	24	24	24	24
ADT 100 - 200	24	24	24	24	24	24
ADT 201 - 750	32	32	32	32	32	32
ADT 750 - 1000	36	36	36	36	36	36
ADT > 1000	40	40	40	40	40	40

ADT - Average Daily Traffic

DHV - Design Hourly Volume (Usually 13-17% of Rural ADT and 8-12% of Urban ADT)

\* Projected ADT 200 and under applicable to gravel surfaced roadways. Projected ADT over 200 applicable to bituminous roadways.

<b>RURAL UNDIVIDED 2 LANE ROAD</b>						
<b>STANDARD GRADE CONTROLS (PERCENT)</b>						
<b>FUNCTIONAL CLASSIFICATION</b>	<b>DESIGN SPEED - mph</b>					
	<b>20</b>	<b>30</b>	<b>40</b>	<b>50</b>	<b>60</b>	<b>70</b>
<b>ARTERIAL</b>						
LEVEL	–	–	–	4	3	3
ROLLING	–	–	–	4	4	4
<b>COLLECTOR</b>						
LEVEL	7	7	7	6	5	4
ROLLING	10	9	8	7	6	5
<b>LOCAL</b>						
LEVEL	8	7	7	6	5	–
ROLLING	11	10	9	8	6	–

## CHAPTER 152: ZONING CODE

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***GENERAL PROVISIONS***

**§ 152.001 SHORT TITLE.**

This chapter shall be known, cited, and referred to as the Carver County Zoning Code except as referred to herein where it shall be known as “this chapter.”

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

**§ 152.002 INTENT AND PURPOSE.**

This chapter is adopted for the purpose of:

- (A) Protecting the public health, safety, comfort, convenience and general welfare and to minimize the loss of life and property associated with flooding;
- (B) Dividing the unincorporated portions of the county into zones and districts;
- (C) Restricting and regulating therein the location, construction, reconstruction, alteration and use of structures and land;
- (D) Promoting orderly development of the unincorporated areas of the county;
- (E) Providing for adequate light, air and convenience of access to property by regulating the use of land and buildings and the bulk of structures in relationship to surrounding properties;
- (F) Guiding the future development and growth of the county in accordance with the comprehensive plan;
- (G) Preserving land for agricultural uses and protecting it from conflicting land uses;
- (H) Discouraging the pollution of air, lakes, streams and ponds and encouraging the wise use and management of natural resources throughout the county in order to preserve the integrity, stability, and beauty of the community and the value of the land;
- (I) Limiting congestion in public rights-of-way;
- (J) Providing the compatibility of different land uses and the principal use of land in the county;
- (K) Providing for the administration of this chapter and defining the powers and duties of the administering officers as provided hereinafter;
- (L) Prescribing penalties for the violation of the provisions in this chapter or any amendment thereto.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.003 AUTHORITY.**

This chapter is adopted pursuant to M.S. § 394.21, M.S. § 473.865, and M.S. Chapters 103B and 103F, as they may be amended from time to time.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.004 RULES OF LANGUAGE CONSTRUCTION.**

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

- (A) The singular number includes the plural and the plural, the singular. The present tense includes the past and future tenses and the future, the present;
- (B) The word "shall" is mandatory and the word "may" is permissive;
- (C) Whenever a word or term defined hereinafter appears in the text of this chapter, its meaning shall be construed as set forth in the definition thereof;
- (D) All measured distances expressed in feet shall be to the nearest tenth of a foot.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.005 APPLICATION AND JURISDICTION.**

(A) In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety and welfare, and for carrying out the intent of the comprehensive plan.

(B) The provisions of this chapter shall apply to all land within the county which is not within the boundaries of an incorporated city or within any orderly annexation area where the city and township and county have a separate agreement concerning zoning within the orderly annexation area, or where a joint powers agreement or similar agreement provides for another zoning authority.

(C) Where the conditions imposed by any provision of the chapter are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution, or regulation of any kind, the regulations which are more restrictive or which impose higher standards of requirements shall prevail except that all uses legally established under the provisions of Ordinance No. 32S and amendments thereto may continue in the manner established under this chapter. The provisions of this chapter shall not apply until there is a change in use or an increase in the intensity of the established use.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.006 ZONING DISTRICTS AND MAPS.**

(A) *Zoning districts.* For the purpose of this chapter several zoning districts shall be created within the area of Carver County and in effect outside the corporate limits of incorporated areas. These districts shall carry the title as follows:

“A,” the Agriculture District

“RSD,” the Rural Service Overlay Districts

“S,” the Shoreland Overlay District

“F,” the Floodplain Overlay District

“R,” Residential Cluster District

“T,” Transition Area Overlay District.

(B) *Maps.* The boundaries of the above districts are hereby established as shown on the map entitled “Carver County Zoning Map” and all the flood insurance rate maps identified in the index dated December 21, 2018. The maps and all of the notations, references and other information shown thereon and amendments thereto, shall have the same force and effect as fully set down herein and are hereby made part of this chapter by reference and incorporated herein as if set forth herein at length. The flood insurance study for the county prepared by the Federal Emergency Management Agency, dated December 21, 2018, is hereby attached to and made part of the official zoning map and this chapter.

(C) *Boundaries.* District boundaries as indicated on the zoning map follow property lines, the center line of streets and alleys projected, the center line of water courses or the corporate limit lines, all as they exist upon the effective date of this chapter or as hereafter amended. If the district boundary lines do not follow any of the above described lines, the district boundary lines are established by scaling the distances as drawn on the zoning map. District boundary lines as shown on the Shoreland District Map are nominal; final boundary determination shall be made based on air photos or similar information or field measurements; in the case of floodplain areas determination shall be made in accordance with the following rules for interpretation of Floodplain District boundaries:

(1) *Rules for interpretation of Floodplain District boundaries.* The boundaries of the Floodplain District shall be determined by scaling distances on the Digital Flood Insurance Rate Map (DFIRM) dated December 21, 2018.

(2) *Interpretation.* Where interpretation is needed as to the exact location of the boundaries of the district as shown on the above noted maps as, for example, where there appears to be a conflict between a mapped boundary and actual field conditions, the Board of Adjustment shall make the necessary interpretation. This interpretation shall be based on ground elevations that existed on the site at the time the county adopted its initial floodplain ordinance or the date of the first National Flood Insurance Program Map showing the area in the floodplain, if earlier, elevations on the applicable regional (100 year) water surface profile and, where appropriate, other best available technical information.

(3) *Opportunity to contest.* The person contesting the location of the district boundaries shall be given a reasonable opportunity to present his or her case to the Board of Adjustment and to submit technical evidence if he or she so desires.

(D) *Residential Cluster District.* District boundaries may be shown on the zoning map for information only. Actual boundaries will be as legally described in Attachment A - Residential Cluster Zones, attached to Ordinance 47 and on file in the office of the County Auditor.

(Ord. 47, passed 7-23-02; Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.007 ROAD CLASSIFICATIONS.**

Road classifications shall be as designated on the Future Functional Class Map of the Carver County comprehensive plan.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.008 AERIAL PHOTOGRAPHY.**

Several sections of the chapter reference the use of aerial photos as an information source. If the need is for current information, the most current Carver County geographic information systems (GIS) mapping shall be utilized. If historical information is required the most appropriate set of GIS mapping or photography done by a governmental unit shall be utilized.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.009 NON-CONFORMING USES AND STRUCTURES.**

(A) Any structure or use of a structure, or use of land lawfully existing upon the effective date of this chapter may be continued at the size and in the manner of operation existing upon the date, notwithstanding the certain classes pursuant to M.S. § 394.36, except as hereinafter specified.

(1) *Certain classes of property.* This division applies to homestead and non-homestead residential real estate and seasonal residential real estate occupied for recreational purposes. Except as otherwise provided by law, a nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an official control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. If the nonconformity or occupancy is discontinued for a period of more than one year, or any nonconforming building or structure is destroyed by fire or other peril to the extent of greater than 50% of its estimated market value, as indicated in the records of the County Assessor at the time of damage, and no building permit has been

applied for within 180 days of when the property is damaged, any subsequent use or occupancy of the land or premises must be a conforming use or occupancy. If a nonconforming building or structure is destroyed by fire or other peril to the extent of greater than 50% of its estimated market value, as indicated in the records of the County Assessor at the time of the damage, the Board may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the Shoreland District with less than 50% of the required setback from the water is destroyed by fire or other peril to greater than 50% of its estimated market value, as indicated in the records of the County Assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

(B) Nothing in this chapter shall prevent the placing of a structure in a safe condition when the structure is declared unsafe by the Building Inspector, providing the necessary repair shall not constitute more than 50% of fair market value of the structure as shown in the records of the County Assessor.

(C) When any lawful non-conforming use of any structure or land in any district has been changed to a conforming use, it shall not thereafter be changed to a non-conforming use.

(D) A lawful non-conforming use of a structure or parcel of land may be changed to a similar non-conforming use or to a more restrictive nonconforming use.

(E) Whenever a lawful non-conforming structure shall have been damaged by fire, flood, explosion, earthquake, war, riot, or act of God, it may be reconstructed and used as before if it can be reconstructed within 12 months after the calamity, unless the damage to the building or structure is 50% or more of its fair market value of the entire nonconforming use, in which case the whole thereof shall be demolished, and any construction thereafter shall be for a use in accordance with the provisions of this chapter.

(F) Whenever a lawful non-conforming use of a structure or land is discontinued for a period of 12 months, any future use of the structure or land shall be in conformity with the provisions of this chapter.

(G) Any lawful non-conforming use of land not involving a structure and any lawful nonconforming use involving a structure with an assessor's true and full valuation upon the effective date of this chapter of \$1,000 or less, may continue for a period of one year from the date of adoption of this chapter, whereupon the non-conforming use shall cease unless brought into conformity.

(H) Any proposed structure which will under this chapter become non-conforming, but for which a building permit has been lawfully granted not more than six months prior to the effective date of this chapter, may be completed in accordance with the approved plans provided construction is started within six months of the effective date of this chapter and continues to completion within two years of that date. The structure shall thereafter be a legally existing non-conforming structure.

(I) Normal maintenance of a building or other structure containing or related to a lawful non-conforming use is permitted, including necessary non-structural repairs and incidental alterations which do not extend or intensify the non-conforming use.

(J) Alterations may be made to a building containing lawful, nonconforming residential units when they will improve the livability thereof, provided they will not increase the number of dwelling units. The bulk of the building may be increased if the Department rules that the increase in bulk will not intensify the non-conformity.

(K) Non-conforming uses which would or could be conforming if they were under the provisions of a conditional use permit, shall file for the permit. Should the permit be denied, a non-conforming use certificate shall be issued by the County Board defining the use, scale and operational limits in detail.

(L) A structure existing on the date of the adoption of this chapter that intrudes upon a required setback may be expanded provided a variance is approved, and the expansion does not decrease the distance between the structure and the applicable lot line.

(M) A residential parcel of land with existing structures on the effective date of this chapter because of its dimensions or because it does not have sufficient road frontage is considered a legal lot. The lot may be expanded provided a variance is approved, and the new lot meets all chapter criteria except the minimum road frontage standard.

(N) *Shoreland standards.* For shoreland standards, see the Shoreland Overlay District regulations in §§ 152.108 through 152.135.

(O) *Floodplain standards.* For floodplain standards, see the Floodplain Overlay District regulations in §§ 152.143 through 152.156 of this chapter.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

## **§ 152.010 DEFINITIONS.**

Any words not defined in this section shall have the meanings given them in *Merriam-Webster's Collegiate Dictionary*, Eleventh Edition or most recent edition. The following words and terms, whenever they occur in this chapter are defined as follows:

**ABUTTING.** Making contact with or separated only by a public thoroughfare, railroad, public utility right-of-way or

navigable waters.

**ACCESSIBLE PARKING.** A space reserved exclusively for an automobile registered with a state with handicapped license plates or displaying an official city or state-issued handicapped placard.

**ACCESSORY STRUCTURE.** A structure of secondary or subordinate use to the principal structure, located on the same parcel.

**ACCESSORY USE.** A use subordinate to and serving the principal use on the same parcel, which is compatible with and customarily incidental to the principal use.

**ADAPTIVE REUSE.** Rehabilitation or renovation of existing buildings or structures for uses other than the current ones.

**ADDITION.** A physical enlargement of an existing structure.

**ADJACENT PARCELS.** Parcels of land that are touching at a minimum of a single point or are separated only by a public road, railroad, trail or similar right-of-way.

**ADMINISTRATIVE SPECIAL USE PERMIT.** A permit that can be issued by the Department.

**AGRICULTURAL AREA.** Large contiguous land areas planned and zoned to maintain agriculture as the primary land use.

**AGRICULTURAL BUILDING.** Any structure located on a parcel of 20 acres or more that is used exclusively for agricultural purposes and is not subject to State Building Code.

**AGRICULTURAL PRESERVE PROGRAM (AG. PRESERVE).** The program governed by M.S. Chapter 473H, as amended from time to time, that is designed to value and tax qualifying agricultural property in the metropolitan area, in a manner similar to out-state Minnesota. In addition to a tax benefit, this program also places some restrictive land use covenants on the subject property.

**AGRICULTURAL PRODUCTION LAND.** Land that has been tilled and utilized for growing of row crops, hay, forage, vegetables, fruits or similar purposes for the majority of the past ten years. Land that is entered in a state or federal program where there is reimbursement for maintaining the land out of production shall be considered production land for the purposes of enforcing these regulations.

**AGRICULTURE.** The principal use of a parcel of land of 20 acres or more for any one or combination of the following activities:

- (1) The production and storage of fruits, vegetables, herbs, floriculture, grains, seeds, trees, forage, cider, maple sap, honey or other crops;
- (2) The keeping, raising, feeding, breeding, or production of animals whether on range, pasture, or feedlot (cattle, sheep, hogs, poultry, ostriches, emus, alpaca, farmed elk, farmed deer, farmed buffalo and the like); or
- (3) Dairying.

**AGRI-TOURISM.** Any agricultural, horticultural or agri-business activity that allows organizations or members of the general public, for the purpose of recreational entertainment, education or active involvement to view, enjoy, or participate in rural activities of a farm or farm related operation. An activity is an agri-tourism activity whether or not the individual pays to participate in the activity.

**AIRPORT or HELIPORT.** Any land, water, or structure which is used or intended for use for the landing and takeoff of aircraft and any appurtenant land or structure used or intended for use for port buildings or other port structures or rights-of-way.

**ANIMAL AGRICULTURE.** The keeping, raising, feeding, breeding, dairying or production of livestock or animals whether on range, pasture, or feedlot.

**ANIMAL UNIT.** Refer to the feedlot management regulations, Chapter 54 of this code of ordinances. Animals such as dogs, cats or other animals customarily kept as pets shall not be considered animal units for purposes of this chapter provided they are being kept as pets.

**APPLICANT.** The owners, their agent or person having legal control, ownership and/or interest in land for which the provisions of this chapter are being considered or reviewed.

**BACKYARD COMPOST SITE.** A site used to compost food scraps, garden wastes, weeds, lawn cuttings, leaves, and prunings from a single-family or household, apartment building, or single commercial office, a member of which is the owner, occupant, or lessee of the property.

**BASE FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year.

**BASE FLOOD ELEVATION.** The elevation of the **REGIONAL FLOOD**. The term **BASE FLOOD ELEVATION** is used in the flood insurance survey.

**BASEMENT.** Any area of a structure, including crawl spaces, having more than half of its floor below ground, regardless of the depth of excavation below ground level.

**BERM.** A natural or man-made earthen mound, hill or embankment typically utilized for screening, drainage diversion or



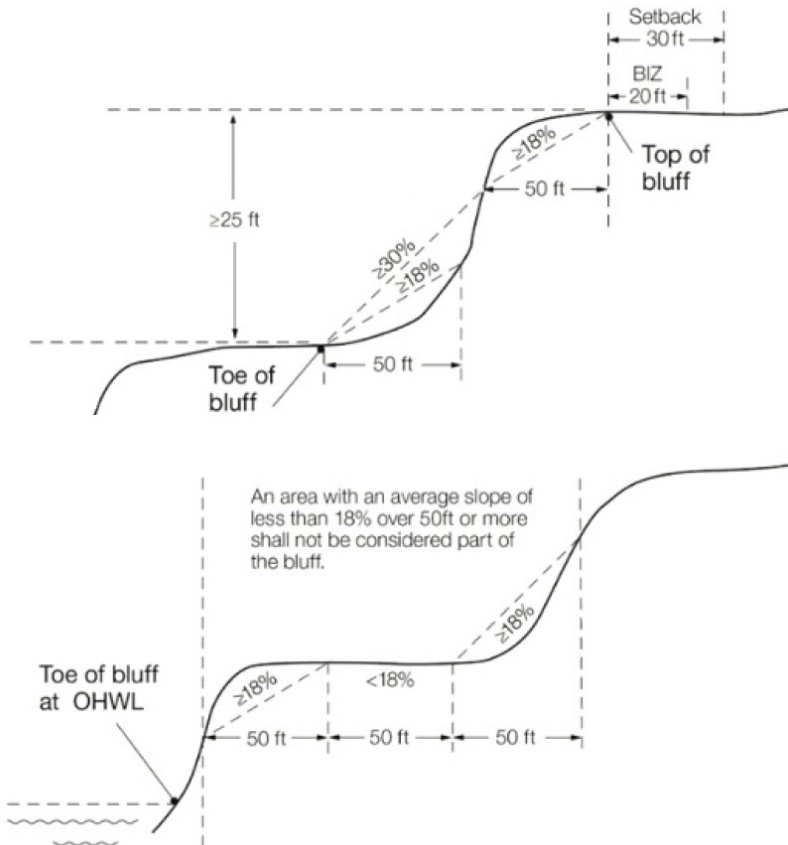
landscaping.

**BILLBOARD.** See **SIGN-ADVERTISING.**

**BIOMASS.** Organic materials used as energy production sources such as wood, crops, and animal waste.

**BLUFF.** A topographic feature such as a hill, cliff, or embankment having the following characteristics:

- (1) The slope rises at least 25 feet; and
- (2) The grade of the slope from the toe of the bluff to the top of the bluff averages 30% or greater, except that an area with an average slope of less than 18% of a distance of at least 50 feet shall not be considered part of the bluff.



**BLUFF-ACTIVELY ERODING.** A bluff with a visibly unstable slope including, but not limited to, slopes that are substantially devoid of vegetation, evidence of cracks, gullies or washouts in the soil, trees that are tipping or that have curved trunks, or are determined to be actively eroding by the Soil and Water Conservation District.

**BLUFF IMPACT ZONE.** A bluff and land located within 20 feet from the top of a bluff.

**BLUFF "TOE".** The toe is a point on the lower part of a 50-foot segment where the average slope levels off to 18% or less.

**BLUFF "TOP".** The top of a bluff is a point on the upper part of a 50-foot segment where the average slope levels off to 18% or less.

**BOARD OF ADJUSTMENT.** The Carver County Board of Adjustment established under provisions of this chapter.

**BOATHOUSE.** A facility as defined by M.S. §103G.245.

**BUFFER.** A vegetative feature as defined by M.S. §103F.48.

**BUILDING.** Any structure used or intended for supporting or sheltering any use or occupancy.

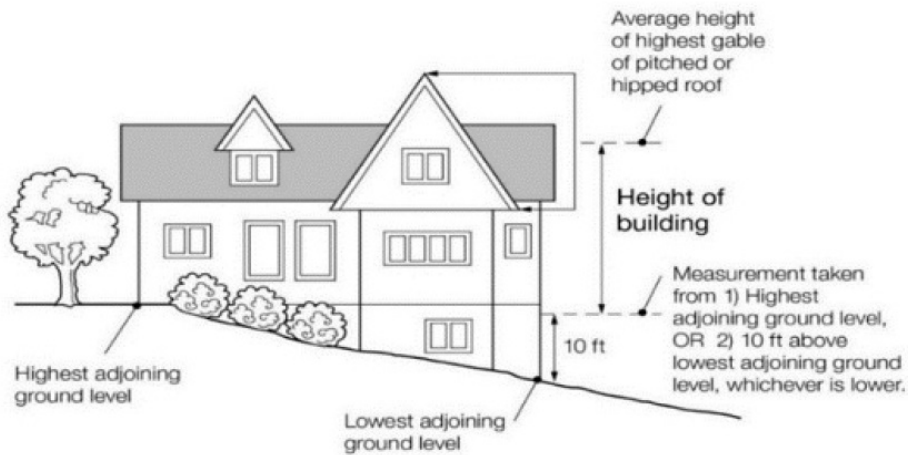
**BUILDING ELIGIBILITY.** The eligibility to apply for and be issued a building permit for a single-family home under the provisions of this chapter.

**BUILDING HEIGHT.** The vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whichever yields a greater height of building:

- (1) The elevation of the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior wall of the building when the sidewalk or ground surface is not more than ten feet above lowest grade;

(2) An elevation ten feet higher than the lowest grade when the sidewalk or ground surface described in division (1) above is more than ten feet above lowest grade; or

(3) The height of a stepped or terraced building is the maximum height of any segment of the building.



**BUILDING SITE.** A parcel of land exclusive of easement and setback requirements with the following characteristics:

- (1) One acre in size with no dimension less than 30 feet;
- (2) Slope of 18% or less;
- (3) One foot above any known flood elevation or any nearby source of flooding; and

(4) A minimum of 12 inches of original soil separation between the periodically saturated soil or other limiting factor and the surface of the soil. This separation shall be demonstrated by the submission of soil borings, from a licensed SSTS designer identifying both a primary and alternate SSTS site as required in Chapter 52. The areas identified for on-site sewage treatment sites may be included in the area utilized to obtain the one-acre minimum building site.

**BUSINESS.** Any occupation, employment or enterprise wherein merchandise, or associated equipment is exhibited, stored or sold, or where services are offered for compensation.

**CARPORIT.** An accessory structure typically for a vehicle having one or more open sides.

**CARTWAY.** A township road less than 66 feet in width, and declared and accepted as a public cartway by resolution of the Town Board of Supervisors.

**CEMETERY.** Land used for the burial of the dead and dedicated for cemetery purposes including columbariums, mausoleums and services uses necessary to operate.

**CERTIFICATE OF ZONING COMPLIANCE.** A certificate issued by the Department stating the subject request complies with all requirements of this chapter. This certificate is required for any structure subject to State Building Code, any structure or use requiring an administrative permit, or for any structure or use when requested by a landowner for their property.

**CHURCH.** A building together with its accessory buildings and uses where persons regularly assemble for a religious service and which buildings and uses are maintained and controlled by an organized group for public worship.

**CLUBorLODGE.** A non-profit association of persons who are bona fide members paying annual dues, use of premises and/or buildings being restricted to members and their guests.

**CO-LOCATION.** Placement of two or more wireless telecommunications providers on a single tower or other structure.

**COMMERCIAL KENNEL.** A place where three or more dogs or cats over the age of four months are kept for sale, breeding for sale, boarding for pay, or training for pay on an ongoing basis.

**COMMERCIAL USE.** The principal use of land or buildings for the sale, lease, rental, or trade of products, goods, and services. The principal or accessory use of land or buildings for the sale, lease, rental, or trade of products, goods, and services.

**COMMISSION.** The Carver County Planning Commission.

**COMMISSIONER.** The Commissioner of the Department of Natural Resources.

**COMPREHENSIVE PLAN.** The document entitled Carver County/Townships Comprehensive Plan adopted pursuant to M.S. § 473.864 and M.S. § 394.21 and all amendments thereto.

**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 (1) certain conditions as detailed in the zoning code exists, and (2) the use or development conforms to the comprehensive land use plan of the county, and (3) is compatible with the existing neighborhood.

**CONDITIONAL USE PERMIT (CUP).** A permit specifically and individually ordered by the County Board after recommendation thereon pursuant to the provisions of this chapter.

**CONTIGUOUS.** Parcels of land that have a common lot line or boundary. Parcels that only touch at a single point or are separated by a public road, railroad, trail or similar right-of-way shall not be considered **CONTIGUOUS**.

**CONTRACTOR.** A person whose business is contracting work in any of the building or construction trades including directly related fabrication, landscaping, road building, general construction, SSTS installation, or who has two or more trucks used for hauling or transport or to supply a property maintenance service.

**CONTRACTOR'S YARD.** A site used for the storage and maintenance of vehicles, equipment or supplies used by a contractor in the operation of the business.

**CONTROLLED ACCESS LOT.** A lot used to access public waters or as a recreation area for owners of nonriparian lots within the same subdivision containing the controlled access lot.

**COUNTY BOARD.** The Carver County Board of Commissioners or Board.

**CRITICAL FACILITIES.** Facilities necessary to a community's public health and safety; those that store or produce highly volatile, toxic, or water-reactive materials; and those that house occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of **CRITICAL FACILITIES** include hospitals, correctional facilities, schools, daycare facilities, nursing homes, fire and police stations, wastewater treatment facilities, public electric utilities, water plants, fuel storage facilities, and waste handling and storage facilities.

**DAY CARE FACILITY.** Any facility, public or private, which for gain or otherwise regularly provides one or more persons with care, training, supervision, habilitation, rehabilitation, or developmental guidance on a regular basis, for periods of less than 24 hours per day, in a place other than the person's own home. **DAY CARE FACILITIES** include, but are not limited to: family day care homes, group family day care homes, day care centers, day nurseries, nursery school, daytime activity centers, day treatment programs, and day services.

**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.

**DEMOLITION DEBRIS.** Refer to the solid waste management regulations, Chapter 50 of this code of ordinances.

**DEMOLITION LAND DISPOSAL FACILITY.** An area of land used for the disposal of demolition debris.

**DEPARTMENT.** The Land Management Department, formerly known as Planning and Zoning.

**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.

**DWELLING UNIT.** A building or single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, occupied or intended to be occupied for residential purposes by a single family, but not including motels, hotels, nursing homes, boarding houses, trailers, tents or cabins. All dwellings, including manufactured homes, shall have a minimum of at least 480 square feet and a minimum width of 20 feet.

**EARTH SHELTERED STRUCTURE.** A structure designed and constructed so that more than 50% of the exterior surface area of the building, excluding roofs, garages or other accessory buildings, is covered with earth and the building code standards are complied with. Partially completed buildings shall not be considered "earth-sheltered."

**EASEMENT.** The right to use the land of another owner for a specified use. An **EASEMENT** may be granted for the purpose of constructing and maintaining walkways, roadways, subsurface sewage treatment systems, utilities, drainage, driveway, and other uses.

**EASEMENT - CONSERVATION.** A legal agreement creating an interest in real property created in a manner to impose limitations or affirmative obligations regarding the use of property including the retention, protection, and maintenance of open space.

**ENERGY PRODUCTION.** A site or facility where the primary function is focused on obtaining sources of energy from natural resources.

**EQUAL DEGREE OF ENCROACHMENT.** A method of determining the location of floodplain boundaries so that the floodplain lands on both sides of the stream are capable of conveying a proportionate share of the flood flows.

**EQUESTRIAN FACILITY.** Building and or structures being utilized for or by riding academies, stables, personal riding arenas and or similar uses.

**EQUESTRIAN FACILITY - PERSONAL.** A structure utilized by a private individual or family for the purpose of riding, training or exercising equine.

**EQUESTRIAN FACILITY - PUBLIC/COMMERCIAL.** A combination of land and structures used for boarding or keeping for pay three or more horses and/or for the purpose of giving instructions in riding and horsemanship for pay, training of horses other than the owner's and the breeding of racing and show stock.

**ESSENTIAL SERVICE.** Public, quasi-public, limited private uses, and uses that serve a community purpose such as utilities, transportation, government operations, communication, energy production, water management, waste treatment or disposal, public parks and similar uses that serve a public need, or are deemed beneficial or essential to the public health and safety, welfare, or serving a public good of the community as determined by the County Board.

**FAMILY.** An individual or two or more persons each related by blood, marriage, or adoption living together as a single housekeeping unit or a group of not more than four persons not so related, maintaining a common household and using common cooking and kitchen facilities.

**FARM.** A parcel of land which is 20 acres or more in size, utilized as a single economic unit for the purpose of conducting agriculture as the principal use of the land.

**FARM FENCE.** A fence as defined by M.S. § 344.02, subs. 1(a) through (d). An open type fence of posts and wire is not considered to be a structure under this chapter. Fences that have the potential to obstruct flood flow, such as chain link fences and rigid walls, are regulated as structures under this chapter.

**FEEDLOT.** Refer to the feedlot management regulations, Chapter 54 of this code of ordinances.

**FEEDLOT, (NEW) ANIMAL.** An animal feedlot constructed and operated at a site where no animal feedlot existed previously or where a pre-existing animal feedlot has been abandoned or unused for a period of three years or more.

**FEEDLOT, (EXISTING) ANIMAL.** An animal feedlot that has registered, pursuant to Minn. Rule 7020.0350 and/or has registered with Carver County Environmental Services prior to July 7, 2003.

**FENCE.** An artificially constructed barrier of wood, masonry, stone, wire, metal, or other manufactured material or combination of materials erected to enclose, screen, or separate areas.

**FIELD ACCESS DRIVE.** An access to a public road used exclusively for the movement of farm vehicles and equipment onto a field for the purposes of tiling, planting, cultivation, harvesting, or the application of pesticide, herbicide, fertilizer, or similar activity.

**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.

**FLOOD FREQUENCY.** The average frequency statistically determined for which it is expected that a specific flood stage or discharge may be equaled or exceeded.

**FLOOD FRINGE.** That portion of the special flood hazard area (1% annual chance flood) located outside of the floodway. **FLOOD FRINGE** is synonymous with the term **FLOODWAY FRINGE** used in the Flood Insurance Study for Carver County, Minnesota.

**FLOOD INSURANCE RATE MAP (FIRM).** An official map on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A **FIRM** that has been made available digitally is called a digital flood insurance rate map (DFIRM).

**FLOOD PRONE AREA.** Any land susceptible to being inundated by water from any source.

**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.

**FLOOD PROOFING.** A combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flooding damages.

**FLOODWAY.** The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which are reasonably required to carry or store the regional flood discharge.

**FLOOR AREA – GROSS.** The sum of the gross horizontal areas of the several floors of a building including interior balconies, mezzanines, basements and attached accessory buildings except that area primarily devoted to window display, fitting rooms, stairs, escalators, unenclosed porches, detached accessory buildings utilized as dead storage, heating and utility rooms, inside off-street parking or loading space.

**FLOOR AREA – PARKING.** For the purpose of calculating the number of off-street parking spaces required shall be determined on the basis of the exterior floor area dimension of the buildings, structure or use times the number of floors minus 10%, except as required in § 152.038 of this chapter.

**FLOOR AREA RATIO.** The numerical value obtained through dividing the floor area of a building or buildings by the lot area on which the building or buildings are located.

**GARAGE.** A detached or attached accessory building or carport which is used primarily for non-commercial vehicles and personal equipment.

**GARAGE SALE.** Any display of used goods and/or salesman samples and sale of the goods on a property customarily used as a residence, the persons conducting the sale being residents of the property.

**GEOHERMAL HEAT PUMP SYSTEM.** A system that uses the relatively constant temperature of the earth or a body of water to provide heating in the winter and cooling in the summer. System components include open or closed loops of pipe, coils or plates; a fluid that absorbs and transfers heat; and a heat pump unit that processes heat for use or disperses heat for cooling; and an air distribution system.

**HOME OCCUPATION.** An occupation or profession that is carried on in a dwelling unit by a member of the family that is a resident thereof, provided that the use is limited in extent and incidental and secondary to the use of the dwelling unit for residential purposes and does not change the character thereof.

**HORSE STABLES AND RIDING ACADEMIES.** See **EQUESTRIAN FACILITY.**

**IMPERVIOUS SURFACE.** A constructed hard surface that prevents or retards entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development, including rooftops; decks; sidewalks; patios; swimming pools; parking lots; concrete, asphalt, gravel driveways, or permeable pavers; and other similar surfaces.

**INSTITUTIONAL USE.** A use that is primarily religious, governmental, educational, social or healthcare facilities.

**INTENSIVE VEGETATION CLEARING.** The complete removal of trees or shrubs in a contiguous patch, strip, row, or block.

**INTERIM USE PERMIT (IUP).** An interim use is a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.

**LAND RECLAMATION.** Depositing 400 cubic yards or more of material to elevate the grade or substantially change the topography.

**LANDSCAPING.** Planting of trees, grass, ground cover, shrubs, and screening, including the use of rock and timbers.

**LIGHT MANUFACTURING.** The processing or fabrication of certain materials or products where no process involved will produce noise, vibration, air pollution, fire hazard, or noxious emission which would disturb or endanger neighboring properties. This does not include bulk storage of materials that are flammable or explosive or that present hazards or conditions commonly recognized as offensive.

**LIVESTOCK.** Any animals, including but not limited to cattle, swine, sheep, poultry, fowl, or other animals except dogs, cats and birds owned by the resident of a premises and kept as pets.

**LOADING BERTH.** An unobstructed area provided and maintained for the temporary parking of trucks and other motor vehicles for the purpose of loading and unloading goods, wares, materials, and merchandise.

**LONG TERM AGRICULTURAL LAND (LTA).** USDA Soil Conservation Service Agricultural Capability Class 1, 2, and 3 land that is utilized as **PRODUCTION LAND** as defined by this chapter.

**LOT.** A parcel of land designated by metes and bounds, registered land survey, or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease, or separation thereof. In all cases, a road shall be considered a property line.

**LOT AREA.** The area of a lot in a horizontal plane bounded by the lot lines, but not including any area occupied by the waters of a duly recorded lake or river or area which has been dedicated as public thoroughfare or road.

**LOT-CORNER.** A lot situated at the intersection of two streets.

**LOT DEPTH.** The mean horizontal distance between the front lot line and the rear lot line of the lot measured in the general direction of the side lot lines.

**LOT LINE.** A property line bounding a lot except that where any portion of a lot extends into or abuts the public right-of-way or a proposed public right-of-way, the nearest line of the public right-of-way shall be the **LOT LINE** for applying this chapter.

**LOT LINE-FRONT.** Generally the road right-of-way line.

**LOT LINE-REAR.** That boundary of a lot which is opposite the front lot line. If the **REAR LOT LINE** is less than ten feet in length or if the lot forms a point at the rear, the **REAR LOT LINE** shall be a line ten feet in length within the lot connecting the side lot lines and parallel to the front lot line.

**LOT LINE-SIDE.** Any boundary of a lot which is not a front lot line or a rear lot line.

**LOT OF RECORD.** Part of a subdivision, the plat of which has been recorded in the office in the Registrar of Deeds or Registrar of Titles; or a parcel of land for which the deed or agreement to convey was recorded in the office of the Registrar of Deeds or Registrar of Titles prior to July 1, 1974.

**LOT WIDTH.** The horizontal distance between the side lot lines of a lot measured at the location of the front yard setback and at the ordinary high water level.

**LOWEST FLOOR.** The **LOWEST FLOOR** of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's **LOWEST FLOOR**, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 C.F.R. § 60.3.

**MANUFACTURED HOME.** 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; except that the term includes any structure which meets all the requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under M.S. §§ 327.31 to 327.35, the Manufactured Home Building Code, as it may be amended from time to time. The term **MANUFACTURED HOME** does not include the term **RECREATIONAL CAMPING VEHICLE**.

**METES AND BOUNDS.** A method of property description by means of their direction and distance from an identifiable point of beginning.

**MINING.** The extraction of sand, gravel or other materials from the land in the amount of 10,000 cubic yards or more. The removal of material incidental to construction for a permitted or conditional use, or for highway or drainage purposes shall not be considered **MINING**.

**MINNESOTA STATE BUILDING CODE.** (add definition and refer to Chap. 150)

**NEW CONSTRUCTION.** Structures, including additions and improvements, and placement of manufactured homes, for which the start of construction commenced on or after the effective date of this chapter.

**NONCONFORMING LOT.** Any lot existing upon the effective date of this chapter which fails to meet the current required lots size, width, or does not have the required frontage on a publicly maintained road.

**NONCONFORMING STRUCTURE.** Any structure existing upon the effective date of this chapter which would not conform to the applicable regulations if the structure were to be erected under provisions of this chapter.

**NONCONFORMING USE.** Use of the land, buildings or structures existing at the time of adoption of this chapter which does not comply with all the regulations of this chapter or any amendments hereto governing the zoning district in which the use is located.

**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.

**NOXIOUS MATTER/MATERIALS.** Material capable of causing injury to living organisms by chemical reaction or which is capable of causing detrimental effects to the physical or economic wellbeing of individuals or animals.

**OBSTRUCTION.** Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across or projecting into any channel, watercourse or regulatory flood hazard area which may impede, retard or change the direction of flow of water either in itself or by catching or collecting debris carried by water, or that is placed where the flow of water might carry it downstream to the damage of life or property.

**OFFICIAL CONTROL.** Legislatively defined and enacted policies, standards, precise detailed maps and other criteria, all of which control the physical development of a municipality or a county or any part thereof or any detail thereof and are the means of translating into ordinances, all or any part of the general objectives of the comprehensive plan. The **OFFICIAL CONTROLS** may include but are not limited to ordinances establishing zoning, subdivision controls, site planned regulations, sanitary codes, building codes, housing codes and official maps.

**OFFICIAL MAP.** A map adopted in accordance with the provisions of M.S. §394.361, as it may be amended from time to time, which may show existing county roads and county state aid highways, proposed future county roads and highways and the areas needed for widening existing county roads and highways. Any **OFFICIAL MAP** may also show the location of existing public land and facilities and other land needed for future public purposes including public facilities such as parks, playgrounds, schools, and other public buildings, civic centers, traveling services facilities.

**ONE HUNDRED YEAR FLOODPLAIN.** Lands inundated by the regional flood.

**OPERATIONAL AREA.** An area of land specifically defined within a permit within which the operations shall be confined.

**ORDINANCE.** A law or statute. The term used to designate the enactment of the legislative body of a municipal corporation or a county.

**ORDINARY HIGH WATER LEVEL.** The boundary of public waters and wetlands which 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 predominately 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.

**OVERLAY DISTRICT.** A zoning district, the regulations of which are applied in addition to or in modification of the regulations of the underlying zone.

**OWNER.** Any individual, firm, associate, partnership, corporation, trust or any other legal entity having proprietary interest in the land.

**PARCEL.** A distinct, legally described piece of land under the ownership of one or more persons.

**PARKING AREA.** An open area, excluding a public roadway, used for the parking of automobiles.

**PARKING-OFF-STREET.** Space occupied by motor vehicles on premises other than public or private roads.

**PARKING SPACE.** A surfaced and permanently maintained area on privately- or publicly-owned property either within or outside of a building of sufficient size to store one standard vehicle.

**PASTURE.** Refer to the feedlot management regulations, Chapter 54 of this code of ordinances.

**PERSON.** One or more natural persons; a limited liability company, whether domestic or foreign; a registered limited liability partnership, whether domestic or foreign; a partnership; a limited partnership; a corporation, including a foreign, domestic, or nonprofit corporation; a trust; or any other business organization.

**PHOTOVOLTAIC ARRAY.** A group of solar photovoltaic modules connected together to increase voltage and/or power to the level required for a given system.

**PHOTOVOLTAIC DEVICE.** A system of components that generates electricity from incident sunlight by means of the photovoltaic effect, whether or not the device is able to store the energy produced for later use.

**PLANNING COMMISSION.** The Carver County Planning Commission established by this chapter.

**PRACTICAL DIFFICULTY.** When used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. **PRACTICAL DIFFICULTIES** include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

**PRIME (AGRICULTURAL) LAND.** All SCS Capability Class 1 and 2 land plus Glencoe Loam (GL), Canisteo Silty Clay Loam (CS), and Talcot Silty Clay Loam (TT) Soils.

**PRINCIPAL RESIDENCE.** The primary or most important house located on a lot, regardless of whether the residential use is a principal or subordinate use.

**PRINCIPAL STRUCTURE.** A structure or set of structures utilized as a unit and used as an integral part of the principal use of the land.

**PRINCIPAL USE.** The primary use of land or structures or a combination of land and structures as opposed to a subordinate or accessory use. A **PRINCIPAL USE** may be either conditional or permitted.

**PRODUCTION LAND.** Land that has been tilled and utilized for growing of row crops, hay, forage, vegetables, fruits or similar purposes for eight of the past ten years. Land that is entered in a state or federal program shall be considered **PRODUCTION LAND** until the contract expires for the purposes of enforcing these regulations.

**PROPERTY LINE.** The legal boundaries of a parcel of land.

**PROTECTED WATERS AND WATERWAYS.** Water bodies or watercourses identified on the Public Waters Wetlands Inventory Map published by the Department of Natural Resources, State of Minnesota or watercourses determined by the county to have a watershed of two square miles or more.

**PUBLICATION.** Notice placed in the official county newspaper stating time, location and date of meeting and description of topic.

**PUBLIC HEARING.** Whenever the term **PUBLIC HEARING** is used in this chapter, unless otherwise specifically redefined, it shall mean a public hearing pursuant to a notice published once in the official newspaper of the county at least ten days before the date of the hearing, which notice shall specify the general purpose, time and place of the hearing. Any hearing after the publication, may be continued, recessed or adjourned from time to time without any further publication or notice thereof.

**PUBLIC ROAD, STREET, HIGHWAY.** A strip of land including bridges and other structures used for vehicular traffic and which is owned in fee simple or the public use of which is guaranteed through easement by a governmental unit and is maintained by a unit of government utilizing public funds.

**PUBLIC WATERS.** Any **PUBLIC WATERS** as defined in M.S. §103G.005, subs. 15, 15a.

**QUARTER-QUARTER (¼¼) SECTION.** A quarter of a quarter section as determined by the United States Rectangular Land Survey System. A government lot as determined by the rectangular land survey system shall be considered a **QUARTER-QUARTER SECTION** for purposes of this chapter. For purposes of this chapter, rights-of-way for public or private transportation, public trails, or a public use shall not impact the completeness of a quarter-quarter section.

**REACH.** The hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by natural or manmade obstruction. In an urban area, the segment of a stream or river between two consecutive crossings would most likely constitute a **REACH**.

**REASONABLE USE.** For purposes of this chapter, **REASONABLE USE** shall be a lot or parcel of land with at least one of the following characteristics: at least 20 acres that is primarily good farmland suitable for agriculture; a single-family dwelling exists or there is at least one building eligibility available; or a conditional use permit has been issued for the property as provided by this chapter. Vacant or "no" use shall not be considered a reasonable use.

**RECREATION.** The refreshment of body and mind through forms of play, amusement, or relaxation. The recreational experience may be active or passive.

**RECREATION - ACTIVE.** Leisure activities usually performed with others, often requiring equipment and taking place at prescribed places, sites, or fields. The term **ACTIVE RECREATION** includes but is not limited to swimming, tennis, and other court games, baseball and other field sports, golf and playground activities.

**RECREATION - PASSIVE.** Outdoor leisure activities that have a low potential for nuisance to adjacent property owners and require little to no development or alteration to the land. The term **PASSIVE RECREATION** includes but is not limited to hiking, picnicking, parks, walking, jogging, running, and bicycle paths/trails.

**RECREATIONAL CAMPING VEHICLE.** Any of the following:

(1) **TRAVEL TRAILER** means a vehicular, portable structure built on a chassis designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently identified travel trailer by the manufacturer of the trailer.

(2) **PICK-UP COACH** means a structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation, and vacation.

(3) **MOTOR-HOME** means a portable, temporary dwelling to be used for travel, recreation, and vacation, constructed as an integral part of a self-propelled vehicle.

(4) **CAMPING TRAILER** means a folding structure, mounted on wheels and designed for travel, recreation, and vacation use.

**REDUCTION/RECYCLING FACILITY.** A lot or a designated part of a lot principally used for the reduction, recycling, or preparation for recycling of vehicles, equipment, and/or used, waste, or salvaged materials. Reduction and recycling shall include dismantling, wrecking, crushing, repairing, rebuilding, sale of parts of scrap, storage, abandonment, or accumulation for sale or shipment.

**REFUSE.** Refer to the solid waste regulations, Chapter 50 of this code of ordinances, for definition.

**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 a magnitude of the 1% chance or 100-year recurrence interval. **REGIONAL FLOOD** is synonymous with the term **BASE FLOOD** as used in the Flood Insurance Study.

**REGULATORY FLOOD PROTECTION ELEVATION (RFPE).** An elevation not less than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on a floodplain that results from the designation of a floodway. It is this elevation which is regulated by this chapter and required to be elevated or flood proofed.

**REPETITIVE LOSS.** Flood related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.

**RESIDENCE - PRIMARY.** A separate, complete dwelling unit that is the larger of the dwelling units when a single-family residential site contains an approved secondary residence.

**RESIDENCE - SECONDARY.** A residential dwelling unit located on the same lot as a single-family dwelling unit, either as a mobile home or in a detached accessory structure. Prohibited by this chapter unless otherwise allowed by an interim use permit.

**RESIDENTIAL FACILITY.** Any facility, public or private, which for gain or otherwise regularly provides one or more persons with a 24-hour per day substitute for care, food, lodging, training, education, supervision, habilitation, rehabilitation, and treatment they need, but which for any reason cannot be furnished in the person's own home. Residential facilities include, but are not limited to: state institutions under the control of the Commissioner of Public Welfare, foster homes, residential treatment centers, maternity shelters, group homes, residential programs, or schools for handicapped children.

**RESIDENTIAL LOT.** A parcel that is less than 20 acres in size, which has an available building eligibility or an existing single-family residence.

**RIGHT-OF-WAY (R-O-W).** A strip of land acquired by reservation, dedication, prescription, or condemnation and intended to be occupied or used by a road, street, trail, water line, sewer line, electrical transmission line or similar public and/or utility service. Unless otherwise specified, the term **RIGHT-OF-WAY (R-O-W)** as used in this chapter refers to road or street right-of-way.

**ROTOR DIAMETER.** The diameter of the circle described by the moving rotor blades.



**SEMI-PUBLIC USE.** The use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

**SENSITIVE AREAS.** Areas within 150 feet of DNR protected waters; areas within 150 feet of watercourses as defined; a designated floodplain; bluffs and areas within 100 feet of the bluff top; Wellhead Protection Areas as adopted by LGU; areas within 100 feet of a delineated wetland boundary or wetlands as shown on the National Wetland Inventory (NWI); areas within 100 feet of protected properties such as DNR wildlife areas, USFW property, and parkland.

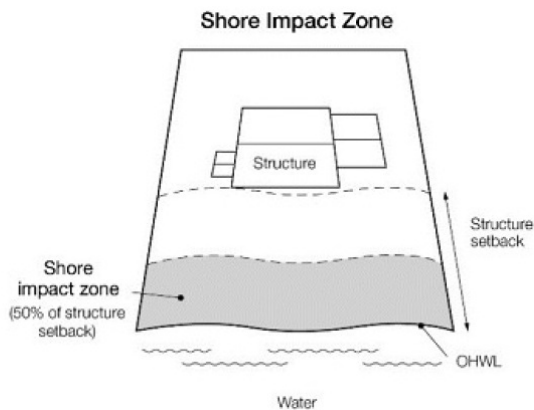
**SETBACK.** The minimum horizontal distance between a structure, sewage treatment system, or other facility, and an ordinary high water level, sewage treatment system, top of bluff, road, highway, property line, or other facility. A required open space on a lot which is unoccupied and unobstructed by a building from its lowest ground level to the sky except as expressly permitted in this chapter. A **SETBACK** shall extend along a lot line and at right angles to a lot line to a depth or width specified in the yard regulations for the district in which the lot is located.

**SETBACK–FRONT.** A setback extending along the full width of the front lot line between side lot lines and extending from the centerline of the street right-of-way line to a depth as required in the setback regulations for the district in which the lot is located.

**SETBACK–REAR.** A setback extending along the full width of the rear lot line between the side lot lines and extending toward the front lot line for a depth as specified in the setback regulations for the district in which the lot is located.

**SETBACK–SIDE.** A setback extending along the side lot line between the front and rear yards, having a width as specified in the yard regulations for the district in which the lot is located.

**SHORE IMPACT ZONE.** Land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50% of the structure setback.



## **SHORELAND.**

(1) Land located within the following distance from public waters:

(a) 1,000 feet from the ordinary high water level of a lake, pond or flowage; and

(b) 300 feet from river or stream as designated on the Carver County Zoning Map or the landward extent of a floodplain as designated by this chapter of a river or stream, whichever is greater.

(2) The practical limits of **SHORELAND** may be less than statutory limits wherever the waters involved are bounded by natural topographic divides which extend landward from the waters for lesser distances and when approved by the Commissioner of Natural Resources.



**SIGN.** Any device (including but not limited to letters, words, numerals, figures, logos, pictures, or any part or combination) used for visual communication intended to attract the attention of the public. The term **SIGN** shall not include any flag, symbol, or any governmental unit.

**SIGN – ADVERTISING (BILLBOARD).** A sign which directs attention to a business, commodity, service or entertainment not exclusively related to the premises where the sign is located or to which it is affixed.

**SIGN – BUSINESS.** A sign which directs attention to a business or profession conducted or to a commodity, service, or entertainment sold or offered on the premises on which the sign is located or to which it is affixed.

**SIGN – FLASHING.** A sign where light is not maintained stationary or constant in intensity and color at all times in which the sign is in use.

**SIGN – IDENTIFICATION OR NAMEPLATE.** Any sign which states the name or address or both of the business or occupant of the lot or building where the sign is placed or may be a directory listing the name, address and business of occupants.

**SIGN ILLUMINATED.** Any sign which is illuminated in any way including reflection.

**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 M.S. § 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**.

**SINGLE-FAMILY RESIDENCE.** A dwelling unit with a minimum width of 20 feet, attached to a permanent foundation built to frost depth, having an earth covered, composition, shingled or tiled roof, constructed in accordance with the Minnesota State Building Code, designed for occupation by one family and being one contiguous living space with one set of utilities.

**SOLAR ARRAY.** Any number of solar photovoltaic modules or panels connected together to provide a single electrical output.

**SOLAR CELL.** The basic unit of a photovoltaic solar panel.

**SOLAR ENERGY STORAGE.** An accessory use to a solar energy system which captures solar energy produced at one time for use at a later time.

**SOLAR ENERGY SYSTEM (SES).** A set of devices whose primary purpose is to collect solar energy and convert it for useful purposes including heating and cooling buildings or other energy-using processes, or to produce generated power by means of any combination of collecting, transferring, or converting solar-generated energy. (See also: **LARGE SOLAR ENERGY SYSTEM** and **SMALL SOLAR ENERGY SYSTEM**).

**SOLAR ENERGY SYSTEM, LARGE.** Composed of multiple solar panels on multiple mounting systems (poles or racks), and generally have a direct current (DC) rated capacity greater than 100 kilowatts.

**SOLAR ENERGY SYSTEM, SMALL.** A solar array that is an accessory use with a direct current (DC) rated capacity less than 100 kilowatts.

**SOLAR MODULE.** Any number of individual solar cells connected together in an environmentally protected housing producing a standard output voltage and power. Multiple modules/panels can be assembled into an array for increased power and/or voltage.

**SOLID WASTE.** Refer to the solid waste regulations, Chapter 50 of this code of ordinances, for definition.

**SOLID WASTE FACILITY.** All property real or personal, including negative and positive easements and water and air rights, which is or may be needed or useful for the processing or disposal of waste. It includes but is not limited to the storage, collection, transportation, processing and reuse, conversion or disposal of solid waste in a safe, environmentally sound manner.

**SPECIAL FLOOD HAZARD AREA.** A term used for flood insurance purposes and synonymous with the **ONE HUNDRED YEAR FLOODPLAIN**.

**START OF CONSTRUCTION.** Includes substantial improvement, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement that occurred before the permit's expiration date. The actual start is either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual **START OF CONSTRUCTION** means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STEEP SLOPE.** Lands having average slopes over 12%, as measured over horizontal distances of 50 feet or more,

which are not bluffs.

**STOCK-IN TRADE.** A stock of goods kept on hand for sale on the premises.

**STREET.** See **PUBLIC ROAD**.

**STRUCTURE.** Anything constructed or erected on or connected to the ground.

**SUBDIVISION.** The creation of one or more lots under the provisions of Chapter 151.

**SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure where the cost of restoring the structure to its before damage condition would equal or exceed 50% of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT.** Within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure. For the purpose of this chapter, historic structure is as defined in 44 C.F.R. § 59.1.

**SUBSURFACE SEWAGE TREATMENT SYSTEM (SSTS).** Either an individual sewage treatment system or a midsized subsurface sewage treatment system pursuant to Chapter 52 and Minn. Rules Chapters 7080 and 7081.

**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. Resorts and restaurants with transient docking facilities are examples of the use.

**TEMPORARY STRUCTURE.** A structure specifically designed to be moved at will and in no way permanently attached to the ground through foundations, tie downs or similar attachments.

**TOWER.** A structure as defined in the Uniform Building Code.

**TRANSFER FACILITY/TRANSFER STATION.** Refer to the solid waste regulations, Chapter 50 of this code of ordinances, for definition.

**TRANSMISSION SYSTEMS.** Systems designed to move information, electrical power or a commodity such as petroleum or natural gas from place to place. Systems may consist of overhead lines or cables with poles or towers, underground cables, pipelines, pipes or similar installations. En-route consumption systems are designed primarily to provide service to local areas and provide service to individual users. Non-en-route consumption systems are designed primarily to transport information, power or a commodity over long distances and typically do not provide service to individual users along the way.

**USE.** The purpose or activity for which the land or building thereon is designated, arranged, or intended or for which is occupied, utilized or maintained and shall include the performance of an activity as defined by the performance standards of this chapter.

**USE-ACCESSORY.** See **ACCESSORY USE**.

**USE-PERMITTED.** A use which may be lawfully established in a particular district or districts, provided it conforms with all requirements, regulations and performance standards, if any, of the districts.

**VARIANCE.** Any modification or variation of official controls, as defined in M.S. § 394.27, subd.7, where it is determined that by reason of exceptional circumstances, the strict enforcement of the official controls would cause a practical difficulty.

**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 these structures and facilities include boathouses, gazebos, screen houses, fish houses, pumphouses, saunas, patios, and detached decks. Boathouses and boat storage structures given the meaning under M.S. § 103G.245 are not **WATER-ORIENTED ACCESSORY STRUCTURES**.

**WATER SUPPLY PURPOSE.** Any use of water for domestic, commercial or agricultural purposes.

**WETLAND.** As defined by Minnesota Wetland Conservation Rules, Minn. Rules Part 8420.0111, as it may be amended from time to time.

**WIND ENERGY CONVERSION SYSTEM (WECS).** A device such as wind charger, windmill, or wind turbine and associated facilities that converts wind energy to electric energy, including, but not limited to: power lines, transformers, substations, and meteorological towers. The energy may be used on-site or distributed into the electrical grid. (See also: **LARGE WIND ENERGY CONVERSION SYSTEM** and **SMALL WIND ENERGY CONVERSION SYSTEM**).

**WIND ENERGY CONVERSION SYSTEM, LARGE.** A WECS of equal to or greater than 40kW in total name plate generating capacity.

**WIND ENERGY CONVERSION SYSTEM, SMALL.** A WECS that is an accessory use of less than 40 kW in total name plate generating capacity.

**WIND TOWER.** Vertical structures that support the electrical generator, rotor blades, or meteorological equipment.

**WIND TURBINE.** Any piece of electrical generating equipment that converts the kinetic of blowing wind into electrical energy through the use of airfoils or similar devices to capture the wind.

**WIRELESS COMMUNICATIONS FACILITY.** Structures, antennas, towers, fences and related equipment and appurtenances associated with licensed commercial wireless telecommunication services including, but not limited to, broadband, broadcast, cellular, personal communications services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public.

**YARD–FRONT, SIDE, REAR.** The area between structures and the respective lot line.

**ZONING CODE.** Chapter 152 of this code.

**ZONING DISTRICT.** An area or areas within the limits of the county for which the regulations and requirements governing use, lot and size of building and premises are uniform.

(Ord. 47, passed 7-23-02; Am. Ord. 4703-1, passed 5-5-03; Am. Ord. 58-1007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.011 FEES.**

Certificate of zoning compliance fees, application fees, permit fees and any other fees relating to official control measures shall be established by the Carver County Fee Schedule as adopted by the County Board of Commissioners. Any fees adopted shall be collected by the Department for deposit with the county and credited to the general revenue funds.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **STANDARDS**

#### **§ 152.025 REQUIREMENT FOR COMPLIANCE.**

(A) No structure shall be erected, converted, enlarged, reconstructed, or altered and no structure or land shall be used for any purpose nor in any manner unless it complies with the provisions of this chapter. A land use and/or structure that is not referenced by the provisions of this chapter shall be considered prohibited.

(B) Compliance with this chapter shall be required as follows:

- (1) Before any land is hereafter occupied or used for any permitted or accessory use in this chapter;
- (2) Before any land is hereafter occupied or used in any manner for which an administrative permit is issued, a conditional use permit or interim use permit is issued or a variance is ordered;
- (3) Before any building is erected or structurally altered;
- (4) Before the principal use of a building, structure or land is changed, or the open space character of the land is changed;
- (5) Before any land is filled or is excavated and more than 400 cubic yards of material is displaced. All activities involving fill or excavation activities in a Floodplain District shall require an application for a certificate;
- (6) No accessory structure or accessory use, other than those specifically allowed by this chapter, shall be permitted prior to the time of the construction of the associated principal structure or establishment of the associated principal use.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.026 DISCLOSURE OF USE OF HAZARDOUS MATERIALS.**

All applicants for permits or certificates pursuant to this chapter shall, as part of their application, disclose the use or storage of any hazardous materials or chemicals, including but not limited to items that are flammable, combustible, corrosive, toxic or reactive, or any material that could be considered hazardous waste as defined by Chapter 51 of this code of ordinances. Any permits issued where these substances are present shall address the proper management of the materials.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.027 WATER MANAGEMENT, EROSION AND SEDIMENTATION CONTROL.**

All activities conducted pursuant to this chapter, including activities that involve grading, filling, or excavation, shall comply with Chapter 153 of the Carver County Code (Water Resource Management) within the Carver County Water Management Organization or the Minnehaha Creek Watershed District permitting standards within the Minnehaha Creek Watershed, and

the erosion and sediment control design and operational standards as set forth in Minnesota Permit R100001 (the General Permit Authorization to Discharge Storm Water Associated With Construction Activity Under the National Pollutant Discharge Elimination System), as amended from time to time. If one is more restrictive, then the more restrictive shall apply.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.028 STRUCTURES IN A PUBLIC RIGHT-OF-WAY.**

No structure or temporary structure shall be located in or on any public lands or rights-of-way without a permit issued pursuant to appropriate county ordinances or other regulations.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.029 FENCES.**

A boundary line fence is any fence that is erected within the required structure setback for a property. A boundary line fence may be erected in a required yard but shall not be erected in the public right-of-way. Boundary line fences shall not exceed seven feet in height; the only exceptions to this limitation are when a fence higher than seven feet is specifically required for an agricultural operation or for screening/security as part of a conditional use permit, variance, or other county permit process. Fences shall be no higher than the horizontal distance between the fence and any residence on a neighboring property. The height of a fence shall be measured based on the average grade of the surrounding area. In cases where a fence is constructed on a berm raising it above the surrounding area, the height of the berm shall be included in the height measurement. On the interior lot lines of any property, boundary line fences shall be located on the property of the property owner causing the fence to be erected, unless the adjoining property owner agrees in writing to have the fence erected on the property line. If no agreement can be reached, a fence may still be erected on the property line, provided property survey markers are present and known, otherwise a survey needs to be conducted. Fences seven feet or more in height shall be constructed only after the issuance of a permit as provided in the State Building Code.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.030 NO GARAGE, TENT, TRAILER.**

No garage, tent, trailer or cargo container, recreational camping vehicle, or accessory buildings shall at any time be used as a permanent dwelling unit. Temporary occupancy shall only be allowed in accordance with the standards of this chapter.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.031 NO MORE THAN ONE PRINCIPAL RESIDENTIAL STRUCTURE.**

No more than one principal residential structure shall be located on a lot or as otherwise allowed in accordance with the standards of this chapter.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.032 UNLICENSED/INOPERABLE MOTOR VEHICLES OR ACCUMULATION OF LICENSED MOTOR VEHICLES.**

No more than a total of two unlicensed and/or inoperable motor vehicles shall be kept or stored outside a building in any district unless specifically permitted by this chapter or a CUP. On properties less than one and one-half acres in size an accumulation of more than five licensed vehicles located outside a building is prohibited. For the purposes of this section motor vehicles shall include, but are not limited to, cars, trucks, semi tractors and/or semi trailers, boats, motorcycles and recreational vehicles, regardless of whether the vehicle has a motor. The following shall be considered to be equivalent to one unlicensed or inoperable vehicle for the purposes of this chapter:

- (A) A vehicle without current registration; or
- (B) A vehicle that is not functional or operable; or
- (C) An out-of-service item of motorized farm equipment on a parcel less than 20 acres; or
- (D) Vehicle parts accumulations of five cubic yards.

(Ord. 47, passed 7-23-02; Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.033 LOT REQUIREMENTS.**

(A) *Generally.* A new lot shall not be created unless it conforms to all of the following requirements. Any action that changes the size, configuration, or shape of a lot is considered to be creating a new lot. The only exception is where changes are being made to correct discrepancies in a legal description or to recognize actual occupation.

(B) *Reasonable use.* All new lots created must have a reasonable use as defined by this chapter. If there is no reasonable use, the lot shall not be created.

(C) *Minimum lot area requirements.*

(1) Lots for a dwelling unit under the 1/40 (one per quarter-quarter) provision shall have the following minimum lot sizes: 1½ acres in non-shoreland; 1½ acres in shoreland of rivers or watercourse, general or recreational development lakes; 2 acres in shoreland of natural environment lakes.

(2) Lots for a dwelling unit under the density options and all conditional use provisions shall have the following minimum lot size: 2½ acres unless a different size is specified in the requirements for a permit.

(3) A parcel for which agriculture is the only reasonable use as defined by this chapter must be a minimum of 20 acres.

(D) *Road frontage, lot width and depth.*

(1) *Road frontage.* All new lots shall have frontage on a public road or be attached to an adjacent parcel having the required road frontage; minimum road frontage is 125 feet.

(2) *Minimum width.* One hundred twenty-five feet with 125 feet of frontage on a public road existing at the time of application or the minimum width required to maintain width to depth ratio, whichever is greater. The minimum width of a specified lot must be maintained for the entire depth of the lot except where the lot is located on a cul-de-sac.

(3) *Minimum lot depth.* One hundred twenty-five feet.

(4) *Width to depth ratio.* Depth of the lot shall not exceed five times the width. Road frontage of 500 feet or more will support a lot of any depth.

(5) *Minimum width for lots in the Shoreland Overlay District.*

- (a) Natural environment lakes - 200 feet;
- (b) Recreational development lakes - 150 feet;
- (c) General development lakes - 150 feet;
- (d) Protected rivers and watercourses - 150 feet.

(E) *Lot configuration.* Lot configuration for new lots containing a home and associated buildings that existed prior to July 1, 1974: If the buildings are located such that to meet the requirements above would utilize more than five acres of long term agricultural land, then lot configuration may be as follows:

(1) Minimum road frontage and lot width - 66 feet. This 66 feet shall either include the existing driveway or a new driveway that is constructed to minimize the severing of tilled land.

(2) Lot width will be measured at the building location and must be such that the side yard setbacks of the zoning district are met for all existing buildings.

(3) Lot depth shall be such that the distance from the buildings to the rear lot line meets the rear yard setback of the zoning district.

(4) Lot shall be configured so that there is an area that can be utilized for an alternate SSTS.

(F) *Use of prime AG land.* Lots of less than 20 acres created for a new residential building site shall contain no more than 2 acres of prime agricultural land under till. The setbacks as required by this chapter shall not be included in the calculation.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.034 SETBACKS.**

(A) *No reduction in setback.* No setback existing upon the effective date of this chapter shall be reduced in area or dimension so as to make the setback less than the minimum required by this chapter.

(B) *Existing buildings on new lots.* Any new lot created that contains existing buildings must be configured so that all setback requirements from new lot lines are met.

(C) *Exemptions.* The following shall not be subject to setback requirements:

(1) Chimneys, flues, belt courses, leaders, sills, pilaster, lintels, cornices, eaves, gutters, provided they do not extend more than two feet into a setback area;

(2) Yard lights and signs provided they are located three feet or more from all lot lines. Lights for illuminated parking or loading areas or yards for safety and security purposes may be installed where necessary provided that glare is not visible from public right-of-way or adjacent residential property and not more than three foot candles of light intensity is present at a residential property line;

(3) In the front yard, balconies that extend a distance of four feet or less, provided they are seven feet or more above grade at the building line. Also steps, driveways, stoops, and uncovered porches which do not extend in elevation above the ground floor level of the principal building;

(4) In the side yard, terraces, steps, uncovered porches or stoops which do not extend in elevation above the height of the ground floor level of the principal building; and

(5) In the rear yard, recreation equipment, parking, driveways, patios.

(D) *Table of setback requirements.* All structures unless exempted above; and signs and parking areas near a public right-of-way:

Side Lot Line Setbacks	All Districts	15 feet
Rear Lot Line Setback	All Districts	30 feet
Bluff Setback–All Structures	All Districts	Structures 50 feet; 100 feet for actively eroding bluffs.
Bluff Impact Zone		The clear-cutting of existing natural vegetation or other disturbance is prohibited.
Front Setbacks		The front setback shall be required from any public road or private road serving the function of a public road. Front setbacks are measured from the center of the road. R-O-W shall be the typical planned right-of-way.

<b><i>Future Functional Class of Road as Shown in Roadway Systems Plan Figure 4.13</i></b>	<b><i>Setback from Centerline</i></b>	<b><i>Reduced Setback*</i></b>	<b><i>R-O-W</i></b>	<b><i>Reduced R-O-W</i></b>
<b><i>Future Functional Class of Road as Shown in Roadway Systems Plan Figure 4.13</i></b>	<b><i>Setback from Centerline</i></b>	<b><i>Reduced Setback*</i></b>	<b><i>R-O-W</i></b>	<b><i>Reduced R-O-W</i></b>
Principal arterial not in Shoreland District	145	90	200	130
Principal arterial in Shoreland District	150	Right-of-way plus 50 ft.	200	130
Minor arterial not in Shoreland District	120	80	150	110
Minor arterial in Shoreland District	125	Right-of-way plus 50 ft.	150	110
Collector roads not in Shoreland District	95	75	120	100
Collector roads in Shoreland District	110	Right-of-way plus 50 ft.	120	100
Local roads not in Shoreland District	68	N/A	66	
Local roads in Shoreland District	68	N/A	66	
In a case where the actual R-O-W plus 35 feet results in a greater setback requirement; this greater requirement shall be enforced. Right-of-way for county roadways with a corridor study shall be designated per the study.				
In a case where a cul-de-sac is present, the front setback shall be measured from the center of the cul-de-sac. No structure shall be closer than 35 feet from the exterior radius of a cul-de-sac.				

<b><i>Setbacks from Ordinary High Water Level in Shoreland District</i></b>	<b><i>Setback Required for Structures</i></b>	<b><i>Setback Required for SSTS</i></b>
<b><i>Setbacks from Ordinary High Water Level in Shoreland District</i></b>	<b><i>Setback Required for Structures</i></b>	<b><i>Setback Required for SSTS</i></b>
Natural environment lake	150	as required by Chapter 52

Recreational development lake	100	as required by Chapter 52
General development lake	75	as required by Chapter 52
Agriculture, urban and tributary rivers	100	as required by Chapter 52
When more than one setback applies to a site, structures and facilities must be located to meet all setbacks, and comply with the following OHWL setback provisions.		
Structures and sewage treatment systems must meet setbacks from the ordinary high water level (OHWL), except that one water-oriented accessory structure or facility, designed in accordance with § 152.124, may be set back a minimum distance of ten feet from the OHWL.		
All SSTS setbacks are regulated by the SSTS regulations pursuant to Chapter 52		
* Provision for reduction of front setback: The front setback may be reduced by the Department to the value shown, provided the applicant demonstrates need; and, the responsible road authority submits a statement certifying that the reduction will not impair any planned widening, relocation, repair, upgrading, construction or similar activity.		
<b>NOTICE: The SSTS regulations, Chapter 52, feedlot management regulations, Chapter 54, sign regulations, Chapter 154 of this code of ordinances and water rules contain setback provisions that may affect the placement of buildings and structures. All setback provisions of those chapters must be maintained.</b>		

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.035 SUBSURFACE SEWAGE TREATMENT SYSTEM (SSTS) STANDARDS.**

(A) *Treatment required.* All sewage generated by human occupancy, habitation or activity shall be properly managed in accordance with Chapter 52 of this code of ordinances or be treated in a municipal wastewater treatment system.

(B) *Standard for new systems.* Permits shall be issued, building eligibilities granted, or a site shall be considered suitable for the construction of new residences or other activities requiring sewage treatment by an SSTS on land that has a minimum of 12 inches of separation between the periodically saturated soil or other limiting factor and the surface of the soil in its original, natural state. This separation shall be demonstrated by the submission of soil borings, provided by a licensed SSTS designer and verified by the Environmental Services Department, identifying a primary and alternate SSTS site as required in Chapter 52 of this code of ordinances.

(C) *New lots.* New lots less than 20 acres which are intended for a land use which will require an SSTS shall not be created unless a plan showing two soil treatment sites, a primary site and alternate site is submitted. Suitability of the sites shall be documented by the submission of a soil borings by a licensed SSTS designer. The plan shall clearly show the location of both the primary and alternate SSTS sites. Lots of 20 acres or more shall contain at least two acres of soils that will accommodate an SSTS that meets Minn. Rules Chapter 7080, based on the USDA Web Soil Survey. The Department after consultation with the Environmental Services Department may require the identification of two soil treatment sites as provided for lots of greater than 20 acres.

(D) *New lots containing existing uses.* New lots which contain an existing land use required to utilize an SSTS shall not be created unless the existing SSTS is issued a certificate of compliance or a guarantee is provided that ensures the issuance of a certificate of compliance within ten months of the application approval date or the time required by Chapter 52 of this code of ordinances, whichever is more restrictive. Lots of less than 20 acres shall submit a plan with soil borings for an alternate SSTS site. The plan shall include a soil borings report for the site, which has been prepared by a licensed SSTS designer. A certificate of compliance and an alternate SSTS site shall not be required when the lot is the result of a land exchange for purposes of correcting errors in legal descriptions, changing legal descriptions to reflect lines of occupation, or the attachment of land to an existing parcel to provide land to accommodate an SSTS upgrade or to bring a nonconforming lot into conformity. For the purpose of this section, a new lot shall be any parcel, parent parcel, or remnant parcel created as the result of a minor subdivision or plat application, pursuant to Chapter 151 of this code of ordinances.

(E) *Issuance of permits; SSTS compliance required.* In all districts, for all systems which have been determined to be a direct discharge, imminent health threat, or for which there are no county SSTS records existing on the property at the time of application, a permit shall not be issued unless the requirements of § 152.122 are met.

(F) *Protection of primary and alternate SSTS sites.* On parcels where an SSTS site plan has been submitted, the primary and alternate sites shall be protected from activities that may render the sites unsuitable for future SSTS use. The sites shall be staked and flagged so they are clearly identified. The sites shall not be disturbed and shall be left in their natural state until the SSTS is constructed. No buildings shall be erected on the sites nor shall the sites be used for parking vehicles. Heavy equipment must be kept off the sites and no trees shall be planted on the sites. If either site has been disturbed or rendered unusable, a plan including soil borings identifying a new SSTS site(s) shall be submitted.

(G) *Permit review.* All permits that include activities that may affect the ability to locate an alternate SSTS site on a parcel shall be reviewed to ensure that a feasible alternate SSTS site is preserved. The Department, in consultation with the Environmental Services Department, may require soil borings to identify a suitable alternate SSTS site.



(H) *Temporary uses.* Temporary uses, such as construction and similar activities, and other uses permitted pursuant to this chapter which may exist for a short period of time and have a number of people on the premises that cannot be accommodated by an existing SSTS may be required to provide additional auxiliary sanitary facilities.

(Ord. 47, passed 7-23-02; Am. Ord. 64-2008, passed 4-8-08; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.036 ACCESS REQUIREMENTS.**

(A) *Relation to road authority.* Nothing in this chapter shall abrogate the ability of a road authority to approve, deny, or require modification of an access, require a permit for an access, develop and impose standards and conditions for an access. Approval by the Department of an access pursuant to this chapter shall not constitute approval by the road authority nor shall approval by the Department require that the road authority approve the access.

(B) *Number of accesses limited.* With the exception of field access drives, any principal use of land requiring access to a public road shall be limited to a single access connection. All parcels shall be limited to a single access, unless through the conditional, interim, or accessory use permitting process an additional access is supported by the operational plan and/or site plan, it is approved by the road authority, and it meets the standards of this chapter.

(C) *Field access drives.* A new or existing field entrance is exempt from the standards of this chapter provided all other permitting requirements of the road authority are met. An access connection to a farmstead, feedlot or farm-related structures are not considered a field entrance, and must comply with the standards of this chapter. If a different use for a property served by an existing field entrance is proposed, the presence of a field entrance shall not be construed as a right to continue that access connection. When the use of the property changes to a nonexempt use, compliance with the standards of this chapter shall be required, which shall include compliance with access permit requirements.

(D) *Access to state highways.*

(1) All new driveways for residential, commercial or zoning permits shall be constructed in accordance with State of Minnesota adopted standards and policy, per Minnesota Department of Transportation (MnDOT) regulations.

(2) Authorization to construct or alter an access to a state highway shall consist of a permit signed by the MnDOT Engineer or authorized representative. No access shall be constructed or altered to a state highway until such permit has been obtained.

(3) All existing driveway or field access locations may be modified, closed or altered as a conditional approval for any plat approval, zoning permit, grading permit or building permit issued by the county.

(4) Turn and/or by-pass lanes may be required as a condition of approval for certain traffic generating land uses (i.e. permitted, conditional or interim use) as determined by the MnDOT Engineer or authorized representative.

(E) *Access to county roads.*

(1) All new driveways for residential, commercial or zoning permits shall be constructed in accordance with county adopted standards and policy.

(2) Prior to submitting a subdivision application, the applicant shall demonstrate access to the parcel.

(a) If the proposed access is on a county road an approved access permit is required prior to subdivision approval.

(b) If the proposed access is a shared access on a county road an approved access permit is required prior to subdivision approval.

(c) For shared access locations an easement needs to be recorded on all properties, where applicable.

(3) Authorization to construct or alter an access to a county road shall consist of a permit signed by the County Engineer or authorized representative. No access shall be constructed or altered to a county road until such permit has been obtained.

(4) All existing driveway or field access locations may be modified, closed or altered as a conditional approval for any plat approval, zoning permit, grading permit or building permit issued by the county.

(5) Turn and/or by-pass lanes may be required as a condition of approval for certain traffic generating land uses (i.e. permitted, conditional or interim use) as determined by the County Engineer or authorized representative.

(F) *Access to township roads.* All private accesses to a public road other than field access drives shall meet a 100-foot access separation. The separation standards shall apply to the side of the road where the access is located. In cases where the road frontage of a lot of record is insufficient to permit adequate separation, an access not meeting the standards may be permitted. The access shall be located as required by the road authority; if the road authority has no preference the access shall be located as far as possible from accesses on either side.

(1) Authorization to construct or alter a driveway on a township road shall consist of a permit signed by a representative of the Town Board.

(2) Driveways shall be constructed in accordance with township standards.

(3) No driveway shall be constructed to a township road until such permit has been obtained.

(G) *Accesses near intersections.* In addition to the required minimum lot area and dimensions contained in this chapter, all corner lots shall be of adequate dimension to accommodate corner clearances specified below. When a private access is requested near the intersection of two roads the following shall apply:

- (1) For a county road and a township road, access on the township road shall be at least 1/8 mile (660 ft.) From the intersection of the county road and shall not be located within any turn lane serving the county road intersection.
- (2) For two township roads, on the road of higher classification, the access shall be no closer than 300 feet from the center of the proposed access to the center of the intersecting public road;
- (3) For two township roads, on the road of lower classification, the access shall be no closer than 150 feet from the center of the proposed access to the center of the intersecting public road;
- (4) At an intersection of two roads with the same functional classification, the road with the higher traffic volume shall be considered the road of higher classification;
- (5) Accesses shall not be located within any turn lane or bypass lane.

(Ord. 47, passed 7-23-02; Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.037 HEIGHT REGULATIONS.**

(A) *Height regulations.* All structures shall have a maximum height of 35 feet except those structures specifically excepted below and subject to the provisions thereof.

(B) *Height limitations; exceptions.* The maximum height as stated above shall be increased to 100 feet for the following: belfries, church spires and steeples, cooling towers, flagpoles, smokestacks, water towers, farm accessory structures and similar structures. The structure shall be located at least the height of the structure plus 10 feet from any lot line. Structures in excess of 100 feet shall be permitted only upon issuance of a CUP. For a structure of 200 feet or more in height, the procedures of Minn. Rules 8800.0100 through 8800.1200, as they may be amended from time to time, shall be observed. Wireless communications facilities are regulated by §§ 152.052 and 152.056. Energy production facilities are regulated by § 152.057.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.038 PARKING STANDARDS.**

(A) *General provisions.*

(1) The Department and the County Board of Commissioners shall have the authority to modify parking standards for special use and conditional use permits, when applicable.

(2) Existing off-street parking spaces upon the effective date of this chapter shall not be reduced in number unless the number exceeds the requirements set forth herein for a similar new use.

(3) The owner or occupant of all land parcels in the unincorporated area of Carver County shall provide off-street parking as set forth in this chapter to alleviate or prevent congestion of the public right-of-way and promote the safety and general welfare of the public.

(4) Should a building, structure or use in existence upon the effective date of this chapter be damaged or destroyed by fire or other cause, it may be re-established according to standards regarding any nonconformities but in doing so the number of off-street parking spaces which existed must be retained and should plans be proposed for enlarging the floor area, seating capacity or other facilities which would affect the parking spaces, shall be enlarged accordingly.

(5) *Calculating parking space.*

(a) *Benches.* In churches, recreation facilities, and other places of public assembly in which patrons or spectators occupy benches, pews or similar seating facilities, each 22 inches of the seating facility shall be counted as one seat for the purposes of determining requirements for off-street parking facilities under this chapter.

(b) *Fractions.* When determining the number of off-street parking spaces results in a fraction, each fraction of one-half or more shall constitute another space.

(c) *Multiple uses.* Should a structure contain two or more types of use, each use shall be calculated separately for determining the total off-street parking spaces required.

(6) *Location.*

(a) In all zoning districts, any off-street parking space shall not be designated within the actual or prescriptive road right-of-way, whichever is greater.

(b) The parking spaces must not create unsafe traffic or pedestrian conditions.

(B) *Parking lot design.*

(1) Off-street parking areas shall be surfaced to control dust and shall be drained to dispose of all surface water

accumulation within the parking area in accordance with the County Erosion Control and Water Management Plan. All surfacing must be completed prior to the occupancy of the structure, unless otherwise approved by the Department and/or County Board of Commissioners.

(2) Each parking space shall be unobstructed and not less than 9 feet wide and 20 feet in length, plus adequate system of access.

(3) The grade elevation of any parking area shall not exceed 5% except as approved by the Department.

(4) Disability accessible parking spaces shall be provided as applicable pursuant to M.S. § 168.021, as it may be amended from time to time.

(C) *Minimum off-street parking requirements.*

(1) *Schools, elementary and junior high.* At least one parking space for each classroom plus one additional space for each 100 student capacity and each administration employee.

(2) *High school through college.* At least one parking space for each classroom plus one additional space for each five students based on designed capacity and for each administration employee.

(3) *Churches and clubs.* At least one parking space for each three seats based on the design capacity of the main assembly hall.

(4) Disability accessible parking spaces shall be provided as applicable pursuant to M.S. §168.021, as it may be amended from time to time.

(C) *Minimum off-street parking requirements.*

(1) *Schools, elementary and junior high.* At least one parking space for each classroom plus one additional space for each 100 student capacity and each administration employee.

(2) *High school through college.* At least one parking space for each classroom plus one additional space for each five students based on designed capacity and for each administration employee.

(3) *Churches and clubs.* At least one parking space for each three seats based on the design capacity of the main assembly hall.

(4) *Recreational facilities.* At least one parking space for each eight seats designed capacity.

(5) *Golf course.* Twenty spaces, plus three spaces per hole. If a restaurant and/or bar is established, one additional space per four seats is required. Additional requirements may be added if additional activities are proposed.

(6) *Minimum convenience shopping.* At least four parking spaces plus three for each service stall.

(7) *Agricultural support.* Four parking spaces plus one parking space for each 800 square feet of the first 1,000 feet of space.

(8) *Manufacturing, fabricating or processing of a product or material.* Four parking spaces plus one for each 400 square feet of floor area.

(9) *Other uses.* Spaces for uses not listed shall use be calculated by the land management department based on, but not limited to, the characteristics for similar uses and professional studies prepared by American Planning Association or Institute of Traffic Engineers.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

**§ 152.039 (RESERVED).**

**§ 152.040 OPERATIONAL STANDARDS.**

(Note: many of these standards pertain to state or federal jurisdiction and are referenced as such.)

(A) Purpose: The guiding of development so as to create a compatible relationship of uses depends upon certain standards being maintained.

(B) Uses permitted in the various districts, conditional and accessory uses, shall conform to the following standards:

(1) Semi-trailers, railroad cars, or similar equipment shall not be used as commercial or residential accessory structures.

(2) A single cargo container may be used for permanent personal storage or as an agricultural storage structure on a legally described parcel, provided the following conditions can be met:

(a) The subject parcel is a minimum of five acres.

(b) The subject parcel shall not exceed the maximum allowed square footage for personal storage as listed in § 152.073, unless a variance has been approved.

- (c) The cargo container meets all applicable setbacks and separation distance as required by the county zoning code.
- (d) A building permit for the placement of the cargo container is obtained.
- (e) The cargo container meets all applicable requirements of the building code.
- (f) The cargo container does not exceed 320 square feet.
- (g) The cargo container is a neutral color, and is prohibited from displaying any logo, sign, advertising, or message as regulated by Chapter 154 (Sign Regulations).
- (h) Screening consisting of a berm (2:1 maximum slope with supplemental plant materials including trees, shrubs, and groundcovers) and/or a continuous evergreen vegetative buffer shall be provided and maintained at all times around the perimeter of a cargo container that faces (a) public road right-of-way within 250 feet of the structure, (b) an existing residence or farmstead within 300 feet of the structure not on the subject parcel, or (c) residentially zoned or platted property within 300 feet of the structure.

(3) In addition to the above, a single cargo container may be used for temporary storage during a permitted construction project provided it is shown on the approved site plan for the project. The cargo container shall be removed from the property prior to the project receiving any final approval(s).

(4) In addition to the above, a single cargo container may be used for the temporary storage of an owner or a tenant's personal belongings during the process of moving in or out of a residential dwelling or commercial location. The temporary cargo container shall not exceed 320 square feet and shall not remain longer than 60 days.

(5) *Vibration.* Any use creating periodic earth shaking vibrations such as may be created from a drop forge shall be prohibited if the vibrations are perceptible beyond the lot line of the site on which the use is located. The standard shall not apply to vibrations created during the process of construction.

(6) *Glare or heat.* Any use requiring an operation producing an intense heat or direct light transmission shall be performed with the necessary shielding to prevent the heat or direct light from being detectable at the lot line on the site on which the use is located.

(7) *Explosives.* Any use requiring the storage, utilization or manufacturing of Class A explosives shall be located not less than 400 feet from the lot line.

(8) *Traffic control.* The traffic generated by any use shall be channelized and controlled in a manner that will avoid congestion on the public streets, safety hazards and excessive traffic through residential areas. Traffic into and out of all commercial and industrial uses and areas shall in all cases be forward moving, with no backing onto streets or pedestrian ways.

(9) Standards relating to noise, air emissions, toxic and noxious matter, radiation and electro- magnetic emissions are regulated by state and/or federal laws. Compliance with the laws shall be as determined by the appropriate state and/or federal regulatory agency, except as regulated by another county ordinance.

(10) Slopes in excess of 18% shall be left in their natural state unless the alteration of the slope is unavoidable, there are no viable alternatives, and the alteration conforms to all other county requirements. Alterations shall be designed and approved by a registered engineer. Activities intended to stop slumping or erosion shall be exempt from this standard if approved by the SWCD.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.041 SCREENING STANDARDS.**

(A) *Purpose.* The screening of activities conducted under a conditional use permit, interim use permit or variance issued under this chapter may be required as a condition of a permit or variance to break up the visual profile in an aesthetically pleasing manner.

(B) If screening is required as a condition, the following standards shall be complied with:

(1) A planting strip shall consist of evergreens, deciduous trees, shrubs and/or plants of a sufficient density to compose a substantially opaque visual screen and reasonable buffer viewed at a 90 degree angle from the planting strip.

(2) A planting strip shall be designed to provide visual screening to a minimum height of six feet. The grade for determining height shall be the grade elevation of the building or use for which the screening is providing protection, unless otherwise established by the Land Management Department. An earth berm may be used but shall not be used to achieve more than eight feet of the required screen. The planting plan and type of plantings shall require the approval of the Planning Department.

(3) Plant material centers shall not be located closer than three feet from the fence line or property line and shall not be planted to conflict with public plantings, sidewalks, trails, fences, parking areas, and driveways based on the judgment of the Planning Department.

(4) Where massing of plants or screening is intended, large deciduous shrubs shall be planted four feet on center or closer, and/or, evergreen shrubs shall be planted eight feet on center or closer.

- (5) Trees and shrubs shall not be planted in the right-of-way.
- (6) Trees and shrubs shall not be planted in or across any recorded easement.
- (7) All plants required as part of an approved screening plan shall be maintained and kept alive. Dead plants shall be replaced in accordance with the approved screening plan.
- (8) All new plants shall be guaranteed for a full growing season from the time planting has been completed. All plants shall be alive, of good quality, and diseases free at the end of the warranty period or be replaced. Any replacements shall be warranted for a full growing season from the time of planting. The growing season is herein defined as the period from June 1 to September 30.
- (9) Planting operations shall be conducted under favorable weather conditions during one of the following planting seasons as specified herein. For deciduous plant materials, spring planting should occur from April 1 to June 1; and fall planting from September 30 to November 15. For coniferous plant materials, spring planting should occur from April 1 to May 15; and fall planting from August 15 to October 15.
- (10) Any proposed modifications to these landscape requirements must consider a site-specific design solution if site conditions are deemed appropriate and other functional requirements (screening, etc.) are met.
- (11) Financial surety pursuant to the Carver County Fee Schedule may be required to insure the establishment of the required screening. If required, the following standards shall apply:
  - (a) The responsible party shall provide surety for the performance of the work described and delineated on the approved landscape plan and any related remedial work.
  - (b) The form and conditions of the surety shall be as follows:
    1. Deposit, either with the county or a responsible escrow agent, cash escrow. The financial assurance must be in a form acceptable to the county and from a surety licensed to do business in the State of Minnesota.
    2. The financial assurance shall be in favor of the county and conditioned upon the applicant's performance of the authorized activity in compliance with the permit and applicable laws, including this chapter, and the payment when due of any fees or other charges authorized or required by the permit and this chapter. The financial assurance shall state that in the event the conditions of the financial assurance are not met, the county may make a claim against it. The county shall be authorized to make a claim or draw against the surety after any default by the responsible party under the permit or these rules.
    3. If at any time during the course of the work or the initial two growing seasons the financial surety amount falls below 50% of the required deposit, the responsible party shall make another deposit in the amount necessary to restore the cash deposit to the required amount.
    4. If the responsible party does not bring the financial surety back up to the required amount within seven days after notification by the county that the amount has fallen below 50% of the required amount the county may take such legal action as specified in § 152.999 of this chapter.
    5. The county shall be authorized to make a claim or draw against the surety after any default by the responsible party under the permit or this chapter.
    6. The county may use funds from this surety to finance remedial work undertaken by the county or a private contractor and to reimburse the county for all costs incurred in the process of remedial work including, but not limited to, staff time and attorney's fees under the following circumstances:
      - i. The responsible party ceases land altering activities and abandons the work site prior to completion of the screening plan;
      - ii. The responsible party fails to conform to the screening plan as approved by the county;
      - iii. The screening techniques utilized under the screening plan are not maintained during site construction, for the initial two growing seasons after being planted; or
      - iv. The responsible party fails to reimburse the county for corrective action.
    7. The surety deposited with the county for faithful performance of the screening plan and any related remedial work to finance necessary remedial work shall be released after the practices identified in the screening plan have been installed, two full growing seasons have elapsed from the time of planting, and a final inspection has been completed by the county.
    8. The county may return a portion of the financial surety submitted to assure performance if the county determines that the entire amount is no longer required to ensure compliance with permit conditions and rules.

(Ord. 97-2021, passed 7-20-21)

## **ESSENTIAL SERVICES**

### **§ 152.050 SCOPE.**

(A) Land uses that serve a public need, or are deemed beneficial or essential to the public health and safety, welfare, or serving a public good of the community as determined by the County Board are considered essential services. These land uses, being necessary for the public health, safety, and welfare, and serving a public good, may be located in any area where it is essential to perform their function, provided the applicant demonstrates that the location is essential to perform the function and an appropriate siting process is utilized. The factors to be considered in the siting process include those set forth in the comprehensive plan and other factors applicable to the nature of the activity being proposed. The provisions of the zoning and overlay districts may be given consideration when considering an application for a conditional use permit when one is required, but the provisions shall not prohibit the location of essential services in any district.

(B) An essential service would typically fall into one or more of the following categories of activities:

(1) *Governmental uses, buildings, and storage.* Governmental services such as office buildings, garages, temporary open space, open storage when not a principal use, fire and police stations, parks and recreational areas, training centers, correctional facilities or other essential uses proposed by federal, state, county, local, special districts, and school districts.

(2) *Public or private utility primary uses, energy production, transmission services, buildings, structures, towers, and storage.* Transmission services such as electrical power lines of a voltage of 35 KV or greater, or bulk gas or fuel being transferred from station to station and not intended for en-route consumption or other similar equipment and accessories.

(3) *Public or private utility accessory uses.* Underground or overhead electrical, gas, steam or water distribution systems, collection, communications, supply or disposal system, including poles, wire, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, or other similar equipment and accessories; but not including buildings or transmission services.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.051 PERMITTED USES.**

The following are permitted uses in all districts:

(A) Transmission systems designed for en-route consumption are permitted uses in all zoning districts and may be installed within the public right-of-way and easements according to the standards of the responsible authority and after receiving approval from the responsible road authority. Essential services extended from the system to serve a single parcel of land abutting a public right-of-way or easement are not subject to height, yard and setback regulations, certificate of occupancy or other than the approval of the owner. Should a non-public easement be desired for installation of an essential service which will serve more than one parcel of land, the easement shall require approval under the conditional use permit provisions;

(B) Towers and antennas 100 feet in height above ground level (AGL) or less, which are not wireless communications facilities. These personal use facilities, including, but not limited to, television, CB radio, farm and business communications, and wind generators are permitted upon the issuance of a building permit provided the proposed use serves only the subject parcel and the structure is located a distance at least the total height of the structure plus ten feet from any lot line;

(C) Amateur radio support structures. Amateur radio support structures (towers) shall not exceed a height above ground level of 100 feet, unless a conditional use permit has been granted. They shall be mounted on the roof of a dwelling or other building or located in the rear yard unless there is not sufficient space to erect them in those locations. They shall be installed in accordance with the instructions furnished by the manufacturer of that tower model. Because of experimental nature of the amateur radio service, antennas mounted on a tower may be modified and changed at any time so long as the published allowable load on the tower is not exceeded and the structure of the tower remains in accordance with the manufacturer's specifications;

(D) Public roads, streets, highways, cartways, and trails; and

(E) Stormwater management system and structures including public ditches constructed pursuant to M.S. Chapter 103E, as it may be amended from time to time.

(F) All requests, with provided documentation, which identifies a project as being under the jurisdiction of a state or federal regulatory commission (Federal Energy Regulatory Commission (FERC), Public Utilities Commission (PUC), etc.).

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.052 CONDITIONAL USE PERMIT REQUIRED.**

(A) Unless specifically exempted herein, all activities in this section shall be conducted only under a conditional use permit issued pursuant to this chapter. A conditional use permit is not needed under this section to maintain, reconstruct or relocate existing lines or facilities where the general line and confirmation thereof remains essentially the same unless the construction is within the traveled roadway. When the proposed activity is within the traveled roadway, a permit or other authorization shall be obtained from the responsible road authority. Emergency work otherwise requiring a filing or application shall be accomplished provided filing or application is made as soon thereafter as possible.

(B) A pre-application meeting with county land management staff is required prior to submitting an application for all

activities in this section that requires a public hearing.

(C) Any application for a conditional use permit shall outline the siting process that was utilized to select the site and shall address the relationship of the site to the following factors:

- (1) Site requirements for the facility;
- (2) Use of prime agricultural land and environmentally sensitive areas;
- (3) Traffic generation, road access;
- (4) Adverse effects on the environment, especially those that cannot be mitigated and/or reversed;
- (5) Potential for the pollution of air, groundwater, surface water;

(6) Agricultural preserve status of the land. Agricultural preserve land may be used for essential services only if no other alternatives exist, and then only after an eminent domain proceeding ordering the land removed from agricultural preserve. When ten or more acres of agricultural preserve land will be used, the procedure in the statute will be followed in making the determination. In cases where the Environmental Quality Board review provisions of the statute do not apply (the land is less than ten acres), the need shall be considered as part of the consideration of the conditional use permit or other approval process. Release from agricultural preserve will be accomplished by the filing of the appropriate court documents indicating that the use is in fact a public purpose and ordering termination of the preserve;

- (7) Effects on existing and planned land uses in the area;
- (8) Need for services and infrastructure;
- (9) Any additional information specified under a particular provision in this section.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.053 PUBLIC UTILITY BUILDINGS AND STRUCTURES.**

(A) Public utility buildings and structures, structures such as substations or similar structures not customarily considered industrial in use, and radio and communication towers not considered "wireless communication facilities" are allowed in all zoning districts provided a conditional use permit is issued.

(B) This section shall be exempt from the minimum lot size requirements to permit a lot area less than the minimum required for the district in which the building or structure is located.

(C) In consideration of an application for a conditional use permit the Planning Commission shall consider:

- (1) The operational plan and potential for future expansion;
- (2) The landscape treatment options and requirements for screening where appropriate;
- (3) The security and design standards to prevent trespassing; and
- (4) The access and parking needs for the site.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.054 PUBLIC/QUASI-PUBLIC FACILITIES.**

The following shall be considered public or quasi-public facilities requiring a conditional use permit:

(A) Municipal, township or county structures or uses of land except roads and their appurtenances and drainage systems established pursuant to M.S. Chapter 106, as it may be amended from time to time;

(B) Schools. Schools and related facilities provided they have the approval of the State Department of Education;

(C) Public parks provided the facilities are in compliance with the Carver County Comprehensive Plan;

(D) Waste management facilities. The following are considered waste management facilities or operations for this section: private- or government-owned or operated sites for: solid waste facility, transfer station, demolition land disposal facility, recycling facility, incinerator, public or private composting or tree or yard waste utilization site, application of biosolids or bioremediated materials, or similar materials are considered waste management facilities under this section. Operations that would be considered a contractor's yard are exempt from this section and would need to be considered under the appropriate provisions. The following standards shall apply to activities under this provision:

(1) The facility/operation is in compliance with the county solid waste regulations, comprehensive plan, Groundwater and Surface Water Management Plans, the Solid Waste Master Plan and any other applicable ordinance or rule;

(2) The facility/operation shall be on a hard surfaced road (bituminous or concrete) unless written approval for the location on a gravel township road is given by the affected township;

(3) The site shall not be located within the Shoreland or Floodplain Districts;

(4) Any required environmental assessment documents have been developed and required review procedures have

been completed;

(5) Any required county, state, or federal licenses have been issued;

(6) The facility/operation is in compliance with all applicable Minnesota Pollution Control Agency and U.S. Environmental Protection Agency rules and regulations;

(7) An operational plan shall be developed and the activity conducted in accordance with the operational plan;

(8) The permit shall be subject to compliance review;

(9) Special provisions for the land application of biosolids or bioremediated materials;

(10) Permits involving biosolids or bioremediated materials that are to be applied to agricultural land for agricultural purposes at agronomic rates are exempt from the prohibition on permit issuance on AG preserve land.

(Ord. 47, passed 7-23-02; Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.055 TRANSMISSION SYSTEMS—NO EN-ROUTE CONSUMPTION.**

(A) The installation of new, realigned or extended transmission systems not intended for en-route consumption shall require a conditional use permit unless the proposed use is being permitted through another state or federal entity.

(B) The applicant for a permit shall conform to the following procedures:

(1) The applicant shall file with the Department maps and data as requested by the Department to indicate the proposed alignment with the conditions of easement, type of service proposed, depths and size of underground installations, pole heights, location and type and other data as requested.

(2) The applicant shall demonstrate public need for the service.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.056 WIRELESS COMMUNICATIONS FACILITIES AND TOWERS OR ANTENNAS.**

(A) *Conditional use permit required.* Towers and antennas less than 200 feet in height above ground level (AGL), including appurtenances, (as defined by Part 77 of Federal Aviation Regulations as revised) for wireless communications facilities are permitted upon the issuance of a conditional use permit pursuant to this section.

(B) *General requirements.*

(1) The structure/facility shall not be located on agricultural preserve land unless eminent domain action establishes a public purpose as required by the comprehensive plan.

(2) The structure/facility shall not be located within any transition area (as identified in the comprehensive plan) unless the affected municipality adopts a resolution in support of the location.

(3) In situations where there is an existing home or available building eligibility, the location of the structure/facility shall not deprive the subject property of a building site as defined in this chapter.

(4) The structure/facility shall be located on publicly held land and/or land within a Rural Service District, if the land is available, and the location is feasible, within the applicant's search area.

(C) *Requirements for conditional use permit application in addition to those required pursuant to other appropriate sections of this chapter or as otherwise requested by the Department.*

(1) Documentation illustrating compliance or pending compliance with FAA and FCC authorization procedures.

(2) Documentation of the area to be served including a search area for the antenna location. A narrative describing a search area (with not less than a 1½-mile radius) for the request clearly explaining why the site was selected, any environmental review that was conducted including a summary of relevant conclusions, and what existing structures were available and why they are not suitable as locations or co-locations.

(3) Documentation that the communications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within the search area due to one or more of the following reasons:

(a) The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified professional engineer, and the existing or approved tower cannot be reinforced or modified to accommodate planned equipment at a reasonable cost;

(b) The planned equipment would cause interference with other existing or planned equipment at the tower or building as documented by a qualified professional radio frequency (RF) engineer, and the interference cannot be prevented at a reasonable cost;

(c) No existing or approved towers or commercial/industrial buildings within a 1½-mile radius meet the radio frequency (RF) design criteria;



(d) Existing or approved towers and commercial/industrial buildings within a 1½-mile radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified professional radio frequency (RF) engineer;

(e) The applicant must demonstrate that a good faith effort to co-locate on existing towers and structures within a 1½-mile radius was made, but an agreement could not be reached.

(4) An agreement stating that the site will be designed for not less than three tenants with applicant and property owner commitment to co-location, whereby, any prohibition of compatible additional tenants on a tower will be considered a violation of the permit. The agreement shall also include a statement that an unused or obsolete tower shall be removed, within six months of cessation of use, by the property owner and/or applicant. The agreement shall be signed by the applicant and the property owner and shall be attached to and become a part of the permit.

(5) An escrow account, based on the county fee schedule, shall be established from applicants for requests including, but not limited to, locations within 1½ miles of an adjacent jurisdiction or existing structure which is over 100 feet in height. The applicant shall be required to increase the escrow if the county's cost exceeds the initial required amount. The escrow shall be established to reimburse the county for technical services typically provided by a qualified communications engineer, selected by the county, to verify compliance with the co-location and documentation requirements stated above.

(D) *Standards for the issuance and continuation of a conditional use permit.*

(1) An agreement providing for co-location and prompt removal of unused and/or obsolete towers shall be attached and become part of the permit.

(2) The tower and all associated structures (wireless communication facility), excluding guy wires and anchors, must have a 50-foot minimum setback from all property lines. Towers shall not be located closer than the tower height plus 10 feet from any structure, located on adjacent properties, existing at the time of application.

(3) Tower and antenna plans shall be signed by a qualified and licensed professional engineer and constructed to conform to the approved plans, the latest structural standards of the Uniform Building Code, provisions of the Electronic Industries Association and all other applicable reviewing agencies.

(4) Permittee must obtain FAA approval and/or provide documentation that FAA approval is not needed.

(5) Permittee must obtain FCC licensure and approval as required for various communications applications. Permittee shall follow FCC regulations regarding the correction and/or prevention of any radio frequency interference problems.

(6) All towers shall be reasonably protected against unauthorized climbing. The bottom of the tower (measured from ground level to 12 feet above ground level) shall be designed in a manner to preclude unauthorized climbing and shall be enclosed with a minimum of a 6-foot high fence or barrier with a locked gate.

(7) Wireless communications facilities shall utilize building materials, colors, textures, screening and landscaping that effectively blend within the surrounding environment to the greatest extent possible.

(8) No advertising or identification of any kind intended to be visible from the ground or other structures is permitted, except applicable warning and equipment information signage required by the manufacturer or by federal, state, or local authorities.

(9) Wireless communications facilities shall not be illuminated by artificial means, except for camouflage purposes (such as, designed as a lighted tower, for a parking lot, or a ball field), security purposes or when illumination is specifically required by the Federal Aviation Administration or other authority.

(10) No part of any antenna or tower, nor any lines, cable, equipment, wires, or braces shall at any time extend across or over any part of the right-of-way, public street, highway, or sidewalk, without approval by the county through the building permit approval process.

(11) Permittee must submit proof of liability and worker's compensation insurance. All communication towers, their antennas, and associated equipment shall be adequately insured for injury or property damage caused by structural failure of the tower or associated equipment.

(12) The permit will be subject to administrative review.

(13) Towers and antennas existing or approved as of September 9, 1997. Structures allowed under a previous ordinance or conditional use permit may continue to be used as they were built provided they are in compliance with the conditions of the permit.

(E) *Location or co-location of antennas and associated equipment.* Location or co-location of antennas and associated equipment on any existing structure is permitted upon the issuance of a building permit (if required) provided the placement of the antennas and appurtenances are in compliance with any federal, state and county regulations.

(Ord. 47, passed 7-23-02; Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 97-2021, passed 7-20-21)

## **§ 152.057 ENERGY PRODUCTION.**

(A) *General provisions.*

(1) *Pre-application meeting required.* A pre-application meeting with county land management staff is required prior to application for a land development permit that requires a public hearing. The following items shall be reviewed and approved prior to the submittal of an application for a large energy production system:

(a) Existing conditions site plan;

(b) Proposed conditions site plan;

(c) Site plan showing the proposed operational area, access road(s), any accessory uses, and their dimensions in relation to the agricultural production land and/or environmentally sensitive land, as defined by this chapter, on the subject parcel;

(d) Written approval for road access from the applicable road authority (township, county, state, etc.);

(e) Proposed grading plan;

(f) Location for all permanent and temporary stormwater control measures, when

applicable;

(g) Wetland delineation report, if required;

(h) Preliminary vegetation and seeding plan for all perennial vegetation; and

(i) Preliminary decommissioning plan.

(2) No energy production system requiring a CUP is permitted on land enrolled in the Metropolitan Agricultural Preserve Program (M.S. Chapter 473H).

(3) The conversion of existing wooded areas for the placement of an energy production system is prohibited.

(4) No more than 75% of the operational area for any large energy production system shall be existing agricultural production land and/or environmentally sensitive areas. This standard applies to the operational area, all access roads, and any accessory uses/structures.

(5) Operational area(s) of any large energy production system, including fencing, the base of a WECS, solar arrays, and any accessory uses shall be located a minimum of one mile from the operational area(s) of any other permitted large energy production system or wireless communication tower in the county.

(6) All energy production systems and accessory equipment shall be in compliance with any applicable local, state and federal regulatory standards, including the State of Minnesota Uniform Building Code, as amended; and the Minnesota State Electric Code, as amended.

(7) All energy production systems and accessory equipment shall be in compliance with Carver County Water Management Organization, Chapter 153.

(8) *Application.* An application to the county for a conditional use permit under this section is not complete unless it contains the following:

(a) Site plan of existing conditions;

(b) Site plan of proposed conditions;

(c) 1. Site plan showing the proposed operational area, access road(s), any accessory uses, and their dimensions, in relation to the agricultural production land and/or environmentally sensitive land, as defined by this chapter, on the subject parcel.

2. Site plan shall include area calculations for agricultural production land and/or environmentally sensitive land, shown as a percentage of the overall project area.

(d) Manufacturer's specifications and recommended installation methods for all major equipment;

(e) A description of the method of connecting the array to a building or substation;

(f) A copy of the interconnection agreement with the local electric utility or a written explanation outlining why an interconnection agreement is not necessary; and

(g) A decommissioning plan to ensure that facilities are properly removed after their useful life. Decommissioning of an energy production system must occur within 180 days in the event the system is not in use for 12 consecutive months. All items associated with the discontinued use shall be defined as solid waste, in accordance with Chapter 50 of the Carver County Code of Ordinances. The decommissioning plan shall include a bond, letter of credit, or the establishment of an escrow account in the name of the landowner, to ensure proper decommissioning. Any cost incurred by the county for the decommissioning of a discontinued system, as a result of an inadequate financial surety, shall be assessed back to the landowner under M.S. § 375.18, subd. 14, as amended. The plan shall consist of the following:

1. The removal of all structures and foundations.

2. The removal of all power poles, cables/wiring and electrical devices associated with the project.

3. The removal of all access roads and parking areas.
4. The disposal of all power poles, cable/wiring, electrical devices, structures and/or foundations shall meet the provisions of the Carver County Solid Waste Ordinance or successor ordinance.
5. The permanent restoration of the site including the following:
  - i. Site cleanup followed by general surface grading and, if necessary, restoration or surface drainage swales, ditches, and tile drains (if present).
  - ii. Any excavation and/or trenching caused by the removal of building or equipment foundations, rack supports, and underground electrical cables will be backfilled with the appropriate material and leveled to match the ground surface.
  - iii. The roads and parking areas will be removed completely, filled with suitable sub-grade material, and leveled.
6. Further restoration of soil and vegetation of the site as necessary to minimize erosion.

(B) *Wind energy conversion system (WECS).*

(1) *General provisions.*

(a) *Setbacks.* All WECS and accessory structures shall meet the setback requirements for the zoning district in which the project is located and be setback at least 1.1 times the total height of the wind turbine from neighboring property lines and right-of-way.

(b) *Color and finish.* All towers shall be white, grey or another non-obtrusive color. Blades may be black in order to facilitate deicing. Finishes shall be matte or non-reflective.

(c) *Lighting.* Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations. Red strobe lights are preferred for night-time illumination to reduce impacts on migrating birds. Red pulsating incandescent lights should be avoided.

(d) *Noise.* All WECS shall comply with Minn. Rules Chapter 7030, as amended, governing noise.

(e) *Clearance.* Rotor blades or airfoils must maintain at least 12 feet of clearance between their lowest point and the ground.

(f) *Unauthorized climbing.* The WECS shall be guarded against unauthorized climbing. The first 12 feet of the tower shall be unclimbable by design or enclosed by a six foot high, unclimbable fence with a secured access.

(g) *Application.* An application to the county for a conditional use permit under this section is not complete unless it contains the following:

1. The number of wind turbines to be installed.
2. FAA permit application.
3. A USGS topographical map, or map with similar data, of the property and surrounding area, including any other WECS within ten rotor diameters of the proposed WECS.
4. Location of all known communications towers within two miles of the proposed WECS.
5. Description of potential impacts on nearby WECS and wind resources on adjacent properties.
6. *Engineering certification.* For all large WECS, the manufacturer's engineer or another qualified engineer shall certify that the turbine, foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.

(2) *Activities.*

(a) *Small WECS.*

1. *Permitted use.* Small WECS shall be permitted in all districts with the issuance of a building permit.
2. *Height.* The maximum height for small WECS is 100 feet above ground level (AGL), including appurtenances. The height of a tower shall be measured from the base of the structure to the furthest tip of the rotor blade.
3. *Setbacks.* Small WECS shall be located at least the height of the structure plus ten feet from any lot line.
4. *Capacity.* Total name plate generating capacity must be less than 40 kW.

(b) *Large WECS.*

1. *Conditional use.* Large WECS shall be no more than one megawatt (MW) in total name plate generating capacity and shall be permitted with the issuance of a CUP pursuant to § 152.052.

2. *Height regulations.* For a structure of 200 feet or more in height, the procedures of Minn. Rules Parts 8800.0100 through 8800.1200, as they may be amended from time to time, shall be observed.

3. *Separation distance.* For WECS the separation distance from on-site dwellings shall be 1.1 times the total height

of the wind turbine and 750 feet from dwellings on adjacent properties.

(C) *Solar energy system (SES).*

(1) *General provisions.*

(a) *Setbacks.* SES shall meet the structure setback requirements.

(b) *Approved solar components.* Electric solar system components shall have an Underwriters Laboratory (UL) listing.

(c) *Utility notification.* No grid-intertie photovoltaic system shall be installed until evidence has been given to the Department that the owner has notified the utility company of the customer's intent to install an interconnected customer owned generator. Off-grid systems are exempt from this requirement.

(d) *Application.* An application to the county for a conditional use permit under this section is not complete unless it contains the following additional information:

1. The number of panels to be installed;

2. A landscaping/screening plan, including a narrative describing the overarching landscape architecture elements and how the design and placement of plant types and materials will complement the form and function of the developed site and blend into the surrounding environment, shall be prepared by a licensed landscape architect for submittal with the application. Applicants may also be asked to submit renderings of the landscape plan at year one, year three and year five.

(2) *Activities.*

(a) *Small SES.*

1. *Permitted use.* Small SES shall be permitted on parcels with an existing single- family home.

2. *Height.* Building- or roof-mounted SES shall not exceed 35 feet. Ground- or pole- mounted SES shall not exceed 20 feet in height when orientated at maximum tilt.

3. *Maximum coverage.*

a. *For detached garages or accessory structures.* In addition to meeting all regulations required by the most current MN State Building Code and Chapter 150 of this code, roof- or building-mounted solar systems, excluding building-integrated systems, shall not cover more than 80% of the south-facing or flat roof upon which the panels are mounted.

b. *For attached garages or residential structures.* Shall meet all requirements of the most current MN State Building Code and Chapter 150 of this code.

(b) *Large SES.*

1. *Conditional use.* Large SES shall be no more than one megawatt (MW) alternating current (AC) rated capacity and shall be permitted with the issuance of a CUP pursuant to § 152.052.

2. *Standards.*

i. *Foundations.* The manufacturer's engineer or another qualified engineer shall certify that the foundation and design of the solar panels is within accepted professional standards, given local soil and climate conditions.

ii. *Power and communication lines.* Power and communication lines running between banks of solar panels and to electric substations or interconnections with buildings shall be buried underground. Exceptions may be granted by the Department in instances where shallow bedrock, water courses, or other elements of the natural landscape interfere with the ability to bury lines.

iii. Foundation posts shall be installed using noise mitigating equipment such as a vibrating post driver or any other noise reduction method as may be stipulated by the CUP.

iv. Operational areas(s), including fencing and solar array, shall be located a minimum of 50 feet from adjacent property lines and/or public rights-of-way and 500 feet from neighboring residences not on the same parcel of property existing at the time of application for the permit.

v. *Vegetation maintenance required.* All approved large SES shall be required to complete maintenance of all screening and vegetative cover no less than four times per calendar year for the duration of the permit. Written documentation of completed maintenance shall be provided to the county on a quarterly basis.

vi. *Screening.* Screening consisting of a berm (2:1 maximum slope with supplemental plant materials including trees, shrubs, and groundcovers) and/or a continuous evergreen vegetative buffer shall be provided and maintained at all times around the perimeter of the fencing that faces: (1) public road right-of-way within 500 feet of the operational area; (2) an existing residence or farmstead within 750 feet of the operational area not on the subject parcel; or (3) residentially zoned or platted property within 750 feet of the operational area. When required, these distances shall be reviewed and possibly amended by the Planning Commission or County Board of Commissioners.

vii. Financial surety shall be provided to insure the establishment and maintenance of any required screening pursuant to the Carver County Fee Schedule. Financial surety shall be held for at least two consecutive growing seasons or until such time where staff has deemed the screening vegetation to be established.

viii. *Beneficial habitat.* The project site design shall include the installation and establishment of ground cover meeting the beneficial habitat standards consistent with M.S. § 216B.1642, or successor statutes and guidance as set by the Minnesota Board of Water and Soil Resources. Beneficial habitat standards shall be maintained on the site for the duration of operation, until the site is decommissioned.

ix. *Annual inspection required.*

(D) *Biomass.*

(1) *General provisions.* All components of biomass systems shall meet the structure setback requirements.

(2) *Permitted use.* Biomass systems shall be permitted on parcels with an existing single-family home or permitted farming operation, provided installation is solely used by/for home/farmstead.

(3) Biomass systems not used in conjunction with and exclusively for an existing single-family home or farming operation are prohibited.

(Ord. 70-2010, passed 1-25-11; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 84-2017, passed 7-11-17; Am. Ord. 97-2021, passed 7-20-21) Penalty, see § 152.999

## **“A” AGRICULTURE DISTRICT REGULATIONS**

### **§ 152.070 PERMITTED PRINCIPAL USES.**

(A) *Generally.* The permitted principal uses in the “A” District are agriculture, including animal agriculture, on parcels of 20 acres or more and single-family residences provided a building eligibility is available pursuant to this chapter. Both uses shall be conducted only in accordance with the provisions of this chapter.

(B) *Agriculture.* As a permitted use, agriculture often includes such activities as the intense use of farm equipment and machinery; plowing during dry and windy conditions; the raising of livestock and fowl; the use of soil amendments, including manure, herbicides, and pesticides; and storage of manure. These activities may occur during any 24-hour period. Thus, owners or renters of property, that abut agricultural operations may be subject to discomforts such as odors, dirt, dust, insects, and noise, arising from the operations. While these activities may be considered nuisances in a more urban setting, they are common in an agricultural community and vital to the sustenance of an agricultural economy. Pursuant to M.S. § 561.19, as it may be amended from time to time, agricultural activities shall not be considered a public nuisance, provided the activities do not violate any state statute, rule, or other law.

(C) *Single-family residence.* The residence shall be maintained as one contiguous living space served by one set of utilities. Guest quarters and extended family accommodations are permitted provided they are integrated into the principal structure. A separate rental unit, an additional address, dual utility meters or distinctly segregated entrances shall be prohibited.

(Ord. 47, passed 7-23-02; Am. Ord. 47 03-1, passed 5-5-03; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.071 ANIMAL AGRICULTURE.**

(A) Animal agriculture shall be conducted in accordance with the county feedlot regulations.

(B) New feedlots shall not be located within a Shoreland District. Existing feedlots shall be operated in a Shoreland District on under a conditional use permit.

(C) New feedlots shall not be located within a Floodplain District.

(D) Existing feedlots in a Shoreland District shall not be expanded above 999 animal units. Existing feedlots in a Floodplain District shall not be expanded.

(E) In cases where the feedlot regulations require a conditional use permit, the permit shall be considered under the provisions of this chapter.

(F) The establishment of a new feedlot of 50 or more animal units on a parcel of less than 40 acres shall require the issuance of a conditional use permit pursuant to this chapter.

(G) The animal unit density of a feedlot shall be limited only by the provisions of the feedlot permit, the certificate of compliance, the county feedlot management regulations, or other provisions of this section. A feedlot operated under or as part of a conditional use permit may be further regulated by the conditions of the permit in addition to the provisions of the feedlot permit or certificate of compliance.

(H) Animal density regulations. These regulations apply to lots of less than 20 acres unless otherwise regulated by this chapter or the county feedlot management regulations. A manure-handling plan may be required when there are any domestic animals other than customary household pets.

(1) On parcels of 2.4 to 5 acres, one animal unit per acre is permitted, with the number of acres rounded up to the nearest whole number.

(2) On parcels of at least 1½ acres, but less than 2.4 acres, one animal unit is permitted.

- (3) On lots of less than 1½ acres, only dogs, cats, and other animals customarily kept as pets, are permitted.
- (4) On lots of greater than 5 acres and less than 20 acres, the number of animal units is limited only by the provisions of Chapter 54, the provisions of this chapter, and any other applicable county ordinances.
- (5) Dogs, cats and other animals customarily kept as pets are not subject to the animal density regulations.
- (6) On any parcel where there are animals and a feedlot certificate is not required, manure must also be handled in an environmentally sound and nuisance free manner pursuant to Minn. Rules Chapter 7020, and all applicable regulations listed in Chapter 54 of the County's Code of Ordinances.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.072 BUILDING ELIGIBILITIES.**

All determinations of building eligibilities under this section shall be based on the ownership and configuration of the parcel as of record in the Office of the County Recorder/Registrar of Deeds on July 1, 1974.

- (A) *4/40 limitation.* Building eligibilities shall not be located so as to violate Policy 18C of the comprehensive plan.
- (B) *One per 40/1 per ¼¼ section building eligibilities.* A parcel consisting of 40 acres or more or a complete quarter-quarter section shall have one potential building eligibility; each additional 40 acres or complete quarter-quarter section shall provide an additional potential building eligibility.
- (C) *Lot of record building eligibilities.* A lot of record not having building eligibility pursuant to the 1 per 40 provision above shall have one potential building eligibility if it meets one of the following standards for eligibility and is not subject to the limitations listed below:
  - (1) The lot of record has a minimum of 33 feet of frontage on a public road, can meet all required setbacks in this chapter and can accommodate an SSTS including a primary and alternate SSTS sites; or
  - (2) There is a deeded easement for roadway purposes from a public road to the lot of record and the deeded easement was conveyed prior to July 1, 1974 and the lot of record is a minimum of 1½ acres and contains a minimum of 1 acre that meets the definition of building site.
- (D) *Limitations on lots of record.* Parcels purchased at different times but owned and occupied by the same owner on July 1, 1974 and subsequently used, occupied and taxed as a single lot shall be considered to be a single lot of record. A lot of record occupied by another principal use other than agriculture shall not have a building eligibility until the time as the other principal use is permanently removed from the parcel provided the lot meets the minimum requirements for a lot of record building eligibility. Lots of record resulting from the conversion of public or private rights-of-way or public lands from public use to private use shall have no residential building eligibility under these provisions.
- (E) *Verification of building eligibilities.* A potential building eligibility shall be verified by the Department only if a residence utilizing the eligibility can meet all requirements of this chapter, Chapter 151 or Chapter 52 of this code of ordinances, and any other ordinances, rules or statutes. Verification shall be valid only as of the day of verification and commitment to writing by the Department.
- (F) *Utilization of building eligibilities.* A building eligibility shall be considered to be utilized when a structure used as a residence is placed on the parcel with the building eligibility or when a parcel is subdivided and the sale includes a building eligibility. The removal or rendering uninhabitable of a structure containing a residence makes available the building eligibility used by that structure.
- (G) *Transfer of 1/40 building eligibilities.* Building eligibilities may be transferred from one parcel to another in accordance with the following rules:

- (1) A building eligibility must be available for transfer;
- (2) The transfer of a building eligibility shall occur only between adjacent parcels, and between non-adjacent parcels, if that option is provided for in the township chapter of the comprehensive plan. The sending and receiving parcels shall be located within the same township and taxing district (pursuant to each township's policy chapter of the comprehensive plan). Sending and receiving parcels may be located within different watershed taxing districts if that option is provided for in the township's chapter of the comprehensive plan;
- (3) The transfer of eligibility shall be accomplished by the approval of an application for transfer by the Department. The application shall clearly state the PID and legal description of the sending and receiving parcels; shall bear the notarized signatures of the respective owners, and shall clearly state the number of eligibilities both used and unused on each parcel before and after the transfer. Subsequent to approval a copy of the approved application or other documentation of the transfer shall be recorded by the Department in the Office of the County Recorder against all affected parcels;
- (4) Requests for the transfer of a one per 40 building eligibility in a Transition Overlay District shall conform to § 152.162 of this chapter.
- (5) Transfers that would result in a violation of the other provisions of this chapter shall not be permitted;
- (6) A parcel may only send or receive a building eligibility, not both;

(7) A building eligibility resulting from a conditional use permit for an extra density option shall not be transferred;

(8) Building eligibilities may be transferred to or from a parcel only once;

(9) Building eligibilities resulting from the removal of an existing residential dwelling shall not be transferable until the demolition of the residence has been completed and the applicable documentation for the removal has been submitted to the Land Management Department.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.073 PERMITTED ACCESSORY USES AND STRUCTURES.**

Within the agriculture district the following uses shall be permitted uses and/or accessory uses [Note—Certification of zoning compliance is required for any structure subject to the State Building Code and any structure or land use specifically requiring an administrative permit, certificate of zoning compliance, conditional use permit or any other type of certification by the Department. The Department may provide certification of zoning compliance for those structures and/or land uses that do not typically require certification when requested by a landowner for his or her own property.]:

(A) Accessory storage structures including sheds, attached and detached garages, detached porches, detached recreational buildings and detached hobby structures: These structures shall be used only by the occupants of the residence for personal storage, hobbies, recreation, entertainment, family uses, private maintenance and repair activities, and for the keeping of animals and appurtenant equipment and supplies, and as otherwise regulated by this chapter. Guest quarters and/or additional dwelling units are strictly prohibited. No products or services shall be offered for sale or pay or similar remuneration except as permitted for a home occupation or as otherwise regulated by this chapter. The following standards apply unless a conditional use permit was issued prior to August 1, 2021 or a variance has been issued allowing for additional square footage:

(1) Parcels of less than one and a half acres – a total square footage of 1,250 square feet is permitted in a combination of a garage and accessory structures. For detached accessory structures, the maximum sidewall height shall be 12 feet and the total height from the average grade shall not exceed 17 feet. The roof and exterior of the structure shall be new material or material with the appearance of new material; the material shall be painted, stained, coated or otherwise finished.

(2) Parcels of one and a half acres or less than or equal to two acres– a total square footage of 2,500 square feet is permitted in a combination of a garage and accessory structures. For detached accessory structures, the maximum sidewall height shall be 12 feet and the total height from the average grade shall not exceed 17 feet. The roof and exterior of the structure shall be new material or material with the appearance of new material; the material shall be painted, stained, coated or otherwise finished.

(3) Parcels greater than two acres and less than or equal to five acres – a total of 4,000 square feet of area is permitted in a combination of garage and accessory structures.

(4) Parcels greater than five acres and less than or equal to ten acres – a total of 5,000 square feet of area is permitted in a combination of a garage and accessory structures.

(5) Parcels greater than ten acres – a total of 7,000 square feet of area is permitted in a combination of a garage and accessory structures.

(6) Existing agricultural structures are not included in the area calculations for the total square footage of accessory structures unless the agricultural buildings (such as a machine shed) are suitable for use as garages or residential accessory structures.

(7) The area calculation for an attached garage shall be made using the outside dimensions (footprint or foundation) of the structure only. The area calculation for a detached structure shall include the gross area for all levels of the building.

(8) Each residential parcel in the county shall be given a personal storage credit of 624 square feet to represent a standard (24 feet by 26 feet) two-car garage. This credit shall not be included in the calculation for personal storage.

(9) The footprint or foundation area of an attached garage shall not exceed 125% of the footprint or foundation area of the related dwelling.

(10) Garages and accessory structures shall meet all locational requirements and shall be constructed in accordance with the Minnesota State Building Code.

(B) Agricultural structures. The structure must be related to the conduct of commercial agricultural activities on parcels of 20 acres or more and must be exempt from the State Building Code. Structures would typically fall into one of the following classes: dairy barn, grain bin, silo, loafing shed, corncrib, farm machinery building, hay barn, and crop handling and processing structures. Applicants must demonstrate a significant agricultural activity that directly correlates to the size and use of the proposed structure. The structures may only be constructed upon the issuance of a certificate of zoning compliance, by the Department or designated individual. Structures related to animal agriculture must be approved by the Feedlot Administrator, or designated individual, prior to the approval of the certificate of zoning compliance.

(C) Home occupations. It is the intent of this division to provide for the operation of a business or profession within the home (including attached garage) or with the home as a base of operations provided that the operation of the home occupation is secondary to the use of the home, land, and any accessory structures for residential purposes. The home occupation shall be conducted principally by the members of the family occupying the dwelling. The following are permitted

home occupation uses: offices, professional services, craft or trade, hair styling salon or barber, dog grooming, teaching, tutoring, or counseling, repair and single truck owner operators. All home occupations shall conform to the following standards:

- (1) Conduct of the home occupation shall not require alterations to the exterior of the residence or change the residential character thereof;
  - (2) No more than one employee other than members of the family living on the premises may be employed on the premises or may report to the premises in order to travel to work off the site;
  - (3) (Reserved);
  - (4) No outdoor display of goods;
  - (5) Except for goods or articles produced on the premises, no stock-in-trade shall be sold on the premises;
  - (6) Any additional need for parking generated by the home occupation shall be met by off-street parking. The parking area shall be limited to three spaces and shall not be located within the actual or prescriptive right-of-way;
  - (7) All home occupations shall conform to county operational standards;
  - (8) Should the occupation be a professional service, including hair salons and dog grooming, then clients shall not exceed three at any one time and related incidental supplies (such as, shampoo) shall not be considered stock-in-trade;
  - (9) Should the home occupation be repair, the items repaired shall be of a size or nature that repair can occur within the home;
  - (10) No outside storage of business equipment or supplies is permitted;
  - (11) An accessory structure pursuant to § 152.073(A) or a non-agricultural structure on parcels of 20 acres or more may be utilized in conjunction with the home occupation only for the purpose of holding equipment used off the site and for the storage of goods or articles produced on the premises upon the issuance of a certificate of zoning compliance by the Department, or as otherwise addressed in a conditional use permit or variance;
  - (12) The home occupation shall not generate sewage of a volume, nature or type that cannot be treated by a certified SSTS;
  - (13) No more than one vehicle used in the home occupation shall be stored on the site. The vehicle may be stored outside provided an adequate off-street location is available on-site.
- (D) Decorative landscaping features provided the item is incidental to the primary use of the property which requires grading, excavating and filling of less than 400 cubic yards of material for one project.
- (E) Signs and fences as regulated by the standards of this chapter and Chapter 154 of this code.
- (F) Swimming pools, provided the pool is:
- (1) Not located under any power line;
  - (2) Located so that water from the back flushing of a filter or draining the pool is naturally filtered before reaching a stream or lake;
  - (3) Located so that water from the back flushing of a filter or draining the pool will not flow on neighboring property unless there is written permission from the adjoining property owners and the agreement is recorded.
- (G) Buildings, structures or uses temporarily located for purposes of construction on the premises, excluding temporary dwelling units (such as, travel trailers, motor homes), for a period of time not to exceed the time normally necessary for construction.
- (H) Roadside stands less than 200 square feet for the sale of horticultural products grown on the premises or grown by the owner on a seasonal basis, provided sufficient off-street parking is available. "Pick your own" sites with an operational area accessed by the public two acres or less in size shall be considered a roadside stand in this section, provided sufficient off-street parking is available and approval from the road authority is received.
- (I) Residential equipment and functions unless specifically regulated by this chapter or other ordinances.
- (J) Day care and residential facilities: Day care facilities serving ten or fewer persons and residential facilities serving six or fewer persons provided the activity is licensed by the state or other appropriate regulating agency if required and is located in a single-family home.
- (K) Backyard composting of waste generated on-site, subject to structure and other applicable setback requirements.

(L) (1) Agricultural structures constructed at least 15 years or more from the current date, may be utilized for the compensated seasonal storage of boats, recreational vehicles, and classic or antique cars on a temporary basis. The storage activity shall be clearly incidental to the principal use of the property. In cases where, because of a subdivision of land occurring prior to the adoption of this provision, an agricultural structure is located on a parcel of land that does not have an existing principal use, a conditional use permit may be applied for to provide for the storage activities provided for herein. The storage of hulks, parts, wrecks or salvage shall not be permitted. Boats or vehicles stored pursuant to this



provision shall be complete and functional or need only minor repair. Agricultural structures utilized pursuant to this provision shall remain agricultural in nature. The structure shall not be improved or modified, except for normal maintenance, so as to change its agricultural nature; the structure shall not be increased in size.

(2) Owner of the property shall homestead and occupy the primary residence.

(M) Land application of water treatment facility lime is a permitted agricultural practice provided: the applicator notifies the affected townships, Land Management, and Environmental Services Departments of the amount and locations of the applications; haul routes are specified; a chemical analysis and evidence of state review and approval of the lime for AG land application is submitted; the lime is not stored on the site over the winter months.

(N) The use of land and structures for the production of movies, videos, or similar purposes is permitted provided: the Department and affected townships are notified prior to the beginning of the activity, the property owner, whether public or private, gives permission in writing; if a public road or right-of-way is used (parking included) the road authority gives written permission, appropriate traffic control is provided for by the producer; all other necessary permits are obtained.

(O) Yard and garage sales, not to exceed three per year, are permitted. The continuous display and offering for sale of items acquired from others specifically for resale is prohibited.

(P) *Sale of vehicles and equipment.* The offering for sale and display of one vehicle or large item (such as, boat, camper, snowmobiles, trailer and agricultural equipment) is permitted. No more than three vehicles or large items may be offered for sale within a calendar year.

(Ord. 47, passed 7-23-02; Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.074 ACCESSORY USES AND STRUCTURES REQUIRING AN ADMINISTRATIVE SPECIAL USE PERMIT.**

The following are permitted accessory uses within the Agriculture District, but require that certification of zoning compliance be issued by the Department prior to initiation:

(A) *General provisions.*

(1) An appropriate official as designated by the township has been notified for review and/or comment.

(2) The appropriate road authority has, or is willing to grant an access permit or approval. In cases where access would be via a township road the certificate of zoning compliance shall not be issued unless the affected township approves the access.

(3) Plans and/or application are approved by the Department. Approval by the Soil and Water Conservation District and/or an appropriate watershed authority may be required by the Department to address ground/surface water related factors. The Department can issue a permit only if the relevant criteria listed are sufficiently satisfied. If non-compliance is determined, the applicant shall be notified in writing of the reasons for denial.

(4) An application is submitted, in a format determined by the Department that may include the following: a plan illustrating the location of the project or event, and location of any structures, equipment, parking areas, and/or areas for obtaining or depositing fill, proposed erosion/sediment control, final grading, turf establishment and drainage design. The application would typically include a letter and/or attachments giving an in depth description of the proposed operation. The description should contain documentation pertaining to the landowner's consent, the number of employees reporting to the site, plans for traffic control, parking and waste management. The application should address parts of the operation that may have an adverse impact on the environment, pose a risk to the public or that may impact neighboring property owners and methods for mitigation of any adverse factors.

(5) The Department has the authority to require plans that are prepared by a registered professional engineer, hired by the applicant, for any site deemed to be environmentally sensitive. For the purposes of this section, environmentally sensitive shall be: on or adjacent to 18% or greater slopes; on or adjacent to waters of the state; floodplain; shoreland impact zones; wellhead protection areas; and/or sites with a direct and immediate adverse relationship to ground or surface water. The decision regarding professional plans would be subsequent to consultation with SWCD or an appropriate watershed authority.

(6) The Department may require a performance surety and/or a liability insurance certificate for projects having a significant restoration component or the potential for unusual public health, safety and welfare risks. For the purposes of this section, restoration/risk shall be those activities that: include a public improvement; are open and accessible to the general public; and/or would involve land reclamation or disposal costs that could be incurred by the public. The decision regarding sureties and insurance would be subsequent to consultation with the County Risk Manager and/or a County Attorney.

(7) The certificate shall clearly state the conditions, if any, upon which it is issued. A copy of the certificate may be recorded against the property if deemed necessary and appropriate by the Department.

(8) Any permit issued under this section is issued to the applicant for the parcel named in the permit only and is not transferable to another parcel of property or to another owner of the parcel for which the permit was issued. The Department has the authority to revoke and enforce the permit.

(B) *Activities requiring a special use permit.*

(1) Personal storage structures of 2,000 square feet or less on parcels of 20 acres or more, provided a building eligibility is available and the landowner submits an affidavit or proper surety stating the single-family dwelling will be constructed within two years of the issuance of the certificate of compliance.

(2) Agricultural structures that include an accessory structure and/or personal storage component on parcels of 20 acres or more, provided the agricultural structure, accessory structure and/or personal storage sizes and uses meet the standards of this chapter and are constructed in accordance to Minnesota State Building Code.

(3) Driveway construction and associated land preparation prior to issuance of a residential building permit provided a building eligibility is available. A survey of affected property lines shall be obtained, at the property owner's expense, and submitted to the Department when project is within ten feet of a property line.

(4) Grading, excavating, or filling of 400 cubic yards or more but less than 10,000 cubic yards for one project including, but not limited to landscaping, excavation, site preparation for building and similar activity and land improvements. A survey of affected property lines shall be obtained, at the property owner's expense, and submitted to the Department when project is within ten feet of a property line.

(5) Temporary uses on private property by a township, city, county, the state or persons engaged in a construction project for a township, city, county, or the state. If the project is not temporary in nature, then the applicant must apply for a conditional use permit.

(6) Occasional special events not to exceed three requests per year for any parcel of land. Gatherings or events, typically one or two days in length, which are open to or accessible by the general public. The County Board must approve the issuance of the permit. For the purpose of this section, an event permitted by the County Parks Department which takes place within a county park is exempt from this provision.

(7) Contractors' yards existing prior to January 1, 1989 are allowed to remain but not expand, pursuant to a certificate of compliance provided the applicant submits verifiable proof that his or her contractor's yard was in existence on the date.

(8) Spreading of petroleum contaminated soil. Soil that has been determined by the Minnesota Pollution Control Agency to be contaminated with petroleum may be land spread upon issuance of permit pursuant to this provision. The following additional criteria also apply to this provision:

(a) The MPCA has issued or has indicated that it will issue a permit for the land spreading of contaminated soil on the proposed site;

(b) The affected township or townships approve the issuance of the permit. Approval shall have occurred at a town board meeting. All property owners within ½-mile of the proposed site shall be given notice that the matter is to be considered at the town board meeting;

(c) The Carver County Environmental Services Department has reviewed and approved the proposal. The Director of Environmental Services may impose conditions upon the permit;

(d) The County Board of Commissioners must approve the application prior to approval.

(9) Temporary home or emergency dwelling. An interim home or emergency dwelling (such as, travel trailer) may be temporarily located on a parcel for the purpose of housing the property owners while they are constructing a permanent home provided:

(a) Temporary homes require the following:

1. The property owner must obtain building and SSTS permits for construction of a permanent home;

2. A building permit must be obtained for the temporary home. The temporary home is not required to be attached to a permanent foundation and may be less than 20 feet in width but it must meet the applicable requirements of the building code;

3. An SSTS must be installed in accordance with Chapter 52 of this code of ordinances prior to occupancy of the temporary home;

4. There must be a water supply meeting the state plumbing code available for the temporary home;

5. The temporary home must be removed within two years of issuance of the building permit for the permanent home;

6. The temporary home must be removed from the parcel within thirty days of issuance of a certificate of occupancy for the permanent home.

(b) Emergency dwellings require the following:

1. A travel trailer, motor home or similar dwelling is needed in an emergency situation (such as, fire, tornado) and when the length of time the temporary home will be needed would typically be less than 180 days;

2. The landowner is in the process of obtaining building and SSTS permits (if needed) for the construction or repair of the permanent home;

3. The property owner must obtain approval by the Department and Building Official for occupancy of any temporary

trailer;

4. The temporary manufactured home must be unoccupied within 30 days of issuance of a certificate of occupancy for the permanent home.

(10) Roadside stands less than 200 square feet for the sale of horticultural products grown on the premises or grown by the owner of the roadside stand, on a seasonal basis, that has a "pick your own" component with an operational area accessed by the public greater than two acres in size, provided sufficient off-street parking is available.

(11) Biomass systems on parcels with an existing single-family home provided installation is solely used by/for home/farmstead.

(Ord. 47, passed 7-23-02; Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.075 CONDITIONAL USES.**

(A) All conditional uses shall comply with the applicable policies of the Carver County Comprehensive Plan.

(B) Land in the Agriculture District may be used for any of the following purposes only upon the issuance of a conditional use permit. Land uses that include more than one activity or CUP category may be consolidated under a single request (application).

(Ord. 80-2015, passed 6-16-15; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.076 CONDITIONAL USES—AGRICULTURE; ANIMAL AGRICULTURE (ALLOWED IN AG PRESERVE).**

(A) Agriculture uses and structures on parcels of greater than 5 acres and less than 20 acres; new feedlots on less than 40 acres – used principally for raising poultry, livestock, fruit, vegetables, or other agricultural products provided it is not used principally for residential purposes, or for the establishment of new feedlots of 50 or more animal units on parcels under 40 acres. Criteria to be used in determining the principal use of the property pursuant to this section:

- (1) Necessity for a feedlot permit;
- (2) Number of animal units;
- (3) Use of the parcel for active farming of an additional 40 acres or more;
- (4) Demonstrated need for agricultural structures;
- (5) Extent of the agricultural operation.

(B) Feedlots. Conditional use permits required by the Carver County Feedlot Management Ordinance shall be considered under this provision. Notwithstanding any other section of the zoning code, permits issued under the provisions of this section shall be subject to review on a five-year basis. The Board is not prohibited from specifying a more frequent review schedule as part of the permit. The permit shall incorporate the provisions of the certificate of compliance or feedlot permit. The conditions of these permits shall constitute the minimum standards for the conditional use permit.

(Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.077 CONDITIONAL USES—RESIDENTIAL RELATED.**

(A) (1) Residential accessory structures (allowed in AG preserve), approved prior to August 1, 2021. Provides for accessory structures in excess of the square footage permitted as a permitted accessory use.

(2) Standards for issuance. The property must contain an existing home or the home would be constructed concurrently with the accessory structure; which must be homesteaded; structure to be used principally by residents of the home; and size must bear reasonable relationship to proposed use.

(B) Farm related permanent homes (allowed in AG preserve). Additional permanent dwellings may be located on a parcel of at least 80 acres or two quarter-quarter sections without subdividing a lot provided: the parcel has one unused building eligibility available for each additional permanent farm related home. The home must be occupied by someone employed on the farm at least 20 hours per week. Any additional homes under this section shall be occupied by someone working at least 40 hours per week in the farming operation. The home must be located in such a manner that at such time as the home ceases to be occupied by someone employed on the farm, a lot meeting all county requirements containing the home can be subdivided from the parcel. At such time as a permanent farm related home ceases to be occupied as provided for by this section, the lot and home shall be subdivided within 180 days.

(Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.078 CONDITIONAL USES—ADDITIONAL DENSITY OPTIONS.**

(A) *General provisions.*

(1) *Effect on 1/40 or lot of record building eligibility.* Residential building eligibilities pursuant to this provision are in addition to and shall have no impact on residential building eligibilities available as a permitted use. This provision shall not

prohibit the transfer of 1/40 building eligibilities pursuant to the provisions of this chapter.

(2) *Limitation on density.* No more than four homes shall be located on a quarter-quarter section (40 acre parcel) based on the configuration of the parcel on July 1, 1974; homes subdivided from a parcel prior to July 1, 1974 shall not be considered in this calculation. In cases where the land does not follow the quarter-quarter section configuration, the shape most nearly approximating a quarter-quarter section containing 40 acres shall be used. The conservation incentive, pursuant to division (E) of this section, shall allow for flexibility in the four homes per 40 acre parcel determination.

(3) (a) *Limitation on use of density options.* The issuance of a conditional use permit pursuant to “wooded and lakeshore lots”, “high amenity” or “conservation incentive” provisions is prohibited on any parcel that was of record as of July 1, 1974 or any parcels derived therefrom, if at any time since December 7, 1982 a conditional use permit was issued or a rezoning occurred which provided residential density greater than that provided by the basic one per 40 or one per quarter-quarter section provisions of this chapter.

(b) The additional density options shall not be combined with one another to create a hybrid option, except for the conservation incentive option, pursuant to the comprehensive plan.

(4) *Compliance with township chapter of the comprehensive plan.* The additional density options provided in this section shall be available only in townships which specifically provide for the option in their township chapter of the comprehensive plan. Residential development pursuant to these options shall be subject to and limited by any additional criteria or standards contained in the township plan chapter. Applications for conditional use permits pursuant to this section shall not be considered complete unless a written statement is received from the affected township stating that the application complies with the township comprehensive plan chapter.

(5) *Road access requirement.* All lots created under the additional density options shall have frontage on: a public road existing at the time of application; or the applicant must submit evidence that the township will accept the road as a township road at some point after it is constructed in accordance with township standards; or a road will be constructed that is privately maintained but with the right-of-way dedicated to the township. All roads shall be constructed to meet the standards in the comprehensive plan, the subdivision regulations, the standards manual, and the water plan.

(6) *Notice pertaining to agricultural uses.* A notice or acknowledgment will be required regarding the “odors, dirt dust, insects, noises, long hours of operation and other factors associated with agriculture and feedlot activities.”

(B) *Wooded and lakeshore lots.*

(1) A maximum of three residential building lots may be subdivided from eligible wooded and/or lakeshore land. This provision may be exercised only once for each parcel that was of record as of July 1, 1974. The parcel from which the lots are to be subdivided was a parcel of record of 40 acres or more, a complete quarter-quarter section or a complete government lot on July 1, 1974.

(2) Eligible land:

(a) Wooded land. A contiguous area of land which has trees that are confirmed to be of a desirable species, healthy and mature, 20 years or older, shade or evergreen trees with a minimum height of 10 feet. The distribution of the trees is such that there are no areas greater than ¼-acre in size not covered by canopy in the summer months; or

(b) The land contains lakeshore of a lake specifically listed in the township’s chapter of the comprehensive plan as eligible for lots under this provision;

(c) All building lots created must meet the following general criteria and the criteria specific to lot eligibility type (wooded or lakeshore). Inability to meet one or more of these criteria shall negate the eligibility for additional lots under this provision.

(3) General criteria:

(a) The comprehensive plan County Policy LU-18C, no more than four homes per 40 (4 homes per ¼¼) shall not be violated.

(b) The lots must be a minimum of 2½ acres and must meet all of the applicable standards pursuant to this chapter.

(c) Each lot subdivided must contain a building site as defined by this chapter. In cases where this standard cannot be met due to soil conditions, the County Board may consider remedial actions designed by a licensed professional engineer or architect. Any actions approved by the County Board shall be binding on any and all future owners.

(d) Residential areas shall be located to provide the most effective buffering from through roads, agricultural areas and feedlots within the context of the other requirements and general criteria.

(4) Additional criteria for wooded lots:

(a) Each lot shall contain at least 2½ acres of land that meets the criteria for eligible land. Wetlands or non-wooded steep slope (12% and over) land may be added to the lot. These lands shall not be considered wooded and shall not be counted as part of the 2½ acres of wooded land needed to qualify as a wooded lot. There may be one area of up to one acre on each lot that does not contain evenly distributed trees and is suitable for the placement of the home, primary and alternate SSTS in accordance with Chapter 52 of this code of ordinances, and a detached accessory structure.

(b) Except for a strip of land 30 feet or less in width used to straighten boundaries or road alignment, the lots to be

subdivided must not contain land used for agricultural production. A road to serve the lots may be constructed over agricultural production land. Agricultural production is row crops and hay land that has been specifically planted and managed for the production of hay. Agricultural production land includes land temporarily out of production in accordance with a government program. Pasture land is not crop production land.

(5) Additional criteria for lakeshore lots:

(a) The entire lot must abut lakeshore on the water body providing eligibility and must not be separated from the lake by a road, railroad, or other right-of-way.

(b) No lot created shall contain more than 2½ acres of long term agricultural land. The road right-of-way setback as required by this chapter shall not be included in the calculation.

(C) *High amenity areas.*

(1) A maximum of three residential building lots may be subdivided from eligible high amenity land. This provision may be exercised only once for each parcel that was of record as of July 1, 1974. The parcel from which the lots are to be subdivided was a parcel of record of 40 acres or more, a complete quarter-quarter section or a complete government lot on July 1, 1974.

(2) The maximum density in any area shall not exceed four single-family dwelling units per 40 acres.

(3) Only land within the amenity area shall be used to calculate additional density. In no case shall land currently enrolled in the agricultural preserve program be included in a density calculation that exceeds 1 per 40 (1 per ¼-¼). Any residential lots that have been subdivided after July 1, 1974, and/or existing homes on the parcel shall be considered 1 per 40 acre (or lot of record) eligibilities and shall be included in the density calculations. Remnant pieces not included in the additional density calculations shall have building eligibilities based on the applicable regulations of the "A" District.

(4) Eligible land:

(a) *Wooded land.* A contiguous area of land which has trees that are confirmed to be of a desirable species, healthy and mature, 20 years or older, shade or evergreen trees with a minimum height of ten feet. The distribution of the trees is such that there are no areas greater than ¼-acre in size not covered by canopy in the summer months; or

(b) *Wooded pasture.* A contiguous area of land which has trees that are confirmed to be of a desirable species, healthy and mature, 20 years or older, shade or evergreen trees with a minimum height of ten feet. The distribution of the trees is such that at least 50% of the total amenity area is covered by canopy in the summer months; or

(c) *Wooded land with native vegetation.*

1. A contiguous area of land which has trees that are confirmed to be of a desirable species, healthy and mature, 20 years or older, shade or evergreen trees with a minimum height of ten feet. The distribution of the trees is such that at least 25% of the total amenity area is covered by canopy in the summer months. In addition to the required tree coverage, the remainder of these lots shall be fully vegetated by native vegetation. For this provision, native vegetation shall be established pursuant to the recommended guidelines of the Minnesota Board of Water and Soil Resources.

2. For all lots created using this provision, a protective easement proposal covering 50% of the amenity shall be submitted for review to the Department, WMO, SWCD, affected township and any other agency deemed appropriate. The proposal shall identify the qualified conservation easement holder, easement terms and restrictions, any land management, monitoring and enforcement responsibilities, and maintenance plans which shall include, but are not limited to: a description (inventory) of baseline conditions, a schedule of maintenance activities, identification of roles and responsibilities as well as funding sources. The schedule of maintenance activities shall be appropriate to sustaining the type and quality of the plant community existing at the time of dedication or pertaining to the establishment and maintenance of the target plant community determined by the restoration assessment.

(d) *Lakeshore lots.* Areas immediately adjacent to lakes as designated in the comprehensive plan or as further specified in a township's chapter. Quarter-quarter sections adjacent to a lake shall be considered amenity areas with potential for additional residential development; or

(e) Bluff areas (buildable areas on top of bluffs) closely associated with the Minnesota River, Bevens/Silver Creek, Chaska Creek, Carver Creek. Townships that have land that may be eligible under this provision should further define bluff areas in their chapter of this plan.

(5) General criteria:

(a) Eligible land considered wooded, wooded pasture, and areas consisting of a mixture of wooded land and native grasses shall not be in agricultural production for the past 20 years, and shall include soils suitable for an SSTS (land enrolled in a state or federal program is in agricultural production).

(b) The comprehensive plan policy allowing for no more than four homes per 40 (4 homes per ¼-¼) shall not be violated.

(c) All building lots created must meet the general criteria and the criteria specific to the lot eligibility type (wooded and/or lakeshore). Inability to meet one or more of those criteria shall negate the eligibility for additional lots under this provision.

(d) The high amenity building sites are to be considered residential lots, not agricultural parcels. The minimum lot size shall be two and one-half acres and able to accommodate a minimum one-acre building site having at least two SSTS (primary and alternate), a house, garage and detached storage structure, while maintaining all required setbacks. Although each lot shall contain at least two and one-half acres of land that meets the criteria for eligible land, wetlands and/or non-wooded steep slope (12% and over) land may be added to individual lots as determined to be necessary during the permitting process. These lands shall not be counted as part of the two and one-half acres needed to qualify as a high amenity lot.

(e) Building sites shall be clustered in the amenity area as much as possible.

(f) There may be no more than two acres of long term agricultural crop production land included in any residential lot. The road right-of-way setback as required by this chapter shall not be included in the calculation nor shall any required setbacks be included in this calculation.

(g) The maximum amount of long-term agricultural land shall be preserved for continued agricultural use. The long-term agricultural land shall be retained in a large parcel(s) suitable for agricultural purposes. The long-term agricultural land shall not be split up and attached to each residential sized parcel unless the amount of agricultural land is so small that it is not reasonably farmable. One of the residential sites and the agricultural land may be combined to form a 20+ acre farm.

(h) All lots that contain a building eligibility shall include a building site as defined by this chapter. No remnant parcels of less than 20 acres shall be created as a stand alone parcel.

(i) High amenity areas shall be located to provide the most effective buffering from through roads, agricultural areas and feedlots within the context of the other requirements and general criteria.

(j) A road to serve the lots may be constructed over production land as defined by this chapter.

(4) Minimum conditions of high amenity lots:

(a) The keeping of animals, with the exception of dogs, cats and similar animals kept as household pets, is prohibited on any residential lot.

(b) All conditional use permit activities shall be prohibited on any residential lot. Agricultural parcels and/or lots shall be subject to the "A" District regulations.

(c) A statement that the area is rural and that commercial agriculture and other rural land use activities will likely be occurring in the area. A notice should be provided regarding the odors, dirt, dust, insects, noises, long hours of operation and other factors associated with agriculture and feedlot activities. Complaints relating to these activities shall be considered unwarranted so long as the activities are being conducted in accordance with existing standards.

(d) The protection of environmentally sensitive land shall be addressed in the conditions. Protections can include, but are not limited to, restrictions on clear cutting or vegetation removal; erosion control plan to control erosion during and after building construction; designation of specific building sites or areas with buildings prohibited; requiring certain management practices.

(D) *Conservation incentive.*

(1) This section provides an opportunity for landowners to protect, preserve, enhance, or restore natural resources on their property in exchange for one or more additional building eligibilities. Density shall be a maximum of four homes per 40 acre parcel as defined by the CUP with the intent to provide flexibility with the configuration of the quarter-quarter or 40 acres. However, it is not the intent of this provision alone, or in combination with the other density options, to provide for the development of the land generally at a 4/40 density; nor is it the intent of this provision to generate exclusively large lot subdivisions, such as dividing a 40 acre parcel into four, ten-acre lots.

(2) Eligible land:

(a) A minimum of 30 acres that can support the proposed conservation activity, AG land preservation and clustering of homes as defined by the CUP:

(b) Land that has received another permanent incentive is not eligible for the conservation incentive. Land that is receiving a temporary incentive is not eligible until the temporary incentive period has ended; and

(c) The conservation incentive is available only in townships that provide for it in their chapter of the comprehensive plan.

(3) General criteria:

(a) The minimum lot size shall be 1½ acres.

(b) Lots should either be small and clustered or 20 plus acres to support a farming activity.

(c) Conservation activity shall generally require ten acres for a building eligibility and may consist of a combination of one or more of the following: permanent preservation, restoration, or enhancement of: wetlands, forest or woodlands, prairie, bluffs, or shoreline. In determining the number of additional building eligibility(s) to be granted, the proposed conservation activity shall be evaluated using a guide developed by the Department which may include, but is not limited to, the following criteria: natural resource assessment priority, size of easement/area preserved, public use value, value of restoration

proposed by landowner, restoration plan submitted by landowner, adjacent to other protected land, adjacent to protected water or wetland, adjacent to impaired water, and unique characteristics. The guide will be provided at the time of application or upon request.

(d) Preference will be given to subdivision plats that include the natural area to be protected with a conservation easement as a separate platted outlot, rather than covering portions of individual lots.

(e) If at all possible, long term agricultural land should remain in large, farmable parcels.

(4) *Additional criteria:*

(a) A conservation easement proposal shall be submitted for review to the Department, SWCD, affected township and any other agency deemed appropriate. The proposal shall identify the qualified conservation easement holder, easement terms and restrictions, any land management, monitoring and enforcement responsibilities, and maintenance plans which shall include, but are not limited to: a description (inventory) of baseline conditions, a schedule of maintenance activities, identification of roles and responsibilities as well as funding sources. The schedule of maintenance activities shall be appropriate to sustaining the type and quality of the plant community existing at the time of dedication or pertaining to the establishment and maintenance of the target plant community determined by the restoration assessment.

(b) Conservation easement areas must be shown on the preliminary plat. Easement documents must be recorded simultaneously with the final plat.

(E) *One building eligibility incentive.*

(1) This section provides for flexibility under the conservation incentive, wooded and lakeshore, or high amenity area provisions of this chapter, to those landowners who are willing to pursue only one building eligibility as a conditional use. A maximum of one building eligibility may be granted under this provision.

(2) *Building eligibility flexible standard.* A building eligibility may be assigned to the qualifying wooded, lakeshore or amenity area, without a subdivision requirement or it may be subdivided as a single lot, primarily for mortgage purposes. The configuration and specific standards for the lot shall be evaluated and stipulated during the conditional use permit process. The criteria for issuance are as follows:

(a) The qualifying land could support two or more building site eligibilities. The applicant must demonstrate that he or she is proposing to eliminate at least one potential building site.

(b) There would not be a need to construct a new township road.

(c) The building site may be utilized without subdividing the subject property, or via a single lot split principally for mortgage purposes.

(d) The applicant submits an acceptable plan for preserving long-term agricultural land. An acceptable plan may include, but would not be limited to, the agricultural preserves covenant and/or a conservation easement.

(Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.079 CONDITIONAL USES—ACTIVITIES CENTERED AROUND A HOME OR A HOME/FARM COMBINATION.**

(A) Minimum criteria for issuance of permit:

(1) Minimum five acre lot size; unless another size is specified under a particular provision;

(2) Sewage can be managed in accordance with Chapter 52 of this code of ordinances;

(3) Land shall not be enrolled in the AG preserve program;

(4) The activity shall be located on a hard surfaced (blacktop or concrete) road unless written approval for location on a township road is given by the affected township or townships. The town board may condition its approval of access to a gravel road on agreements with the applicant regarding dust control, maintenance, or similar issues. The terms of the agreement shall be such that the agreement is in force so long as the permit is in effect;

(5) There is a single-family home on the parcel occupied as a homestead by a principal of the activity; or a single-family home will be constructed or homesteaded before the CUP for the activity is issued;

(6) The scale and operational characteristics of the proposed activity shall be such that it can be operated on the proposed site and within the current levels of support services and infrastructure. Activities that will have service needs—traffic capacity or roads, waste disposal or management, fire or police protection, sewage disposal—that will exceed those available in the area should locate in municipalities where the services are available.

(B) Minimum conditions:

(1) Permit shall be subject to administrative review or compliance review as set by the permit. A change in ownership, operations or operator shall be cause for the permit to be reviewed to determine whether an application for an amendment or similar consideration is necessary.

(2) The activity must operate in conformance with the approved site plan and operational plan and other provisions of this chapter. The operational plan and site plan shall become part of the permit.

- (3) Outside storage is prohibited unless the storage area is adequately screened from nearby roads and residences.
- (4) The operational plan and site plan shall become part of the permit.
- (5) The applicant must submit a copy of workers' compensation insurance or sign an affidavit stating that he or she will not have any employees.
- (6) All buildings utilized by the operation must meet the State Building Code.

(C) Activities.

(1) Auto reduction/recycling yards. The purpose of this provision is to permit the continued operation and/or expansion of facilities, scope, or scale of existing home-based auto reduction yards. No new operations shall be permitted under this provision.

(2) Farm-related businesses.

(a) A business directly related to the conduct of agriculture that involves: retail sales beyond the scope of a roadside stand or yard sale, including "pick your own" sales; or operational limits exceeding that of a home occupation; or a commercial structure that would be constructed according to State Building Code.

(b) The following specific standard must be met: the business is 70% farm-related under one or more of the following criteria:

1. The business provides a repair or maintenance service for equipment unique and necessary to agricultural operations;
2. The business produces a product or involves a process that utilizes locally grown or produced commodities; or
3. The business involves sales and/or purchasing of products of the local agricultural economy or of goods unique and necessary to agricultural operations.

(3) Day care (allowed in AG preserve) accommodating more than ten children provided appropriate licenses and/or permits are granted by the state or other appropriate agencies.

(4) Commercial kennels under the following conditions:

- (a) The facility is 1,000 feet from any residence except that of the owner and a minimum of ½-mile from ten or more homes existing prior to application for a permit under this provision;
- (b) An appropriate manure and waste treatment system shall be provided for the kennel operation;
- (c) Confinement and shelter is provided through the use of fences and structures.

(5) Equestrian facilities.

(a) This division is intended to provide for equestrian-related facilities, such as, a riding academy, stable, personal riding arena or other similar use.

(b) The use must be located on a minimum of ten acres. The number of animal units permitted will be regulated by the permit.

(c) A facility having ten or more horses shall be required to obtain a feedlot certificate of compliance or as administered through the feedlot regulations.

(d) A facility having nine or fewer horses shall provide evidence of acceptable manure management.

(e) Permits involving personal riding arenas are exempt from the prohibition on permit issuance on AG preserve land provided the approved operation is accessory to the residence and there will be no commercial boarding, training or other use for pay or similar remuneration.

(6) Aquaculture (allowed in AG preserve). The use of water or a combination of land and water for the growing, raising, feeding, breeding or holding of aquatic plants or animals and activities appurtenant thereto. The conditional use permit shall establish whether retail sales are permitted and if permitted to what extent.

(7) Retail nurseries provided the retail facility shall not be located within 500 feet of any residence except that of the owner and 50% of the items sold are grown on the site. No more than 10% of the retail business volume shall be non-horticultural items.

(8) School bus service. The operation, maintenance and storage of two or more school buses.

(a) The business shall be located at least 500 feet from neighboring residences not on the same parcel of property existing at the time of application for the permit.

(b) Site shall not be located within the Shoreland Overlay District or the Floodplain Overlay District.

(9) Home extended business accessory use.

(a) It is the intent of this section to provide for the use of newly constructed accessory structures, or adaptive re-use



of residential accessory and farm structures on parcels two acres or greater by permitting the use of the structures for limited business purposes upon the issuance of a conditional use permit pursuant to this section. Permits shall be issued and remain in effect pursuant to this section only upon findings that the proposed use will clearly be accessory and subordinate to the principal use of the land. Examples of businesses permitted under this section include: woodworking, repair, machining, professional services, and small scale contractor's activities.

(b) The following shall be the minimum conditions/operational standards for the issuance and continuation of such a permit; additional conditions may be added as necessary;

1. The business shall be located at least 500 feet from neighboring residences not on the same parcel of property existing at the time of application for the permit.

2. The business must be conducted in one or more of the following: an attached or detached garage, residential accessory structure, or agricultural structure.

3. Businesses prohibited for the purposes of this section shall be on-site recreation and entertainment businesses, mini-storage or seasonal vehicle storage when storage is the principal activity of the business, and businesses that require more than one truck with capacity greater than one ton.

4. There shall be no more than four employees in addition to the owner/operator of the business and family of the owner/operator residing in the home, providing the parcel is five acres or greater. Parcels two acres or greater but less than five acres shall be restricted to two employees in addition to family members residing in the home.

5. The business shall utilize no more than four business vehicles, providing the parcel is five acres or greater. Parcels two acres or greater but less than five acres shall be restricted to two business vehicles.

6. There shall be no retail sales. The sale of incidental stock-in-trade shall not be considered retail sales.

7. No more than three clients shall be allowed on the premises at any one time.

(10) Contractor's yards.

(a) This subsection is intended to provide for contractor's yards established after January 1, 1989. A contractor's yard is a site used for storage of equipment and supplies by a contractor in the operation of his or her business. For purposes of this subsection a contractor is a person whose business is contracting work in any of the building trades, landscaping, road building, sewer installation, or has at least two trucks, but fewer than ten used to supply a service to local communities.

(b) The business shall be located at least 500 feet from neighboring residences not on the same parcel of property existing at the time of application for the permit.

(c) Site shall not be located within the Shoreland Overlay District or the Floodplain Overlay District.

(d) Employees, except office personnel, report to the site only for the purpose of picking up equipment and supplies, necessary fabrication and general maintenance.

(11) Bed and breakfast (allowed in AG preserve). Owner occupied single-family residence where accommodations, including the serving of meals, are offered to transients (guests) on a nightly basis for compensation. The following shall be the minimum standards for the issuance and continuation of such a permit:

(a) The bed and breakfast facility shall be a converted or renovated single-family residence wherein the primary function as a single-family residence is maintained and the owner is in residence;

(b) Expansions, additions or remodeling effectively converting the residence into a motel, hotel or lodge are prohibited;

(c) No structure shall be constructed for the sole purpose of being utilized as a bed and breakfast facility;

(d) The number of guestrooms shall be determined by the number of bedrooms in the house, less the number of bedrooms that have been dedicated to family use. The number of allowable guestrooms shall not exceed five rooms;

(e) The primary entrance to guestrooms shall be from within the main residential structure;

(f) Meals shall be provided only to those persons lodging on the premises;

(g) Food preparation shall not be permitted in any of the guestrooms, nor shall any guestrooms contain cooking facilities;

(h) The maximum number of allowable guests shall not exceed ten persons;

(i) The maximum number of family and allowable guest shall not exceed the capacity of the existing or upgraded septic system as approved by County Environmental Services;

(j) Guests are limited to a stay of no more than 14 consecutive days in length;

(k) Off-street parking shall be provided for guests and residents. A minimum of one space for each guestroom and two spaces for the residents;

(l) Activities that call attention to persons other than the residents shall be prohibited. Additional activities including, but not limited to, banquets, weddings, meetings, luncheons, recreation, and other gatherings for direct or indirect compensation are prohibited; and

(m) The site is of adequate size and configuration to accommodate on-site sewer, parking, screening/buffer and all necessary facilities.

(Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.080 CONDITIONAL USES—LARGE SCALE ACTIVITIES WITH UNIQUE LAND OR LOCATION NEEDS.**

(A) Minimum criteria for issuance.

(1) The activity conforms to all other county ordinances, state, and federal regulations.

(2) Minimum five acre lot size; unless another size is specified under a particular provision.

(3) Sewage can be managed in accordance with Chapter 52 of this code of ordinances. The county may require design by a registered engineer.

(4) The activity shall be located on a hard surfaced (blacktop or concrete) road unless specific approval for location on a township road is given by the affected township or townships. The town board may condition its approval of access to a gravel road on agreements with the applicant regarding dust control, maintenance, or similar issues. The terms of the agreement shall be such that the agreement is in force so long as the permit is in effect.

(5) The activity is of a scale that the demand for support services such as sewer, water, police, fire protection, emergency equipment access, roads or streets, can be accommodated within the context of the service levels available in the commercial agricultural area.

(6) Land is not subject to the land use restrictions of an AG preserve covenant.

(7) The operational characteristics of the proposed activity shall be such that it can be operated on the proposed site and within the current levels of support services and infrastructure. Activities that will have service needs—traffic capacity or roads, waste disposal or management, fire or police protection, sewage disposal—that will exceed those available in the area should locate in municipalities where the services are available.

(B) Minimum conditions.

(1) Permit shall be subject to administrative review or compliance review as set by the permit.

(2) The operational plan and site plan shall become part of the permit.

(3) The activity must operate in conformance with the approved site plan and operational plan and other provisions of this chapter. The site plan and operational plan shall become part of the permit.

(4) The applicant must submit a copy of workers' compensation insurance or sign an affidavit stating that he or she will not have any employees.

(5) All buildings used in the operation must meet the State Building Code.

(C) Activities.

(1) Airports and personal use landing strips. Airports must have the approval of the Minnesota Department of Transportation and/or the Metropolitan Airports Commission.

(2) Churches. Related structures and activities, including education and classes, located on the same site which are an integral part of the church proper and convents or homes for persons related to the religious functions. The number of dwelling units permitted shall not exceed the number of building eligibilities available or the number of units existing on the church site as of September 1, 1998.

(3) New or expanded existing cemeteries. Cemeteries shall not be established in areas with a high water table.

(4) Historical sites and activities as recognized by the State Historical Society.

(5) Golf courses subject to the following criteria:

(a) Golf courses will be permitted only in those townships where the township comprehensive plan states that the use is a compatible and desirable use within the township and the town board forwards a resolution to the county stating that the proposal is in conformance with its comprehensive plan.

(b) The course must be located on either a minor collector, a major collector, a minor arterial or major arterial road as identified in the current Public Works' Transportation Plan. The road must be hard surfaced.

(c) A permanent club house must be constructed that is adequate in size as per the State Building Code to serve the proposed number of golfers.

(d) The course must be a minimum of nine holes.

(e) There must be adequate fencing to deter trespassing on adjacent property.

(f) The applicant will submit information identifying wetlands, watercourses, water bodies and wooded areas. The applicant will also state how the proposal would affect the above natural features. The proposal will be reviewed to determine adverse impact on the above natural features and on areas or sites of historical or archaeological significance. Conditions may be imposed to limit or prevent adverse impact on the above stated or other natural features.

(g) Any of the above requirements may be waived by the County Board for golf courses existing at the time of adoption of the subdivision or for golf courses that were once in existence and are being reactivated.

(h) Appropriate uses accessory to a golf course include but are not limited to a pro shop, a club house, locker room, restaurant and bar, private parties, tennis courts, racquetball, swimming pool, indoor track, exercise room, sauna or steam room, snowmobiling, snowshoeing, cross-country skiing.

(i) These are uses generally or sometimes found in conjunction with golf courses. Those permitted under a particular conditional use permit will be dependent upon additional parking capacity, the capacity of the on-site sewer system and the water supply system.

(j) If these uses are to be permitted they must be addressed in the operational plan. Any changes in use requires an amendment to the conditional use permit.

(k) The front yard setback area may be utilized for parking purposes. A parking area located in a front yard setback may not be hard surfaced with asphalt, concrete or similar material. At no time shall a parking lot intrude upon or in any way utilize public right-of-way for parking purposes.

(6) Recreational, educational, institutional facilities, agri-tourism or activities that require a location in a rural area because of a need for seclusion or a natural setting or a large area of land or activities conducted on a permanent, seasonal or scheduled basis subject to the following criteria:

(a) No more than 20% of the land utilized for the activity, with the exception of agri-tourism, shall be designated as prime agricultural land under till, as illustrated by the Carver County geographic information systems (GIS) mapping;

(b) The road authority will grant an access permit;

(c) A certificate of insurance and/or a performance surety may be required;

(d) A stipulation is made in the permit as to the number of persons to be using the facility at any one time;

(e) Any type of special event that will attract or involve more than the number of people stipulated in division (6)(d) above shall require approval of the County Board.

(7) Agricultural activities with a retail component, exceeding the scope of an accessory use or administrative special use permit, subject to the following criteria:

(a) Ninety percent of the products offered for sale shall be grown on-site; and

(b) Sufficient off-street parking must be provided.

(Ord. 47, passed 7-23-02; Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.081 INTERIM USE PERMIT (IUP).**

The county may authorize an interim use of a property by means of an IUP. These interim uses may be utilized in a temporary manner as approved by the County Board. In reviewing the interim use permit application, the county will establish a specific date or event that will terminate the use of the property. In granting an IUP, the County Board shall consider the effect of the proposed use upon the health, safety, and general welfare of occupants of surrounding lands. Among other things, the Planning Commission and County Board shall make the following findings where applicable.

(A) *General provisions.*

(1) The use conforms to the zoning regulations and the policies of the Carver County comprehensive plan.

(2) The date or event that will terminate the use can be identified with certainty.

(3) Permission of the use will not impose additional costs on the public if it is necessary for the public to take the property in the future.

(4) The user agrees to any conditions that the governing body deems appropriate for permission of the use.

(5) Any interim use may be terminated by a change in zoning regulations.

(Ord.70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.082 INTERIM USE PERMIT-AG DISTRICT.**

(A) *Minimum criteria for issuance.*

(1) If improvements are made, they shall be so designed and constructed that they are not unsightly in appearance to the extent that it will hinder the orderly and harmonious development of the district wherein proposed.

(2) The activity conforms to all other county ordinances, state, and federal regulations.

(3) Minimum five acre lot size; unless another size is specified under a particular provision.

(4) Waste generated shall be treated in accordance with Chapter 52 of this code of ordinances. The county may require design by a registered engineer.

(5) The activity shall be located on a hard surfaced (blacktop or concrete) road unless specific approval for location on a township road is given by the affected township or townships. The Town Board may condition its approval of access to a gravel road on agreements with the applicant regarding dust control, maintenance, or similar issues. The terms of the agreement shall be such that the agreement is in force so long as the permit is in effect.

(6) The activity is of a scale that the demand for support services such as sewer, water, police, fire protection, emergency equipment access, roads or streets, can be accommodated within the context of the service levels available in the commercial agricultural area. Adequate water supply, subsurface sewage treatment system facilities, erosion control and stormwater management are provided in accordance with applicable standards.

(7) The operational characteristics of the proposed activity shall be such that it can be operated on the proposed site and within the current levels of support services and infrastructure. Activities that will have service needs-traffic capacity or roads, waste disposal or management, fire or police protection, sewage treatment and dispersal-that will exceed those available in the area should locate in municipalities where the services are available.

(B) *Minimum conditions.*

(1) Permit shall be subject to administrative review or compliance review as set by the permit.

(2) The operational plan and site plan shall become part of the permit.

(3) The activity must operate in conformance with the approved site plan and operational plan and other provisions of this chapter. The site plan and operational plan shall become part of the permit.

(4) The applicant must submit a copy of workers compensation insurance or sign an affidavit stating that he or she will not have any employees.

(5) All buildings used in the operation must meet the State Building Code.

(6) The use will be sufficiently compatible with, or separated by sufficient distance from, or screened from adjacent agricultural or residential land uses so that there will be no deterrence to the use or development of adjacent land and uses.

(7) The date or event that will terminate the use shall be identified.

(C) *Activities (For the purpose of this section, conditional use permit activities may also be considered and processed as interim uses).*

(1) Mining and/or land reclamation involving 10,000 cubic yards or more (allowed in AG Preserve if the principal use remains ag and restoration is suitable for farming).

(a) The permit shall be issued only upon findings that:

1. There is no substantial environmental impact or that the impact will be alleviated through a restoration program and other condition of the permit; and

2. The activity will have no substantial adverse impact on surrounding property or that the impact will be alleviated through the conditions of the permit.

(b) Each permit shall contain the following minimum standards unless modified by the County Board, and all activities shall conform to these and any additional standards.

1. General operating requirements must address operating hours, dust control, housekeeping, safety and specifying compliance review.

2. Minimum requirements for the operation.

(i) Erosion control measures shall be required. Erosion and siltation of the surrounding area shall be prohibited.

(ii) No non-granular material shall be removed unless the permit is specifically for such an operation.

(iii) Vertical faces shall be kept to a minimum except during actual mining.

(iv) Mining shall not take place within 50 feet of a property line. All slopes at property lines shall maintain a 2.5:1 slope or flatter. The setback from the assumed road right-of-way shall be a minimum of 50 feet. The setback from all homes shall be a minimum of 500 feet, excluding the residence of the mine owner and/or permittee. The setback from a bluff shall be a minimum of 100 feet.

(v) The permit shall specify what operations are to occur in the permitted area and what general types of

equipment may be used in the operation. The Board may order the exclusive use of white noise beepers on trucks and equipment utilized on the site.

(vi) Processing machinery must be located consistent with setback standards for structures from ordinary high water levels of public waters and from bluffs.

(vii) The maximum permitted operational area for mining shall be 35 acres. Only one active IUP for mining is allowed for a parcel.

(viii) Stockpiles in excess of 1,000 cubic yards shall not be located within the Floodplain Overlay District.

(ix) Any mining within 300 feet of a Class 3 through 8 wetland must include a plan to improve public value(s), in conjunction with any Wetland Conservation Act requirements.

(x) A mandatory traffic study shall be prepared by a licensed engineer.

(xi) The operation must comply with applicable watershed management rules.

(xii) The operation must comply with the applicable road authority review and approval.

3. *Site/operational plan.* A plan shall be drawn on both a 1 inch = 200 feet half section map and a 1 inch=200 feet aerial plat showing at a minimum the operational area, mining area, phasing of mining, erosion control measures or structures, restoration areas, type of restoration, and staging of restoration, any areas where mining will be below the water table or result in standing water.

4. *Reclamation plan.* A reclamation plan must include the grading plans, on-site topsoil replacement, seeding, mulching, erosion control and sedimentation control specifications for each phase and an end use plan for final site restoration. The operator and owner must follow the reclamation plan approved by the County Board. The following minimum standards and conditions apply.

(i) The peaks and depressions of the area shall be reduced to a surface which will result in a gently rolling topography in substantial conformity to the land area immediately surrounding, and which will minimize erosion due to rainfall. No graded slope shall exceed a 5:1 ratio(20%). The final grade slope shall commence at the setback. Berms will be removed to the original elevation of the land, unless the Board has approved a different elevation as part of the end use plan. Restored slopes must be 8:1 or flatter within 500 feet of the top of a bluff.

(ii) Excavated, graded or back-filled areas shall meet the following requirements.

A. All materials used for back-filling in any area of the reclamation shall be free of all contaminants and shall be non-noxious, non-flammable and non-combustible.

B. The graded or back-filled area shall not collect or permit stagnant water to remain therein, unless there is an approved ponding area or wetland restoration or creation.

C. Such graded or back-filled area shall be surfaced with soil of a quality at least equal to the topsoil of land areas immediately surrounding and to a depth of at least four inches, and seeded or sodded.

D. Such topsoil as required by the preceding division shall be planted with trees, shrubs, legumes or grasses.

(iii) Seeding and mulching shall be consistent with Minnesota Department of Transportation specifications for rights-of-way. Exceptions to seeding and mulching include areas returned to agricultural production.

(iv) Soil restoration, seeding and mulching must occur within each phase as soon as final grades, or interim grades identified in the phasing plans, have been reached. Exceptions to seeding and mulching include the processing, storage and staging areas within each phase.

(v) Soil erosion and sedimentation control measures shall be consistent with MPCA's publication entitled "Protecting Water Quality in Urban Areas."

(vi) Unless otherwise amended or approved by the county, all final grades and site restoration efforts shall be consistent with the reclamation plan.

(vii) When the end-use is some form of open space, the type of vegetative regrowth must provide appropriate habitat for wildlife consistent with the form of end-use.

(viii) The end-use plan shall consider the safe use of the property. The end-use plan shall be consistent with the comprehensive plan and the zoning ordinance.

(ix) Within nine months after completion of mineral extraction or after termination of the permit, all equipment, vehicles, machinery, materials, stockpiles of extracted mineral materials and debris shall be removed from the subject property.

(x) For each phase, within nine months after completion of mineral extraction for that phase, reclamation must be completed. If the permit is terminated earlier, reclamation must be completed within nine months after termination.

(xi) Soil and Water Conservation District and watershed review and recommendations. As a part of the original application for an interim use permit, the applicant shall submit grading plans, phased reclamation plans and water control

plans to the Carver County Soil and Water Conservation District and to the governing bodies of the watersheds for review and recommendations. The recommendations on the phased reclamation, grading, soil and water retention plans may be included as conditions of the IUP. The permit may require reforestation. Reforestation requirements shall be based on the recommendation of the Natural Resources Conservation Service and/or the DNR Forester.

5. *Performance securities and insurance.*

(i) The permittee shall acquire and keep in force for the duration of the permit, liability insurance specifically covering the mining and/or restoration and related operations. The permittee shall provide certification of insurance.

(ii) A performance surety shall be provided. The permit shall specify the amount and type of surety required. The surety, pursuant to the county fee schedule, shall be used to reimburse the county for any monies, labor, or material expended to bring the operation into compliance with the conditions of the permit. The surety may be used after failure to execute the restoration plan. The surety may also be used if there is a failure to execute a phase of a restoration plan specifically scheduled in the permit.

(2) *Temporary manufactured homes (allowed in AG Preserve).*

(a) *General provisions.*

1. *Location.* Temporary manufactured homes shall be located on the same site as the principal residence. The manufactured home shall be located so that land that was in crop production is utilized only to the extent that it is necessary to meet other requirements and provide a feasible location.

2. *Removal.* At such time as a temporary home ceases to be occupied as required, the home shall be removed within 120 days of the cessation of the required occupancy and no other occupancy shall occur.

3. Temporary manufactured homes shall not be made a permanent structure. The manufactured home shall not be greater than 20 feet in width nor shall an existing manufactured home be replaced with a structure greater than 20 feet in width. Additions other than decks or steps shall not be made to a manufactured home.

4. The applicant shall demonstrate a need to provide the housing.

5. Temporary manufactured homes shall use the existing well.

(b) *Farm workers.* A manufactured home 20 feet or less in width may be temporarily located on a parcel of 80 acres or more for the purpose of housing farm workers. The parcel must contain one permanent dwelling unit occupied by the owner or operator of the farm and must have one unused residential building eligibility for each temporary home. If the manufactured home is to be located on a parcel with one permanent dwelling, the occupant of the manufactured home must work a minimum of 20 hours per week in the agricultural operation. If the manufactured home is to be located on a parcel with a permanent home and either a farm-related permanent home or a farm-related manufactured home pursuant to this section or "farm related" or "temporary mobile homes" under previous ordinances, then the occupant of the manufactured home must work at least 40 hours per week in the agricultural operation.

(c) *Elderly/special needs parent/grandparent.* A manufactured home 20 feet or less in width may be temporarily located on a parcel in order to accommodate parents or grandparents with special needs. The subject parcel must conform to all current zoning regulations and include one permanent dwelling. The temporary manufactured home shall also meet all required zoning regulations, including setbacks and applicable separation distances. The elderly or special needs parent or grandparent may occupy either the temporary or permanent home. The principal occupant of each home shall be specified by name in the permit.

(3) *Reoccurring special events (allowed in AG Preserve).*

(a) Gatherings or events conducted on an annual or periodic basis, typically one or two days in length, which are open to or accessible by the public.

(b) *General provisions.*

1. Pre-event meeting shall be held with the Department to discuss application.

2. Appropriate road authority shall review and approve the application.

3. Sheriff's Office shall review the application related to safety and traffic control.

4. Performance surety and/or liability insurance certificate may be requested as part of the application. The decision regarding sureties and insurance would be subsequent to consultation with the County Risk Manager and/or a County Attorney.

5. Applicant must comply with the conditions attached to the permit for the reoccurring event.

(4) *Home occupation detached structure (allowed in AG Preserve).*

(a) IUPs may be issued for the adaptive re-use of detached accessory structures constructed no less than 15 years prior to the current date. Permits pursuant to this section may provide for expansion of the operation however, the IUP would need to allow for easy conversion to a personal accessory use. The following criteria must be met in order to qualify for this provision:

1. The lot shall be a minimum of 2 acres in size;
2. The structural condition of the building is determined to be sound and not in need of major repair or rehabilitation;
3. The building is of a size, type of construction, or configuration that it is reasonable to expect that it can be efficiently or economically used as an accessory to the principle use;
4. The use shall comply with the home occupation standards pursuant to this chapter, with the exception of the detached accessory structure; and
5. The business shall be located at least 200 feet from neighboring residences, not on the same parcel of property, existing at the time of application for the permit.

(5) Recreational, educational, agri-tourism, and institutional activities that require a location in a rural area because of a need for seclusion or a natural setting or a large area of land and do not require a permanent or significant structure(s) subject to the following criteria:

- (a) No more than 20% of the land utilized for the activity, with the exception of agri-tourism shall have been shown to be prime agriculture land under till, as illustrated by the Carver County Geographic Information Systems (GIS) Mapping;
- (b) The road authority will grant an access permit;
- (c) A certificate of insurance and/or a performance surety may be required;
- (d) A stipulation is made in the permit as to the number of persons to be using the site at any one time; and
- (e) Any type of special event that will attract or involve more than the number of people stipulated in division (C)(5)(d) above shall require approval of the County Board.

(Ord.70-2010, passed 1-25-11; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 97-2021, passed 7-20-21) Penalty, see § 152.999

## **RURAL SERVICE OVERLAY DISTRICT**

### **§ 152.095 PURPOSE.**

The purpose of the overlay zoning district is to recognize and facilitate the role of the rural service districts as defined in the comprehensive plan within the context of the Agriculture (“A”) District.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.096 DESIGNATION.**

The following areas—Bongards, Maple, East Union, Gotha, Hollywood and Hollywood Station—with boundaries as shown on the Zoning Map shall be considered Rural Service District under the terms and provisions of this chapter.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.097 CONDITIONAL USE PERMITS.**

Within the Rural Service Districts, conditional use permits may be issued for the following:

(A) *Newly proposed use.* Land uses supporting the agricultural economy or serving the needs of the surrounding rural community provided one of the following minimum criteria are met:

(1) Rural community-related uses serving the needs of the people of the immediate area by providing family recreation, religious facilities, minimum convenience shopping, minor repair services, light manufacturing, and those activities listed as conditional uses in § 152.079 provided the applicable regulations can be met. Any rural community-related use shall be of a scale no larger than that necessary to serve the needs of the local rural community.

(2) *Agricultural support.* An activity providing goods or services related to the conduct of agriculture.

(B) *Adaptive re-use of existing structures and buildings.* Conditional/interim use permits for commercial, light manufacturing, or institutional purposes may be issued for the adaptive re-use of buildings or facilities constructed at least 15 years or more from the current date. Permits pursuant to this section may not provide for substantial expansion of the existing operation or provide for new buildings or facilities. The following criteria must be met in order to qualify for this provision:

(1) The building or facility was designed and constructed for a commercial, industrial, or institutional purpose;

(2) The structural condition of the building or facility is determined to be sound and not in need of major repair or rehabilitation;

(3) The building or facility is of a size, type of construction, or configuration that it is not reasonable to expect that it can be efficiently or economically used as a newly proposed use as described above; and

(4) The operation utilizing the building or facility substantially conforms to newly proposed use provisions of the Rural Service District.

(C) *Special provisions.* A conditional permit for limited highway service uses may be issued in Hollywood Station RSD. A conditional use permit of dairy product processing and appurtenant activities may be issued in Bongards RSD provided waste treatment is accomplished in accordance with state and federal regulation.

(D) *Adult uses.*

(1) A conditional use permit shall be required for the establishment of an adult use business pursuant to Chapter 113 of the Carver County Code. A conditional use permit pursuant to this provision shall not be issued until the proposed adult use has an approved provisional adult use license pursuant to Chapter 113. In considering a conditional use permit pursuant to Chapter 113 of the Carver County Code:

(a) Only the definite, objective guidelines and standards of §§152.245 through 152.251 apply; and

(b) No general health, safety and welfare requirements shall apply, as adult use businesses as defined in Chapter 113 are protected by the First Amendment of the United States Constitution.

(2) The requirements of this chapter which may not be constitutionally applied shall be severed from the requirements which may be constitutionally applied and those applicable shall remain in full force and effect.

(Ord. 47, passed 7-23-02; Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 66-2010, passed 4-13-10; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.098 SERVICE LEVEL.**

Uses permitted pursuant to this subchapter must be able to operate within the context of the level of services available in the Rural Service District.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **SHORELAND OVERLAY DISTRICT**

#### **§ 152.108 STATUTORY AUTHORIZATION AND POLICY.**

(A) *Statutory authorization.* This subchapter is adopted pursuant to the authorization and policies contained in M.S. Chapter 103F, Minn. Rules Parts 6120.2500 through 6120.3900, and the planning and zoning enabling legislation in M.S. Chapter 394.

(B) *Policy.* The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by Carver County.

(Ord. 97-2021, passed 7-20-21)

#### **§ 152.109 GENERAL PROVISIONS.**

(A) *Jurisdiction.* The provisions of this chapter apply to the shorelands of the public water bodies as classified in § 152.111 of this chapter. Pursuant to Minn. Rules Parts 6120.2500 through 6120.3900, no lake, pond or flowage less than 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.

(B) *Enforcement.* Carver County is responsible for the administration and enforcement of this chapter. Any violation of the provision of this chapter or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variance or conditional uses constitutes a misdemeanor and is punishable as defined by law. Violations of this chapter can occur regardless of whether or not a permit is required for a regulated activity listed in § 152.140 of this chapter.

(C) *Severability.* If any section, clause, provision, or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

(D) *Abrogation and greater restrictions.* It is not intended by this subchapter to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this subchapter imposes greater restrictions, the provisions of this subchapter shall prevail. All ordinances inconsistent with this subchapter are hereby repealed to the extent of the inconsistency only.

(Ord. 97-2021, passed 7-20-21)

#### **§ 152.110 (RESERVED).**

#### **§ 152.111 SHORELAND CLASSIFICATION SYSTEM.**

(A) *Purpose.* To ensure that shoreland development on the public waters of Carver County is regulated consistent with the classifications assigned by the Commissioner under Minn. Rules Part 6120.3300.



(B) The shorelands of Carver County are hereby placed into the "Shoreland Overlay District." For the purposes of this chapter, the regulations of this section shall apply to those lands meeting the definition of shoreland and as shown on Carver County Zoning Map #2, Shoreland Districts, which are listed below.

(C) Lakes are classified as follows:

<b>GENERAL DEVELOPMENT</b>			
<b>Name</b>	<b>DNR Inventory Number</b>	<b>Township</b>	<b>Section</b>
Waconia	10-59P	116-24	6,7,18
		116-25	1,2,10-15
Bavaria	10-19P	116-23	19,30
		116-24	24
Benton	10-69P	115-25	11,14

<b>RECREATIONAL DEVELOPMENT</b>			
<b>Name</b>	<b>DNR Inventory Number</b>	<b>Township</b>	<b>Section</b>
<b>RECREATIONAL DEVELOPMENT</b>			
<b>Name</b>	<b>DNR Inventory Number</b>	<b>Township</b>	<b>Section</b>
Parley	10-42P	116-24	4,5,6,8,9
Auburn	10-44P	116-24	10,11,14,15
Wassermann (Wasserman)	10-48P	116-24	14,22,23
Piersons (Pierson)	10-53P	116-24	21,22,27,28
Burandt	10-84P	116-25	14,15,22,23
Hydes	10-88P	116-25	30,31,32

<b>NATURAL ENVIRONMENT LAKES</b>		
<b>Name</b>	<b>DNR Inventory Number</b>	<b>Section(s)</b>
<b>NATURAL ENVIRONMENT LAKES</b>		
<b>Name</b>	<b>DNR Inventory Number</b>	<b>Section(s)</b>
<b>Benton Township T115, R25</b>		
Maria	10-58P (part)	36
Winkler	10-66P	4,9
Barlous (Barlow)	10-67P	5,6,7,8
Myers (Meyers)	10-68P	7,8,17,18
Rice	10-78P (part)	5,6
Gruenhagen	10-71P	19,20
	10-187P (part)	3,4
Meuwissen	10-70W	14
	10-188W (part)	5
<b>Camden Township T116, R26</b>		
Berliner	10-103P (part)	12,13
Baylor	10-118P	22,27,28
Eagle	10-121P	27,34,35

<b>NATURAL ENVIRONMENT LAKES</b>		
<b>Name</b>	<b>DNR Inventory Number</b>	<b>Section(s)</b>

**NATURAL ENVIRONMENT LAKES**

<i>Name</i>	<i>DNR Inventory Number</i>	<i>Section(s)</i>
Reich	10-43-1P (part)	6
	10-116P	21,22,28
	10-117P	22,27
	10-173W	6
	10-174W	7
Smith	10-120W	29,32
<b>Dahlgren Township T115, R24</b>		
Aue Lake	10-28P	4,9,10
Miller Lake	10-29P	7,8
Gaystock (Gestach) Lake	10-31P	11
Maria Lake	10-58P (part)	31
	10-40W	35
	10-32W	12
<b>Hancock Township T114, R25</b>		
Assumption Lake	10-63P	7
	10-236P	14
<b>Hollywood Township T117, R26</b>		
Campbell	10-127P (part)	18,19
Lippert	10-104P (part)	24,25
	10-162P	13,24
Reich	43-10P (part)	31
Crookshank	10-125P	16,17
Firemen's	10-126W	31,32

**NATURAL ENVIRONMENT LAKES**

<i>Name</i>	<i>DNR Inventory Number</i>	<i>Section(s)</i>
<b>NATURAL ENVIRONMENT LAKES</b>		
<i>Name</i>	<i>DNR Inventory Number</i>	<i>Section(s)</i>
<b>Laketown Township T116, R24</b>		
Lundsten	10-43P	9
Carl Krey Lake	10-50P	15
Reitz Lake	10-52P	19,20
Marsh Lake	10-54P	26,27
Stone Lake	10-56P	3
Unnamed (Auburn Marsh)	10-49W	15,16
	10-135P	3
	10-136P	3
	10-138P	3
	10-140P	4
	10-141P	4
	10-142P	4
	10-144P (part)	6
	10-192P	9
	10-60P (part)	19,30
Turbid	10-51W	16,21
	10-143W	5,6,7
<b>San Francisco Township T114, R24</b>		

Kelly	10-21P	14,21,22
Scott	10-22P	16,17
Hallquist	10-24P	20,21,28,29
Unnamed (Hallquist)	10-233P	29
	10-234P	29
	10-235P	29

<b>NATURAL ENVIRONMENT LAKES</b>		
<b>Name</b>	<b>DNR Inventory Number</b>	<b>Section(s)</b>
<b>NATURAL ENVIRONMENT LAKES</b>		
<b>Name</b>	<b>DNR Inventory Number</b>	<b>Section(s)</b>
Rapids (Rapid)	10-17P	35,31 [115-24, 115-23]
Long Lake	10-16W	6,7,1,12 [114-23, 24]
<b>Waconia Township T116, R25</b>		
Rice	10-78P (part)	31,32
Donders	10-79P	3,4,9,10
Swan	10-82P	9,16
Patterson	10-86P	19,20,29,30
	10-187P (part)	33,34
	10-60P	24,25
Berliner	10-103P (part)	7
Root (Linder)	10-81W	8,9
	10-161P	2,3
	10-144P (part)	1
Goose	10-89P (part)	3,4,5
Rutz	10-80W	8
	10-85W	15
	10-188W (part)	32
<b>Watertown Township T117, R25</b>		
Goose	10-89P (part)	32,33
	10-161P (part)	34,35,36
	10-144P (part)	36
	10-99P	22,26,27
Buck	10-98P	23,24,25,26
Swede	10-95P	15,21,22,23
Mud	10-94P	13,14

<b>NATURAL ENVIRONMENT LAKES</b>		
<b>Name</b>	<b>DNR Inventory Number</b>	<b>Section(s)</b>
<b>NATURAL ENVIRONMENT LAKES</b>		
<b>Name</b>	<b>DNR Inventory Number</b>	<b>Section(s)</b>
Oak	10-93P	10,11,14
	10-153P	11,12
Millman	10-90P	1,12
	10-146P (part)	12

Rice	10-86-32P (part)	1
	10-91P	5,6,7,8
Lippert	10-104P (part)	19,30
	10-97W	16,21
	10-160W	36
<b>Young America Township T115, R26</b>		
Young America	10-105P	1,11,12
Barnes	10-109P	12,13
Brand	10-110P	14,15,22,23
Fredericks (Fredricks)	10-112P	22,23,26,27
Tiger	10-108P	4,8,9,10,15,16
Braunworth	10-107P	2,11

(D) Rivers and streams are classified as follows:

<b>AGRICULTURE</b>	
<b>Name</b>	<b>Legal Description</b>
Crow River	T117, R25, S4, 8, 9, 17, 19, 20, 30, 31 T117, R26, S36 T116, R26, S1, 2, 10, 11, 15, 17, 18, 20, 21, 22
Minnesota River	T115, R23, S2, 3, 9, 16, 17, 20, 30, 31 T114, R23, S5, 6, 7 T114, R24, S11, 12, 14, 15, 21, 22, 28, 29, 30, 31

(E) All public rivers and streams shown on the Public Waters Inventory Map for Carver County, a copy of which is adopted by reference, not given a classification in this section shall be considered "Tributary".

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

**§ 152.112 PERMITTED USES.**

Any use permitted in the underlying district as modified by any other overlay district, as per §§152.052, 152.070, and 152.073, with the following further restrictions:

(A) Feedlots shall occur only pursuant to a conditional use permit;

(B) The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high water level.

(C) General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore and bluff impact zones are maintained in perennial vegetation or operated under an approved conservation plan consistent with the field office technical guides of the local soil and water conservation district or the Natural Resource Conservation Service, and as approved by the local soil and water conservation district.

(D) New feedlots within the Shoreland District are prohibited.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

**§ 152.113 CONDITIONAL USES.**

Any use listed as a conditional use in the underlying district as modified by any other overlay districts, as per §§152.052, 152.075 through 152.082, and 152.097, and as further regulated below:

(A) A new contractor's yard shall not be permitted within the Shoreland District.

(B) Feedlots subject to the following criteria:

(1) All criteria listed in §152.071;

(2) A new animal feedlot area shall not be constructed within shoreland;

(3) Must be designed consistent with Minn. Rules Chapter 7020.

(4) An existing animal feedlot area located in shoreland may not expand to a capacity of 1,000 animal units or more or the manure produced by 1,000 animal units or more. An existing animal feedlot expanding in shoreland shall not locate any

portion of the expanded animal feedlot closer to the ordinary high water mark or bluff impact zone than any existing portion of the animal feedlot.

(5) Old feedlots not currently in operation may resume operation consistent with M.S. § 116.0711.

(C) In cases where the underlying district or other overlay district provides for surface water-oriented commercial, public or semi-public uses, any of these uses which require access to or use of public waters shall be subject to the following criteria:

(1) The use complies with §§ 152.114 and 152.115.

(2) The uses must be designed to incorporate topographic and vegetative screening of parking areas and structures.

(3) 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. If more than six watercraft will be moored at one time, then the lot frontage required will need to be consistent with the table in § 152.034(D).

(4) Uses that depend on patrons arriving by watercraft may use signs in accordance with this chapter.

(D) One temporary manufactured home may be allowed on lots meeting or exceed the lot area and width dimensions presented in § 152.082 and must be located or designed to reduce its visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer leaf-on conditions.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.114 ACCESSORY USES.**

Any use listed as an accessory use in the underlying district as modified by any other overlay district and as further regulated below:

(A) Water-related accessory structure under the following conditions:

(1) The structure is not more than 250 square feet. The structure shall be considered part of the aggregate total square footage of accessory structures permitted.

(2) The structure is not more than ten feet high. Detached decks shall not exceed a height of eight feet above grade.

(3) The structure is setback ten feet from the ordinary high water level.

(4) The structure is situated in a manner and is constructed of a type of material that allows it to blend in with the area.

(5) The structure must not be served with sewer or water.

(6) The roof may be used as a deck with safety rails, but must not be enclosed or used as a storage area.

(B) Stairways, lifts and landings are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways, lifts and landings require no setback if they are being used to achieve access up and down bluffs and steep slopes. Stairways, lifts and landings are subject to the following standards:

(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 the 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.

(6) Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided these facilities meet the standards above (divisions (1) through (5)) as well as complying with the requirements of Minn. Rules Chapter 1340, as it may be amended from time to time.

(C) Carver County does not regulate permanent or seasonal docks or private boat ramps. The Minnesota DNR regulates and issues permits for these structures in accordance with Minn. Rules Parts 6115.0150 through 6115.0520, as they may be amended from time to time. For further information contact the Division of Waters at the Minnesota DNR.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.115 PROHIBITED USES.**

Industrial uses are prohibited in the shoreland areas of natural environment lakes and agricultural rivers, even if the underlying zone allows for industrial use as a conditional use.

(Ord. 47, passed 7-23-02)

**§ 152.115.1 LAND USES BY LAKE, RIVER AND STREAM CLASSIFICATIONS.**

(A) Shoreland District land uses listed in this section are regulated as:

- (1) *Permitted uses (P)*. These uses are allowed, provided all standards in this chapter are followed;
- (2) *Conditional uses (C)*. These uses are allowed through a conditional use permit. The use must be evaluated according to the criteria in § 152.113 and any additional conditions listed in this chapter; and
- (3) *Not permitted uses (N)*. These uses are prohibited.

(B) Land uses for lake classifications:

<i>Land Uses</i>	<i>General Development</i>	<i>Recreational Development</i>	<i>Natural Environment</i>
<i>Land Uses</i>	<i>General Development</i>	<i>Recreational Development</i>	<i>Natural Environment</i>
Single residential	P	P	P
Commercial	C	C	C
Parks and historic sites	C	C	C
Public, semipublic	C	C	C
Agricultural: cropland and pasture	P	P	P
Agricultural feedlots: new	N	N	N
Agricultural feedlots: expansion or resumption of existing	C	C	C
Mining	C	C	C

(C) Land uses for stream/river classifications:

<i>Land Uses</i>	<i>Agriculture</i>	<i>Tributary</i>
<i>Land Uses</i>	<i>Agriculture</i>	<i>Tributary</i>
Single residential	P	P
Commercial	C	C
Parks and historic sites	C	C
Public, semipublic	C	C
Agricultural: cropland and pasture	P	P
Agricultural feedlots: new	N	N
Agricultural feedlots: expansion or resumption or existing	C	C
Mining	C	C

(Ord. 97-2021, passed 7-20-21)

**§ 152.115.2 CONTROLLED ACCESS LOT FRONTAGE REQUIREMENTS.**

(A) Controlled access lots on public waters are permissible if created as part of subdivision and are subject to meeting or exceeding the following standards:

- (1) Lots must meet the width and size requirements for residential lots and must be suitable for the intended uses of controlled access and recreation.
- (2) If docking, mooring, or over-water storage of more than six 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:

<b>Controlled Access Lot Frontage Requirements</b>
--

<i>Ratio of lake size to shore</i>	<i>Length (acres/miles); required percent increase in frontage</i>
Less than 100	25%
100 - 200	20%
201 - 300	15%
301 - 400	10%
Greater than 400	5%

(3) The lot must be jointly owned by all purchasers of lots in the subdivision or by all purchasers of non-riparian lots in the subdivision who are provided riparian access rights on the access lot.

(4) Covenants or other equally effective legal instruments must be developed that:

(a) Specify which lot owners have authority to use the controlled access lot; identify what activities are allowed. The activities may include watercraft launching, loading, storage, beaching, mooring, docking, swimming, sunbathing, or picnicking.

(b) 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 location on the lot to minimize topographic and vegetation alterations.

(c) 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.

(Ord. 97-2021, passed 7-20-21)

#### **§ 152.116 LOT SIZE AND WIDTH, SETBACKS, AND YARD REQUIREMENTS.**

(A) See standards section (§§ 152.025 through 152.041) and provisions below.

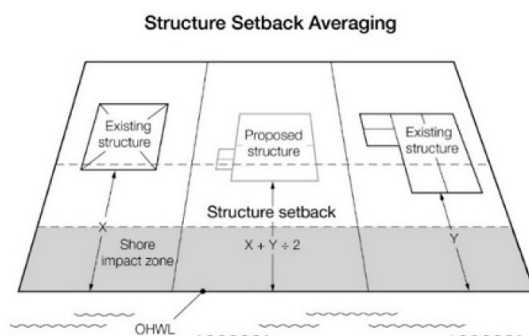
(B) Any structure must meet § 152.034. Additional provisions with regard to setbacks include:

(1) Any structure proposed to be set closer than 30 feet to the crest of a slope of 18% or greater and which meets the ordinary high water level setback, will require a separate grading and filling permit with plans prepared by a registered engineer.

(2) Setbacks from an unplatted cemetery will be 50 feet from the nearest identifiable grave or 50 feet from the property line, whichever is less restrictive.

(3) Public, semi-public, industrial, or commercial 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.

(4) 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 average adjoining setbacks from the ordinary high water level, provided the proposed building site is within a platted area or a metes and bounds subdivision and is not located in a shore impact or bluff impact zone.



(5) Only lands above the ordinary high water level can be used to meet lot area and width standards.

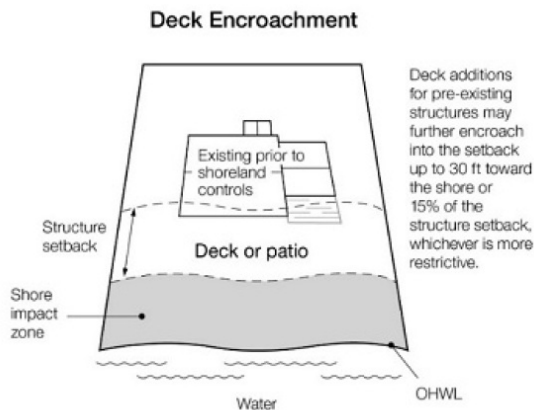
(6) Lot width standards must be met at both the ordinary high water level and at the front setback.

(7) Lake minimum lot areas and width standards must comply with §152.033.

(C) 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:

- (1) The structure existed on the date of adoption of this chapter;
- (2) 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;
- (3) The deck encroachment toward the ordinary high water level does not exceed 15% 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
- (4) The deck is constructed primarily of wood and is not roofed or screened.



(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### § 152.117 LOWEST FLOOR ELEVATION.

(A) *Determining elevations.* Structures must be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or flood proofed must be determined as follows:

(1) For lakes, by placing the lowest floor at a level at least three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher.

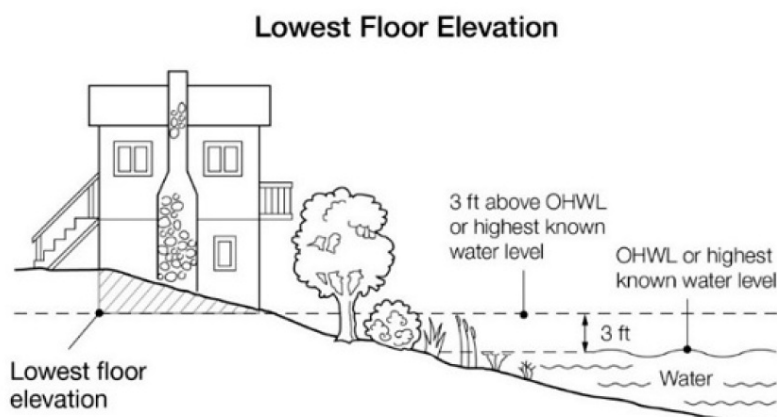
(2) For rivers and streams, by placing the lowest floor at least three feet above the highest known flood elevation. If highest known flood elevation is not available, by placing the lowest floor at least three feet above the highest known flood elevation, or by conducting a technical evaluation to determine effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Technical evaluations must be done by a qualified engineer or hydrologist consistent with Minn. Rules Parts 6120.5000 through 6120.6200.

(B) *Methods for placement.*

(1) In addition to the lowest floor, all service utilities must be elevated or water-tight to the elevation determined in division (A).

(2) If elevation methods involving fill would result in filling in the SIZ, then structures must instead be elevated through floodproofing methods in accordance with § 152.121(B)(3) below.

(3) If the structure is floodproofed, then it must be built to resist hydrostatic pressure through elevation methods such as blocks, pilings, filled stem walls, elevated concrete pad, internally flooded enclosed areas, or through other accepted engineering practices consistent with FEMA technical bulletins 1, 2, and 3.





(C) Water-oriented accessory structures may have the lowest floor placed lower than the elevation determined above in divisions (A) or (B) 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.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.117.1 STAIRWAYS, LIFTS AND LANDINGS.**

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

(A) Stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties, public recreational uses, and planned unit developments;

(B) Landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties, public-space recreational uses, and planned unit developments;

(C) Canopies or roofs are not allowed on stairways, lifts, or landings;

(D) Stairways, lifts, and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion;

(E) Stairways, lifts, and landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical; and

(F) Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, if they are consistent with the dimensional and performance standards of divisions (A) through (E) and the requirements of Minn. Rules Chapter 1341.

(Ord. 97-2021, passed 7-20-21)

#### **§ 152.118 PERFORMANCE STANDARDS FOR PUBLIC AND PRIVATE FACILITIES.**

*Placement and design of roads, driveways, and parking areas.* Public and private roads and parking areas must be designed to take advantage of natural vegetation and topographic to achieve maximum screening as viewed from public waters and comply with the following standards:

(A) 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 must be placed within these areas, and must be designed to minimize adverse impacts;

(B) 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 section are met. Private facilities must comply with the grading and filling provisions of § 152.126.

(C) For public roads, driveways and parking areas, documentation must be provided by a qualified individual that they are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.118.1 WATER-ORIENTED ACCESSORY STRUCTURES OR FACILITIES.**

Each residential lot may have one water-oriented accessory structure or facility if it complies with the following provisions:

(A) The structure or facility must not exceed ten feet in height, exclusive of safety rails, and cannot occupy an area greater than 250 square feet. The structure or facility may include detached decks not exceeding eight feet above grade at any point or at-grade patios;

(B) The structure or facility is not in the bluff impact zone;

(C) The setback of the structure or facility from the ordinary high water level must be at least ten feet;

(D) The structure is not a boathouse or boat storage structure as defined under M.S. § 103G.245;

(E) 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;

(F) The roof may be used as an open-air deck with safety rails, but must not be enclosed with a roof or sidewalls or used as a storage area;

(G) The structure or facility must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities;

(H) As an alternative for general development and recreational development waterbodies, water-oriented accessory structures used solely for storage of watercraft and boating-related equipment may occupy an area up to 400 square feet provided the maximum width of the structure is 20 feet as measured parallel to the shoreline; and

(I) Water-oriented accessory structures may have the lowest floor placed lower than the elevation specified in §152.121 if the structure is designed to accommodate internal flooding, constructed of flood-resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind-driven waves and debris.

(J) Carver County does not regulate permanent or seasonal docks or private boat ramps. The Minnesota DNR regulates, and issues permits for these structures in accordance with Minn. Rules Parts 6115.0150 through 6115.0520, as they may be amended from time to time. For further information contact the Division of Waters at the Minnesota DNR.

(Ord. 97-2021, passed 7-20-21)

#### **§ 152.118.2 MINING STANDARDS.**

Extractive uses are conditional uses and must meet the following standards:

(A) *Site development and restoration plan.* A site development and restoration plan must be developed, approved, and followed over the course of operations. The plan must:

(1) Address dust, noise, possible pollutant discharges, hours and duration of operation, and anticipated vegetation and topographic alterations;

(2) Identify actions to be taken during operation to mitigate adverse environmental impacts, particularly erosion; and

(3) Clearly explain how the site will be rehabilitated after extractive activities end.

(B) *Setbacks for processing machinery.* Processing machinery must meet structure setback standards from ordinary high water levels and from bluffs.

(C) Must meet the provisions of M.S. §§ 93.44 through 93.51.

(Ord. 97-2021, passed 7-20-21)

#### **§ 152.119 (RESERVED).**

#### **§ 152.120 WATER SUPPLY.**

Any supply of water for domestic purposes must meet or exceed the standards for water quality of the Minnesota Department of Health and the Minnesota Pollution Control Agency and any applicable Carver County ordinances. Central public water supplies shall be used where available and feasible.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.121 SEWAGE DISPOSAL REQUIREMENTS.**

Any premises intended for human occupancy shall be provided with an adequate method of sewage treatment, as follows: central public sewage collection and treatment shall be used wherever available and feasible; all on-site sewage treatment systems shall conform with Chapter 52 of this code of ordinances.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.122 ISSUANCE OF PERMITS; SSTS COMPLIANCE REQUIRED.**

(A) Building permits, variances, conditional or interim use permits or permits of any type that are required for any improvement on, or use of property, except as provided below, shall not be issued unless a certificate of compliance, pursuant to Chapter 52 of this code of ordinances, has been submitted for all SSTS existing on the property at the time of application.

(B) If an SSTS is found to be nonconforming, the permits or variances shall not be issued until the SSTS is upgraded or replaced to meet the standards of Chapter 52 of this code of ordinances. In lieu of the upgrade or replacement, or when an SSTS compliance inspection report cannot be completed due to weather (such as, snow and frost), an appropriate escrow may be established for the SSTS upgrade, replacement and/or inspection, upon approval by the Department. All SSTS work shall be completed within 12 months of the issuance of the permit or variance, unless a different timeframe is addressed by the permit, variance, or other regulation.

(C) *Exceptions.* This section shall not apply to: mechanical permits for the installation or repair of heating equipment; permits for roof replacement or repair; and permits for the repair of damage resulting from circumstances such as wind, fire and accidents provided expansion of the structure's size is not requested. This provision shall not apply to flood damage or those structures otherwise regulated by Floodplain District regulations.

(D) Special provision for certain feedlot conditional use permits. Conditional use permits pursuant to §152.113 may be issued to correct an existing erosion and/or pollution problem if an increase in the number of animal units is not being requested. At a minimum, submittal of an SSTS compliance inspection report shall be required within 12 months of the

issuance of the permit.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.123 WASTE DISPOSAL.**

No rubbish, trash, garbage, awful or putrescible matter shall be deposited into any public water or into any watercourse leading to a public water. Sanitary landfills or other types of solid waste disposal are hereby prohibited within land areas designated as shoreland.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.124 VEGETATION ALTERATIONS.**

(A) Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by § 152.117 of this chapter are exempt from the vegetation alteration standards that follow.

(B) Removal or alteration of vegetation, except for agricultural uses as regulated in §152.112, 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.

(2) In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, livestock water areas, beach and watercraft access areas, and permitted water-oriented accessory structures or facilities, provided that:

(a) The screening of structures, vehicles, or their facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced;

(b) The existing shading of water surfaces is preserved along rivers.

(3) The removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards as well as the removal of any noxious weeds is allowed in all shoreland, bluff and steep slope areas.

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

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.125 VEGETATION REMOVAL PROHIBITED.**

In all shoreland areas the removal of natural vegetation is prohibited within 50 feet of the ordinary high water level except that a strip not to exceed 12 feet in width may be clear cut to the water's edge to afford access to the water.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.126 GRADING AND FILLING.**

(A) Grading and filling activities must comply with the provisions of this section except for the construction of public roads and parking areas if consistent with § 152.118 of this chapter.

(B) *Permit requirements.* In all shoreland areas any grading, filling or alteration of the topography which is not already covered under the provisions of a building, conditional use, variance or other permit shall require the issuance of an administrative use permit pursuant to § 152.074 for the following alterations:

(1) The movement of more than ten cubic yards of material on slopes greater than 18% or within shore or bluff impact zones.

(2) The movement of more than 50 cubic yards of material outside of slopes greater than 18%, shore and bluff impact zones.

(C) *Erosion and sediment control permit.* Disturbing activities within the shoreland area may also require an erosion and sediment control permit from the Carver County Watershed Management Organization or the Minnehaha Creek Watershed District.

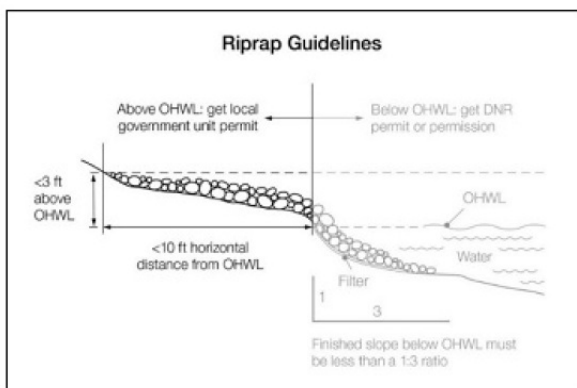
(D) Grading or filling of any wetland must meet or exceed the wetland protection standards under Minn. Rules Chapter 8420 and any other permits, reviews, or approvals by other local, state, or federal agencies such as watershed districts, the DNR or US Army Corps of Engineers;

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

(1) Limiting the amount and time of bare ground exposure;

(2) Using temporary ground covers such as mulches or similar materials;

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



(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.127 ALTERATIONS AT OR BELOW OHW.**

Any alterations below the ordinary high water level of public waters must first be authorized by the Minnesota Department of Natural Resources.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.128 CONNECTION TO PUBLIC WATER.**

Excavations of shorelands where the intended purpose is to create a connection to a public water shall require the issuance of a conditional use permit. Granting of the permit shall be contingent upon issuance of a public waters work permit by the Minnesota Department of Natural Resources.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.129 STEEP SLOPES/BLUFF IMPACT ZONE.**

(A) Plans to place fill or to excavate material on slopes over 18% must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of 30% or greater. Placement of fill or excavation of material must not be conducted in a manner that creates an unstable slope and fill must not be placed in bluff impact zones.

(B) *Bluff impact zones.* Structures, impervious surfaces, and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.130 WETLAND EVALUATION.**

(A) If the proposal entails grading or filling in any type 2, 3, 4, 5, 6, 7 or 8 wetland, the county may require that the

applicant have a professional evaluate (at the applicant's expense) how extensively the proposed activity would affect the following functional qualities of the wetland:

- (1) Sediment and pollutant trapping and retention;
- (2) Storage of surface runoff to prevent or reduce flood damage;
- (3) Fish and wildlife habitat;
- (4) Recreational use;
- (5) Shoreline or bank stabilization; and
- (6) Noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, and the like.

(B) The evaluation must include a determination of whether the wetland alteration being proposed requires permits, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the Minnesota Department of Natural Resources, or the United States Army Corps of Engineers.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.131 EROSION CONTROL.**

Planning for erosion control must be incorporated as conditions on permits issued in the Shoreland District. Erosion control plans should demonstrate what measures will be taken to prevent erosion on the construction site and should be consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service and County Water Management Rules if applicable.

(Ord. 47, passed 7-23-02)

#### **§ 152.131.1 STORMWATER MANAGEMENT.**

##### *(A) General standards.*

(1) When possible, existing natural drainageways, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.

(2) Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized as soon as possible, and appropriate facilities or methods used to retain sediment on the site.

(3) When development density, topography, soils, and vegetation are not sufficient to adequately handle stormwater runoff, constructed facilities such as settling basins, skimming devices, dikes, waterways, ponds and infiltration may be used. Preference must be given to surface drainage, vegetation, and infiltration rather than buried pipes and man-made materials and facilities.

##### *(B) Specific standards.*

(1) Impervious surfaces of lots must not exceed 25% of the lot area.

(2) When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation district or the Minnesota Stormwater Manual, as applicable.

(3) New constructed stormwater outfalls to public waters must be consistent with Minn. Rules Part 6115.0231.

(Ord. 97-2021, passed 7-20-21)

### **§ 152.132 SIGNS WITHIN THE SHORE IMPACT ZONE.**

Uses that depend on patrons arriving by watercraft may use signs and lighting provided that:

(A) Signs placed in or on public waters must only convey directional information or safety messages and may only be placed by a public authority or under a permit issued by the County Sheriff; and

(B) Signs placed within the shore impact zone must be:

(C) Other lighting may be located within the shore impact zone or over public waters if it is used to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination across public waters. This does not preclude use of navigational lights.

(D) Signs must only convey the location and name of the establishment and the general types of goods or services available. The signs must not contain other detailed information such as product brands and prices, must not be located higher than 10 feet above the ground, and must not exceed 32 square feet in size.

(E) Signs must be minimum size necessary to convey the needed information.

(F) If illuminated by artificial lights, the lights must be shielded or directed to prevent illumination out across public waters.  
(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.133 SIGNIFICANT HISTORIC SITES.**

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

(Ord. 97-2021, passed 7-20-21)

### **§ 152.134 ADMINISTRATION.**

#### **(A) *Permits.***

(1) A permit is required for the construction of buildings or building additions (including construction of decks and signs), the installation and/or alteration of sewage treatment systems, and those grading and filling activities not exempted by § 152.132 of this chapter.

(2) A certificate of compliance, consistent with Minn. Rules Part 7082.0700, subpart 3, is required whenever a permit or variance of any type is required for any improvement on or use of the property. A sewage treatment system shall be considered compliant if the only deficiency is the system's improper setback from the ordinary high water level.

(B) *Application materials.* Application for permits and other zoning applications such as variances shall be made to the Department can evaluate how the application complies with the provisions of this chapter.

(C) *Certificate of zoning compliance.* The Department shall issue a certificate of zoning compliance for each activity requiring a permit as specified in § 152.191 of this chapter. This certificate will specify that the use of land conforms to the requirements of this chapter. Any use, arrangement, or construction at variance with that authorized by permit shall be deemed a violation of this chapter and shall be punishable as provided in § 152.155 of this chapter.

(D) *Variances.* Variances may only be granted in accordance with M.S. §152.153 and are subject to the following:

(1) A variance may not circumvent the general purposes and intent of this chapter; and

(2) For properties with existing sewage treatment systems, a certificate of compliance, consistent with Minn. Rules Part 7082.0700, subpart 3, is required for variance approval. A sewage treatment system shall be considered compliant if the only deficiency is the system's improper setback from the ordinary high water level.

(E) *Conditional uses.* All conditional uses in the shoreland area are subject to a thorough evaluation of the waterbody and the topographic, vegetation, and soil conditions to ensure:

(1) The prevention of soil erosion or other possible pollution of public waters, both during and after construction;

(2) The visibility of structures and other facilities as viewed from public waters is limited;

(3) There is adequate water supply and on-site sewage treatment; and

(4) The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercrafts.

#### **(F) *Mitigation.***

(1) In evaluating all variance, conditional use, zoning and building permit applications, the zoning authority shall require the property owner to address the following conditions, when related to and proportional to the impact, to meet the purpose of this chapter, to protect adjacent properties and the public interest:

(a) Advanced storm water runoff management treatment;

(b) Reducing impervious surfaces;

(c) Increasing setbacks from the ordinary high water level;

(d) Restoration of wetlands;

(e) Limiting vegetation removal and/or riparian vegetation restoration;

(f) Provisions for the location, design, and use of structures, sewage treatment systems, water supply systems, watercraft launching and docking areas, and parking areas; and

(g) Other conditions the zoning authority deems necessary.

(2) In evaluating plans to construct sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes, conditions to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters assuming summer, leaf-on vegetation shall be attached to permits.

#### **(G) *Notifications to the Department of Natural Resources.***

(1) All amendments to this section must be submitted to the Department of Natural Resources for review and approval

for compliance with the statewide shoreland management rules. Carver County will submit the proposed ordinance amendments to the Commissioner or the Commissioner's designated representative at least 30 days before any scheduled public hearings.

(2) All notices of public hearings to consider variances, ordinance amendments, or conditional uses under shoreland management controls must be sent to the Commissioner or the Commissioner's designated representative at least ten days before the hearings.

(3) Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.

(4) All approved ordinance amendments and subdivisions/plats, and final decisions approving variances or conditional uses under local shoreland management controls must be sent to the Commissioner or the Commissioner's designated representative and postmarked within ten days of final action. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance shall also include the summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.

(5) Any request to change the shoreland management classification of public waters within Carver County must be sent to the Commissioner or the Commissioner's designated representative for approval and must include a resolution and supporting data as required by Minn. Rules Part 6120.3000, subpart 4.

(6) Any request to reduce the boundaries of shorelands of public waters within Carver County must be sent to the Commissioner or the Commissioner's designated representative for approval and must include a resolution and supporting data. The boundaries of shorelands may be reduced when the shoreland of water bodies with different classifications overlap. In these cases, the topographic divide between the water bodies shall be used for adjusting the boundaries.

(H) *Mandatory EAW*. An environmental assessment worksheet consistent with Minn. Rules Chapter 4410 must be prepared for projects meeting the thresholds of Minn. Rules Part 4410.4300, subparts 19a, 20a, 25, 27, 28, 29, and 36a.

(Ord. 97-2021, passed 7-20-21)

#### **§ 152.135 NONCONFORMITIES.**

(A) All legally established nonconformities as of the date of this ordinance may continue, but will be managed according to M.S. §394.36, subd. 5 and other regulations of this county for alterations and additions; repair after damage; discontinuance of use; and intensification of use.

(B) Construction on nonconforming lots of record is subject to the following criteria:

(1) Lots of record in the Office of the County Recorder on the date of July 1, 1974, that do not meet the minimum lot size and width standards specified by § 152.033 may be allowed as building sites without variance 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.

(2) 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.

(3) If, in a group of two or more contiguous lots under the same owner, any individual lot does not meet the minimum lot size and width standards specified by § 152.033, the lot must not be considered 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 minimum lot size and width standards as much as possible.

(C) *Additions/expansions to nonconforming structures*. All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback and other requirements of § 152.034. Any deviation from these requirements must be authorized by a variance.

(Ord. 97-2021, passed 7-20-21)

### **FLOODPLAIN OVERLAY DISTRICT**

#### **§ 152.143 STATUTORY AUTHORIZATION, FINDINGS OF FACT, AND PURPOSE.**

(A) *Statutory authorization*. The legislature of the state has, in M.S. Chapters 103F and 394, delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the Board of Commissioners does ordain as follows.

(B) *Purpose*.

(1) This subchapter regulates development in the flood hazard areas of the unincorporated areas of the county. These flood hazard areas are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. It is the purpose of this subchapter to promote the public health, safety, and general welfare by minimizing these losses and disruptions.

(2) *National Flood Insurance Program compliance.* This subchapter is adopted to comply with the rules and regulations of the National Flood Insurance Program, codified as 44 C.F.R. §§ 59 through 78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

(3) This chapter 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.

(Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.144 GENERAL PROVISIONS.**

(A) *Lands to which subchapter applies.* This subchapter applies to all lands within the jurisdiction of the county within the boundaries of the Floodway, Flood Fringe, and General Floodplain Districts. The boundaries of these districts are determined by scaling distances on the Flood Insurance Rate Map, or as modified in accordance with § 152.145(B).

(1) 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 are in addition to any other requirements in this chapter. In case of a conflict, the more restrictive standards will apply.

(2) Where a conflict exists between the floodplain limits illustrated on the official floodplain maps and actual field conditions, the flood elevations shall be the governing factor in locating the regulatory floodplain limits.

(3) 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.

(B) *Incorporation of maps by reference.* See § 152.006 for incorporation of maps by reference.

(C) *Abrogation and greater restrictions.* It is not intended that this subchapter repeal, abrogate, or impair any existing easements, covenants, or other private agreements. However, where this subchapter imposes greater restrictions, the provisions of this subchapter prevail. All other provisions of this chapter inconsistent with this subchapter are hereby repealed to the extent of the inconsistency only.

(D) *Warning and disclaimer of liability.* This subchapter does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This chapter does not create liability on the part of the county or its officers or employees for any flood damages that result from reliance on this subchapter or any administrative decision lawfully made hereunder.

(E) *Severability.* If any section, clause, provision, or portion of this subchapter is adjudged unconstitutional or invalid by a court of law, the remainder of this subchapter shall not be affected and shall remain in full force.

(Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.145 ESTABLISHMENT OF FLOODPLAIN DISTRICTS.**

(A) *Districts.*

(1) *Floodway District.* The Floodway District includes those areas within Zone AE delineated within floodway areas as shown on the Flood Insurance Rate Maps adopted in § 152.006. For lakes, wetlands, and other basins, the Floodway District also includes those areas that are at or below the ordinary high water level as defined in M.S. § 103G.005, subd. 14.

(2) *Flood Fringe District.* The Flood Fringe District includes areas within Zone AE on the Flood Insurance Rate Map adopted in § 152.006, but located outside of the floodway. For lakes, wetlands, and other basins, the Flood Fringe District also includes areas mapped in Zones A or AE, which are below the 1% annual chance (100 year) flood elevation, but above the ordinary high water level as defined in M.S. § 103G.005, subd. 14.

(3) *General Floodplain District.* The General Floodplain District shall include those areas designated as Floodplain Overlay District on the Carver County Zoning Map and designated Zone A on the Flood Insurance Rate Map for the county, as adopted in § 152.006(B).

(B) *Applicability.* Where Floodway and Flood Fringe Districts are delineated on the floodplain maps, the standards in §§ 152.147 or 152.148 will apply, depending on the location of a property. Any watercourses identified as Zone A on the floodplain maps adopted in § 152.144(B) are considered to fall within the General Floodplain District. Within the General Floodplain District, the Floodway District standards in § 152.147 apply unless the floodway boundary is determined, according to the process outlined in § 152.149(B). Areas in and adjoining lakes, wetlands, and other basins shall be designated as either Floodway or Flood Fringe based on the procedures described in §§ 152.145(A)(1) and (A)(2).

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.146 REQUIREMENTS FOR ALL FLOODPLAIN DISTRICTS.**

(A) *Permit required.* A permit must be obtained from the Zoning Administrator to verify if a development meets all applicable standards outlined in this chapter prior to conducting the following activities:

(1) The erection, addition, modification, rehabilitation, or alteration of any building, structure, or portion thereof. Normal



maintenance and repair also requires a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in this chapter;

- (2) The construction of a dam, on-site septic system, or any fence not meeting the definition of farm fence, as defined;
- (3) The change or extension of a nonconforming use;
- (4) The repair of a structure that has been damaged by flood, fire, tornado, or any other source;
- (5) The placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain;
- (6) Relocation or alteration of a watercourse (including new or replacement culverts and bridges), unless a public waters work permit has been applied for; and
- (7) Any other type of development as defined in this chapter.

(B) *Minimum development standards.* All new construction and substantial improvements must be:

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

(C) *Flood capacity.* Floodplain developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.

(D) 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.

(E) Critical facilities, as defined, are to be located so that the lowest floor is not less than two feet above the regional flood elevation, or the 500-year flood elevation, whichever is higher.

(Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.147 FLOODWAY DISTRICT (FW).**

(A) *Permitted uses.* The following uses, subject to the standards set forth in §152.147(B) are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:

- (1) General farming, pasture, grazing, farm fences, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting;
- (2) Industrial-commercial loading areas, parking areas, and airport landing strips;
- (3) Open space uses, including, but not limited to, 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, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails;
- (4) Residential yards, lawns, gardens, parking areas, and play areas; and
- (5) Railroads, streets, bridges, utility transmission lines and pipelines, provided that the Department of Natural Resources' Area Hydrologist is notified at least ten days prior to issuance of any permit.

(B) *Standards for floodway permitted uses.*

- (1) The use shall have a low flood damage potential.
- (2) The use shall not obstruct flood flows or involve structures, fill, obstructions, excavations or storage of materials or equipment. The use must not cause any increase in flood damages, nor any increase in flood elevations in areas where a floodway has been established, as certified by a registered professional engineer.
- (3) Any facility that will be used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.

(C) *Conditional uses.* The following uses may be allowed as conditional uses following the standards and procedures set forth in § 152.153 (D) and further subject to the standards set forth in division (D) of this section, if otherwise allowed in the underlying zoning district.

- (1) Structures accessory to the primary uses listed in division (A) above and the primary uses listed below;

- (2) Grading, extraction, fill, and storage of soil, sand, gravel, and other materials;
- (3) Marinas, boat rentals, permanent docks, piers, wharves, water control structures, and navigational facilities;
- (4) Storage yards for equipment, machinery, or materials;
- (5) Fences that have the potential to obstruct flood flows;

(6) Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures and levees or dikes where the intent is to protect agricultural crops for a frequency flood event equal to or less than the ten-year frequency flood event.

(D) *Standards for floodway conditional uses.*

(1) A conditional use must not cause any increase in flood damages, nor any increase in flood elevations in areas where a floodway has been established, as certified by a registered professional engineer.

(2) Fill; storage of material and equipment.

(a) Fill, dredge spoil and all other similar materials deposited or stored in the floodplain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method. Permanent sand and gravel operations and similar uses must be covered by a long-term site development plan.

(b) Temporary placement of fill, other materials, or equipment which would cause an increase to the stage of the 1% chance or regional flood may only be allowed after the County Board has approved 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.

(3) 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 M.S. § 103G.245, as it may be amended from time to time.

(4) A levee, dike or floodwall constructed in the floodway shall not cause an increase to the 1% chance or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.

(5) *Accessory structures.* Accessory structures, as identified in division (C)(1), may be permitted provided that:

(a) Accessory structures shall not be designed for human habitation.

(b) Accessory structures will have a low flood damage potential.

(c) 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.

(d) Accessory structures shall be elevated on fill or structurally dry flood proofed and watertight to the regulatory flood protection elevation. Certifications consistent with § 152.153(B)(2) shall be required.

(e) As an alternative, an accessory structure may be floodproofed in a way to accommodate internal flooding. To allow for the equalization of hydrostatic pressure, there shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one foot above grade. The openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding, have a net area of not less than one square inch for every square foot of enclosed area subject to flooding, and shall allow automatic entry and exit of floodwaters without human intervention. A floodproofing certificate consistent with § 152.153(B)(2) shall be required.

(Ord. 47, passed 7-23-02; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

**§ 152.148 FLOOD FRINGE DISTRICT (FF).**

(A) *Permitted uses.* Permitted uses shall be those uses of land or structures listed as permitted uses in the underlying zoning use district. If no pre-existing, underlying zoning use districts exist, then any residential or non residential structure or use of a structure or land shall be a permitted use provided the use does not constitute a public nuisance.

(B) *Standards for flood fringe permitted uses.*

(1) All structures, including accessory structures, must be elevated on fill so that the lowest floor, as defined, is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be no lower than one foot below the regulatory flood protection elevation and the fill shall extend at that elevation at least 15 feet beyond the outside limits of the structure erected thereon. Elevations must be certified by a registered professional engineer, land surveyor, or other qualified person designated by the community.

(2) *Accessory structures.* As an alternative to the fill requirements of § 154.148(B)(1), structures accessory to the uses identified in division (A) may be designed to accommodate the inundation of floodwaters, meeting the following provisions, as appropriate:

(a) The accessory structure constitutes a minimal investment and satisfies the development requirements in § 152.146(B).

(b) Any enclosed accessory structure shall not exceed 576 square feet in size, and only be used for parking and

storage. Any such structure shall be designed and certified by a registered professional engineer, or be designed in accordance with the following floodproofing standards: to allow for the equalization of hydrostatic pressure, there shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one foot above grade. The openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding, having a net area of not less than one square inch for every square foot of enclosed area subject to flooding, and shall allow automatic entry and exit of floodwaters without human intervention.

(3) The cumulative placement of fill or similar material on a parcel must not exceed 1,000 cubic yards, unless the fill is specifically intended to elevate a structure in accordance with division (B) of this section, or if allowed as a conditional use under division (C).

(4) All service utilities, including ductwork, must be elevated or watertight to prevent infiltration of floodwaters.

(5) All fill must be properly compacted and the slopes must be properly protected by the use of riprap, vegetative cover, or other acceptable method.

(6) All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation, or must have a flood warning/emergency evacuation plan acceptable to the Department.

(7) Accessory uses such as yards, railroad tracks, and parking lots may be at an elevation lower than the regulatory flood protection elevation. However, any facilities used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.

(8) Manufactured homes and recreational vehicles must meet the standards of §152.152 of this chapter.

(C) *Conditional uses.* The following uses may be allowed as conditional uses following the standards and procedures set forth in § 152.153 (D) and further subject to the standards set forth in division (B), if otherwise allowed in the underlying zoning district(s).

(1) The placement of floodproofed nonresidential basements below the regulatory flood protection elevation. Residential basements are not allowed below the regulatory flood protection elevation.

(2) The cumulative placement of more than 1,000 cubic yards of fill when the fill is not being used to elevate a structure in accordance with division (B)(1).

(3) The use of methods other than fill to elevate structures above the regulatory flood protection elevation. This includes the use of stilts, pilings, filled stem walls, or above-grade, internally flooded enclosed areas such as crawl spaces or tuck under garages, meeting the standards in division (D)(4).

(D) *Standards for flood fringe conditional uses.*

(1) The standards for permitted uses in the flood fringe, listed in divisions (B)(4) through (8) apply to all conditional uses.

(2) All areas of nonresidential structures, including basements, to be placed below the regulatory flood protection elevation must be structurally dry floodproofed, which requires making the structure watertight with the walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A floodproofing certification consistent with § 152.153(B)(2) shall be required.

(3) The placement of more than 1,000 cubic yards of fill or other similar material on a parcel (other than for the purpose of elevating a structure to the regulatory flood protection elevation) must comply with an approved erosion/sedimentation control plan.

(a) The plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the regional (1% chance) flood event.

(b) The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the County Board.

(c) The plan may incorporate alternative procedures for removal of the material from the floodplain if adequate flood warning time exists.

(4) (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. 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
3. It is used solely for parking of vehicles, building access or storage.

(b) The above-noted alternative elevation methods are subject to the following additional standards:

1. Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood include a minimum of two openings on at least two sides of the structure. The bottom of all openings shall be no higher than one foot above grade, and have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice.

2. Floodproofing certifications consistent with § 152.153(B)(2) shall be required. The structure shall be subject to a deed-restricted non-conversion agreement with the issuance of any permit.

(Ord. 47, passed 7-23-02; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.149 GENERAL FLOODPLAIN DISTRICT (GF).**

(A) *Permissible uses.*

(1) The uses listed in § 152.147(A) shall be permitted uses, Floodway District uses are permitted uses.

(2) All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to division (B) below. Section 152.147 shall apply if the proposed use is in the Floodway District and §152.148 shall apply if the proposed use is determined to be in the Flood Fringe District.

(B) *Procedures for determining floodway boundaries and regional flood elevations.*

(1) *Detailed study.* Developments greater than 50 lots or five acres, or as requested by the Zoning Administrator, shall be subject to a detailed study to determine the regulatory flood protection elevation and the limits of the Floodway District. The determination of the floodway and flood fringe must be consistent with accepted hydrological and hydraulic engineering standards, and must include the following components, as applicable:

(a) Estimate the peak discharge of the regional (1% chance) flood;

(b) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas;

(c) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than one-half-foot. A lesser stage increase than one-half-foot shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries, unless development or geographic features warrant other analysis, as approved by the Department of Natural Resources.

(2) *Alternative methods.* Provided no detailed study is available, an applicant must identify a base flood elevation, at minimum, to determine the boundaries of the special flood hazard area. The applicant shall obtain and utilize best available data to determine the regional flood elevation and floodway boundaries from a state, federal, or other source. If no such data exists, the applicant may determine the base flood elevation and floodway limits through other accepted engineering practices. Any such method shall assume a one-half-foot stage increase to accommodate for future floodway determination.

(3) The Zoning Administrator will 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 an 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.

(4) Once the Floodway and Flood Fringe District boundaries have been determined, the Zoning Administrator must process the permit application consistent with the applicable provisions of §§ 152.147 and 152.148.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.150 SUBDIVISION STANDARDS.**

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

(A) All lots within the floodplain districts must be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation.

(B) All subdivisions must have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation, unless a flood warning emergency plan for the safe evacuation of all vehicles and people during the regional (1% chance) flood has been approved by the Department or County Board. The plan must be prepared by a registered engineer or other qualified individual, and must demonstrate that adequate time and personnel exist to carry out the evacuation.

(C) For all subdivisions in the Floodplain, the Floodway, and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads must be clearly labeled on all required subdivision drawings and platting documents.

(D) In the General Floodplain District, applicants must provide the information required in §152.149(B) to determine the regional flood elevation, the Floodway and Flood Fringe District boundaries, and the regulatory flood protection elevation for the subdivision site.

(E) Subdivision proposals must be reviewed to assure that:

(1) All such proposals are consistent with the need to minimize flood damage within the flood prone area;

(2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and

(3) Adequate drainage is provided to reduce exposure of flood hazard.

(Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.151 UTILITIES, RAILROADS, ROADS, AND BRIDGES.**

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

(B) *Public transportation facilities.* Railroad tracks, roads, and bridges to be located within the floodplain must comply with §§ 152.147 and 152.148. These transportation facilities must be elevated to the regulatory flood protection elevation where failure or interruption of these facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

(C) *On-site water supply and sewage treatment systems.* Where public utilities are not provided, on-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems, and are subject to the provisions in Minn. Rules Part 4725.4350, as amended; and new or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, they must not be subject to impairment or contamination during times of flooding, and are subject to the provisions in Minn. Rules Part 7080.2270, as amended.

(Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.152 MANUFACTURED HOMES AND RECREATIONAL CAMPING VEHICLES.**

(A) *Manufactured homes.* Manufactured homes and manufactured home parks are subject to applicable standards for each floodplain district. In addition:

(1) New and replacement manufactured homes must be elevated in compliance with Section §152.148 of this chapter and must be securely anchored to a system that resists flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

(2) New manufactured home parks and expansions to existing manufactured home parks must meet the appropriate standards for subdivisions in § 152.150. New or replacement manufactured homes in existing manufactured home parks must meet the vehicular access requirements for subdivisions in § 152.150(B).

(B) *Recreational camping vehicles.* New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any floodplain district. Recreational vehicles placed in existing recreational vehicle parks, campgrounds, or lots of record in the floodplain must either:

(1) Meet the requirements for manufactured homes in division (A); or

(2) Be travel ready, meeting the following criteria:

(a) The vehicle must have a current license required for highway use;

(b) The vehicle must be highway ready, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks;

(c) No permanent structural type additions may be attached to the vehicle; and

(d) Accessory structures may be permitted in the Flood Fringe District, provided that they constitute a minimal investment, do not hinder the removal of the vehicle should flooding occur, and meet the standards outlined in §§ 152.146(B) and 152.148(B).

(Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.153 ADMINISTRATION.**

(A) *Duties.* A Zoning Administrator or other official designated by the County Board must administer and enforce this subchapter.

(B) *Permit application requirements.*

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

- (a) A site plan showing all pertinent dimensions, existing or proposed buildings, structures, and significant natural features having an influence on the permit;
- (b) Location of fill or storage of materials in relation to the stream channel;
- (c) Copies of any required municipal, county, state, or federal permits or approvals; and
- (d) Other relevant information requested by the Zoning Administrator as necessary to properly evaluate the permit application.

(2) *Certification.* The applicant is required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this chapter. Floodproofing measures must be certified by a registered professional engineer or registered architect as being in compliance with applicable floodproofing standards in the State Building Code. Accessory structures designed in accordance with § 152.148(B) of this chapter are exempt from certification, provided sufficient assurances are documented. Any development in established floodways must not cause any increase in flood elevations or damages, as certified by a registered professional engineer.

(3) *Certificate of zoning compliance for a new, altered, or nonconforming use.* No building, land, or structure may be occupied or used in any manner until a certificate of zoning compliance has been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this subchapter.

(4) *Recordkeeping of certifications and as-built documentation.* The Zoning Administrator must maintain records in perpetuity documenting:

- (a) All certifications referenced in division (B) as applicable; and
- (b) Elevations complying with § 152.148(B)(1). The Zoning Administrator must also maintain a record of the elevation to which structures and alterations to structures are constructed or floodproofed.

(5) *Notifications for watercourse alterations.* Before authorizing any alteration or relocation of a river or stream, the Zoning Administrator must notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to M.S. § 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

(6) *Notification to FEMA when physical changes increase or decrease base flood elevations.* As soon as is practicable, but not later than six months after the date such supporting information becomes available, the Zoning Administrator must notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

(C) *Variances.*

(1) *Variance applications.* An application for a variance to the provisions of this chapter will be processed and reviewed in accordance with applicable state statutes and § 152.215 of this code.

(2) *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.

(3) *Additional variance criteria.* The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

- (a) Variances must not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;
- (b) Variances may only be issued by a community upon:
  - 1. A showing of good and sufficient cause;
  - 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - 3. 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/codes;

(c) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) *Flood insurance notice.* The Zoning Administrator must notify the applicant for a variance that:

- (a) 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
- (b) Such construction below the base or regional flood level increases risks to life and property. Such notification

must be maintained with a record of all variance actions.

(5) *General considerations.* The community may consider the following factors in granting variances and imposing conditions on variances and conditional uses in floodplains:

- (a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments;
- (b) The danger that materials may be swept onto other lands or downstream to the injury of others;
- (c) The proposed water supply and sanitation systems, if any, and the ability of these systems to minimize the potential for disease, contamination, and unsanitary conditions;
- (d) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner;
- (e) The importance of the services to be provided by the proposed use to the community;
- (f) The requirements of the facility for a waterfront location;
- (g) The availability of viable alternative locations for the proposed use that are not subject to flooding;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (i) The relationship of the proposed use to the comprehensive land use plan and floodplain management program for the area;
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles; and
- (k) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

(6) *Submittal of hearing notices to the Department of Natural Resources (DNR).* The Department must submit hearing notices for proposed variances to the DNR sufficiently in advance to provide at least ten days' notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

(7) *Submittal of final decisions to the DNR.* A copy of all decisions granting variances must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

(8) *Recordkeeping.* The Zoning Administrator must maintain a record of all variance actions, including justification for their issuance, and must report such variances in an annual or biennial report to the Administrator of the National Flood Insurance Program, when requested by the Federal Emergency Management Agency.

(D) *Conditional uses.*

(1) *Administrative review.* An application for a conditional use permit under the provisions of this chapter will be processed and reviewed in accordance with § 152.245.

(2) *Factors used in decision making.* In passing upon conditional use applications, the County Board must consider all relevant factors specified in other sections of this chapter, and those factors identified in division (C)(5).

(3) *Conditions attached to conditional use permits.* In addition to the standards identified in §§152.147(D) and 152.148(D), the County Board may attach such conditions to the granting of 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:

- (a) Limitations on period of use, occupancy, and operation;
- (b) Imposition of operational controls, sureties, and deed restrictions; and
- (c) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.

(4) *Submittal of hearing notices to the Department of Natural Resources (DNR).* The Department must submit hearing notices for proposed conditional uses to the DNR sufficiently in advance to provide at least ten days' notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

(5) *Submittal of final decisions to the DNR.* A copy of all decisions granting conditional uses must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR Area Hydrologist.

(Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

## **§ 152.154 NONCONFORMITIES.**

*Continuance of nonconformities.* A use, structure, or occupancy of land which was lawful before the passage or amendment of this subchapter but which is not in conformity with the provisions of this subchapter may be continued subject to the following conditions. Historic structures, as defined in § 152.010, are subject to the provisions below.

(A) A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its flood damage potential or degree of obstruction to flood flows except as provided in division (B) below. Expansion or enlargement of uses, structures, or occupancies within the Floodway District is prohibited.

(B) Any addition or structural alteration to a nonconforming structure or nonconforming use that would result in increasing its flood damage potential must be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (for example, FP1 through FP4 floodproofing classifications) allowable in the State Building Code, except as further restricted in division (D) below.

(C) If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this subchapter.

(D) If any structure experiences a substantial improvement as defined in this chapter, then the entire structure must meet the standards of §§ 152.147 or 152.148 for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively. If the current proposal, including maintenance and repair during the previous 365 days, plus the costs of any previous alterations and additions since the first Flood Insurance Rate Map exceeds 50% of the market value of any nonconforming structure, the entire structure must meet the standards of §§ 152.147 or 152.148.

(E) If any nonconformity is substantially damaged as defined in this chapter, it may not be reconstructed except in conformity with the provisions of this chapter. The applicable provisions for establishing new uses or new structures in §§ 152.147 or 152.148 will apply depending upon whether the use or structure is in the Floodway or Flood Fringe, respectively.

(F) If any nonconforming use or structure experiences a repetitive loss, as defined in §152.010, it must not be reconstructed except in conformity with the provisions of this subchapter.

(Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.155 VIOLATIONS AND PENALTIES.**

(A) *Violation constitutes a misdemeanor.* Violation of the provisions of this subchapter or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) constitute a misdemeanor and will be punishable as defined by law.

(B) *Other lawful action.* Nothing in this subchapter restricts the county from taking such other lawful action as is necessary to prevent or remedy any violation. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses will constitute an additional violation of this subchapter and will be prosecuted accordingly.

(C) *Enforcement.* Violations of the provisions of this subchapter will be investigated and resolved in accordance with the provisions of § 152.999. In responding to a suspected subchapter violation, the Zoning Administrator and County Board 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 county must act in good faith to enforce these official controls and to correct subchapter violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

(Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.156 AMENDMENTS.**

(A) *Floodplain designation: restrictions on removal.* The floodplain designation on the official zoning map must not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Department of Natural Resources (DNR) if it is determined that, through other measures, lands are adequately protected for the intended use.

(B) *Amendments require DNR approval.* All amendments to this subchapter must be submitted to and approved by the Department of Natural Resources (DNR) prior to adoption.

(C) *Map revisions require ordinance/Zoning Code amendments.* The floodplain district regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in § 152.006 of this chapter.

(Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

## **TRANSITION AREA OVERLAY ZONE**

### **§ 152.160 PURPOSE.**

The purpose of this overlay zoning district is to implement the policies contained in the comprehensive plan regarding the use of land in the Transition Policy Areas.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.161 DESIGNATION.**



The provisions of this section shall apply to those lands identified as Transition Area on the Carver County Policy Areas Map in the comprehensive plan.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

### § 152.162 GENERAL PROVISIONS.

All land in the Transition Area Overlay Zone shall remain in the Agricultural Zoning District with the following restrictions and requirements:

(A) *Animal agriculture.* New animal agriculture operations of 30 animal units (AU) or more are prohibited. For the purpose of this section, a **NEW ANIMAL AGRICULTURE OPERATION** shall mean ten AU or more, as defined in the feedlot management regulations. Animal agriculture operations having 30 animal units or more, existing as of January 2, 2002, shall not be expanded such that there would be an increase in the number of AU documented by the operator's Feedlot Registration.

(B) *Residential density.* The residential density shall not exceed one dwelling unit per quarter-quarter section (1 per 40). "1 per 40, 1 per ¼-¼" building eligibilities and "lot of record" building eligibilities shall be determined, assigned and managed in accordance with the provisions of this chapter.

(1) Conditional use permits allowing up to four dwellings per ¼ ¼ section are allowed provided they are compatible with the density option chosen by the township in their chapter of the Carver County Comprehensive Plan, any current orderly annexation agreement, and the annexing city's future land use for the site.

(2) The transferring of eligibilities to parcels within the County's Transition Area Overlay Zone, pursuant to the comprehensive plan, shall not be permitted. The transferring of eligibilities within a transition area would be permitted if the request conforms to the annexing city's future land use for the site. Once the paperwork is submitted by the annexing city to the Administrative Law Judge, the subject parcel(s) are prohibited from sending or receiving building eligibilities.

(C) *Administrative permits.* Applications or requests for accessory uses and structures requiring an administrative special use permit shall be referred to an appropriate municipal official for review and comment before the permit is approved or denied by the Department.

(D) *Conditional use permits.* Applications or requests for conditional uses shall be referred to an appropriate municipal official for comment and consideration as early on as possible, at a minimum, prior to the public hearing. Conditional uses provided for in the Agriculture District should not be permitted in transition areas if they are a significant departure from the future land use in the city's comprehensive plan and the use is of a nature that it could not easily and economically be converted to the planned land use upon urbanization.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

## RESIDENTIAL CLUSTER DISTRICT

### § 152.175 PURPOSES OF THE DISTRICT.

The implementation of the provisions of a previous comprehensive plan and zoning ordinance resulted in the rezoning of several parcels of land to the Residential Cluster District. The current plan and this chapter no longer provide for rezoning to this district. The provisions in these sections are intended to keep in place the ongoing provisions of the previous District regulations.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### § 152.176 GENERAL PROVISIONS.

(A) *Application.* These provisions apply to those areas that were rezoned to the Residential Cluster District prior to January 1, 2000.

(B) *Rezoning.* No additional land shall be rezoned to this district.

(C) *Conditional use permits.* All provisions of conditional use permits issued as a result of previous rezoning to the Residential Cluster District shall remain in effect.

(D) *Preliminary plat, final plat.* All approvals, conditions, designation of buildable areas, approval of building lots occurring in the preliminary/final platting process under the previous district regulations shall remain in effect.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### § 152.177 AGRICULTURAL AREA REGULATIONS.

The following regulations apply to those areas designated as agricultural area in a Residential Cluster District approved under the previous regulations:

(A) *Permitted uses.*

(1) Single-family residences as provided in the conditional use permit and stipulated in the covenants;

(2) Agriculture as provided in the "A" District.

(B) *Conditional and interim uses.* The following conditional and interim use permits as provided in the "A" District are permitted conditional or interim use permits in the agricultural area provided they are not prohibited by the conditional use permit that was issued for the residential cluster: §§ 152.050, 152.077, 152.079, 152.082. No other conditional or interim use permits are permitted.

(C) *Accessory uses.* Uses accessory to agriculture including roadside stand or to any conditional use permit provided for above. If a single-family home is permitted in the area the following as provided in §§ 152.073 and 152.074.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.178 RESIDENTIAL AREA REGULATIONS.**

The following regulations apply to those areas designated as residential area in a Residential Cluster District approved under the previous regulations:

(A) Permitted uses: Single-family home.

(B) Conditional uses: None.

(C) Accessory uses:

(1) *Accessory storage structures and garages.* These structures shall be used only by the occupants of the residence. The structures may be used for: storage of household goods, recreational vehicles and equipment, personal vehicles, maintenance and repair of personal vehicles and equipment; a shop or similar activity for hobby (no products or services for sale or pay or similar remuneration); keeping of animals and appurtenant equipment and supplies; and as otherwise regulated by this chapter. A total square footage of 2,000 square feet is permitted in a combination of a garage and one accessory structure. No single structure shall exceed 1,250 square feet in area. The maximum sidewall height shall be 12 feet and the total height from the average grade shall not exceed 17 feet. The roof and exterior shall be of the same or similar materials as the home.

(2) The following accessory uses as provided in §152.073(C) through (H), (J), (K), (L), (O), (P), (Q), §152.074(B)(3), (4), (5), and (9)(b).

(D) *Keeping of animals.* The keeping of animals, with the exception of dogs, cats and similar animals kept as household pets, is prohibited on any lot in the residential area.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.179 LOT, YARD, ACCESS, AND HEIGHT REGULATIONS.**

Except as modified by the provisions of this section, the requirements shall be those stated in §§152.033, 152.034, 152.036, and 152.037.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **ADMINISTRATION AND ENFORCEMENT**

#### **§ 152.190 LAND MANAGEMENT DEPARTMENT; AUTHORITY/RESPONSIBILITY.**

(A) The Land Management Department, hereinafter called "Department", is responsible to the County Board for the administration and enforcement of this chapter. The Department may delegate administrative responsibility and authority to town boards, in certain instances specified herein.

(B) The Department is authorized to perform the following functions:

(1) Administer and enforce this chapter, including making such rulings, approvals or denials, and issuing such orders as necessary to administer and enforce this chapter;

(2) Receive, file and forward all applications for appeals, amendments, variances, conditional uses, interim uses, or other matters to the designated official bodies. Receive, process, and issue permits as authorized by this chapter;

(3) Conduct inspections of land, buildings, or structures at reasonable times, determine compliance with and enforce the provisions of this chapter;

(4) Institute in the name of the county any appropriate actions or proceedings to prevent, to restrain, to correct, or to abate a violation or threatened violation;

(5) Maintain permanent and current records of this chapter, including but not limited to maps, amendments, variances, conditional uses, administrative permits, building eligibilities including use and transfer thereof;

(6) *Shoreland standards.* For shoreland standards, see the Shoreland Overlay District regulations in §§152.108 through 152.135;

(7) *Floodplain standards.* For floodplain standards, see the Floodplain Overlay District regulations in §§152.143 through 152.156;

- (8) Perform any other administrative functions required or suggested by the provisions of this chapter; and
- (9) Provide and maintain a public information bureau relative to matters arising out of this chapter.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.191 CERTIFICATION OF ZONING COMPLIANCE.**

(A) Definition and purpose. Certification of zoning compliance shall consist of the issuance, by the Department, of the various permits, certificates, orders, exemptions, and/or variances pursuant to this chapter. Zoning compliance shall be evidenced by the written authorization of compliance in a form and format as determined and provided by the Department. In cases where a building permit is required by the State Building Code, the issuance of the permit shall be considered certification of zoning compliance authorizing commencement of construction; final compliance with the code and this chapter shall be evidenced by the final inspection or the certificate of occupancy if the certificate is issued.

(B) Unlawful use of certification. It is unlawful to use, occupy or allow the use for occupancy of any building or premises or both or part therefore hereafter created, erected, changed, converted or wholly or partially altered or enlarged in its use or structure until certification of zoning compliance shall have been approved and/or issued in accordance with a form and format specified by the Department.

(C) Certification of zoning compliance shall be required for the following:

(1) Any structure subject to the State Building Code;

(2) Any structure or land use specifically requiring an administrative permit, certificate of zoning compliance, conditional use permit or any other type of certification by the Department;

(3) The Department may provide certification of zoning compliance for those structures and/or land uses that do not typically require certification. This provision applies only when requested by a landowner for his or her own property.

(D) Certification of zoning compliance shall not be required for the following:

(1) Permitted uses not subject to State Building Code or any other approval by the Department;

(2) Permitted accessory uses not subject to State Building Code or any other approval by the Department;

(3) General agricultural use of land, except structures and feedlots;

(4) Public road projects. Road construction, reconstruction, maintenance and temporary uses within a public right-of-way or an appropriate easement by a township, city, county, the state or persons engaged in a construction project related to public transportation for a township, city, county, or the state.

(E) Town board authorization. The Department may delegate to town boards the ability to issue certificates of zoning compliance for agricultural structures. The Department shall retain authority to issue the final approval of certification pursuant to this provision.

(F) Township land use permits, which were authorized and issued pursuant to ordinances and/or regulations adopted in accordance with M.S. Chapter 462, may be recognized as permitted land uses pursuant to this chapter if approved by the County Board.

(Ord. 47, passed 7-23-02; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 97-2021, passed 7-20-21)

### **BOARD OF ADJUSTMENT**

#### **§ 152.210 CREATION.**

The Board of Adjustment is hereby established and invested with the authority as is hereinafter provided and as provided by M.S. §§ 394.21 through 394.37, as they may be amended from time to time.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.211 MEMBERSHIP.**

(A) The members of the Board of Adjustment shall be appointed by the Board of County Commissioners. There shall be at least one member from the unincorporated areas of the county. Any elected officer of the county or employee of the County Board shall be excluded from membership on the Board of Adjustment.

(B) Number. The Board of Adjustment shall consist of seven members of which one member shall be a member of the County Planning Commission whose term shall coincide with the term he or she has on the County Planning Commission.

(C) Terms. Terms of the members of the Board of Adjustment, except for the Planning Commission member, shall be staggered three-year terms.

(D) Compensation. The members of the Board of Adjustment shall serve with compensation as the County Board may from time to time establish including payment of expense necessary to conduct the business of the Board.

(E) Conflict of interest. Any question of when a particular issue involves a conflict of interest is sufficient to disqualify a regular Board member from voting thereon shall be decided by a majority vote of all Board members except the member who is being challenged.

(F) Removal. The County Board of Commissioners may remove any members of the Board of Adjustment for nonperformance of duty or misconduct in office and may fill vacancies for any unexpired term.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.212 ORGANIZATION.**

(A) The Board of Adjustment shall elect a chairman and vice-chairman from its members and shall appoint a secretary who need not be a member of the Board. It shall adopt rules for the transactions of its business and the rules may include provisions for the giving of oaths.

(B) The meetings of the Board of Adjustment shall be held at the call of the chairman and at other times as the Board in its rules of procedure may specify.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.213 AUTHORITY POWER OF VARIANCE AND APPEALS.**

The Board of Adjustment shall have the exclusive power to:

(A) Order the issuance of variances from the terms of any official control including restrictions placed on nonconformity;

(B) Hear and decide appeals from and review any order, requirement or decision or determination made by any administrative official charged with enforcing any ordinances adopted pursuant to the provisions of M.S. §§ 394.21 and 394.27, as they may be amended from time to time. Appeals may be taken by any person aggrieved or by any officer, department, board, municipality or other unit of government;

(C) Order the issuance of permits for buildings in the area designated for future public use on an official map;

(D) Perform other duties as required by the official controls.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.214 APPEALS.**

(A) *Filing.* The appeal shall be filed with the Department within 30 days of the action that is being appealed and shall include specifically the order, requirement, decision, or determination which is being appealed, the requested remedy, and shall state the reasons for appeal. The Department shall prepare a report and refer the appeal to the County Board of Adjustment for a decision. The appeal shall be heard at a public hearing by the Board of Adjustment. The Board shall give due notice thereof to the appellant and the officer from whom the appeal is taken and to the public.

(B) *Stay of action.* The filing of an appeal stays all proceeding and furtherance of the action appealed from unless the Board of Adjustment to whom the appeal is taken certifies that by reason of the facts stated in the certificate the stay would cause imminent peril to life or property.

(C) *Decision.* The Board of Adjustment may reverse or affirm wholly or partly or may modify the order, requirement, decision or determination appealed from and to that end shall have all of the powers of the officer from whom the appeal was taken and may direct issuance of the permit. The Board's decision shall be by the adoption of an order. The order shall include the findings of fact supporting the Board's decision. The Board shall not act on an appeal in such a fashion as to violate the comprehensive plan or violate any state or federal law or rule. The Board shall act in such time as required to comply with state law.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.215 VARIANCES.**

(A) Prior to submission of a variance application, the person applying for a variance shall submit a concept plan and meet with the Department to discuss the application. Through the pre-application, the Department may summarize the informational requirements and issues related to the specific variance request.

(B) *Application.* The person applying for a variance shall submit to the Department a completed variance application stating the practical difficulty present, and provide all other information required by the Department. The Department shall prepare a report and refer the application to the County Board of Adjustment for consideration.

(C) *Public hearing.* The Board of Adjustment shall hold a public hearing on the request pursuant to §152.285.

(D) *Grounds for variance.* The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall be granted in accordance with M.S. Chapter 394, as it may be amended from time to time, in cases where the applicant establishes that there is a practical difficulty in the way of carrying out the strict letter of any official control.

(1) A variance shall only be permitted when the following can be found as fact:

(a) The variance is in harmony with the general purpose and intent of the official control.

(b) The variance is consistent with the intent of the comprehensive plan.

(2) In addition, a variance may be granted when the applicant establishes a practical difficulty in complying with the official control. A practical difficulty is established when the following items are found as fact:

(a) The property owner proposes to use the property in a reasonable manner not permitted by an official control.

(b) The plight of the landowner is due to circumstances unique to the property, not created by the landowner.

(c) The variance will not alter the essential character of the locality.

(d) The practical difficulty includes more than economic considerations alone.

(E) In consideration of an after-the-fact variance request, and in addition to the criteria listed in §152.215(D), the Board of Adjustment shall take into consideration and weigh the following:

(1) Whether or not the applicant acted in good faith or attempted to comply with this chapter.

(2) Whether a substantial investment of money has been made.

(3) Whether the construction is fully completed.

(4) Whether there are similar structures or similarly situated structures in the area.

(5) Whether the benefit to the county is outweighed by the burden on the applicant, if the applicant is required to comply with this chapter.

(F) *Other provisions related to variances.*

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

(2) Inadequate access to direct sunlight for solar energy systems is considered a practical difficulty.

(3) Variances shall be granted for earth shelter construction as defined in M.S. § 216C.06, subd. 14, when in harmony with the official controls.

(4) The Board of Adjustment may impose conditions on the granting of any variance pursuant to §152.216(B).

(5) Granting of the variance shall not have the effect of violating a state or federal rule or law.

(6) *Floodplain standards.* A variance issued to property within the Floodplain Overlay District must meet the requirements set forth in §§ 152.143 through 152.156.

(7) *Shoreland Overlay District.* A variance issued to property within the Shoreland Overlay District must meet the requirements set forth in §§ 152.108 and 152.135.

(8) That the granting of the variance will not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

## **§ 152.216 DECISION.**

(A) *Order adopted.* The Board of Adjustment shall make its decision by the adoption of an order either approving or denying the variance or appeal. The Board of Adjustment shall adopt findings of fact supporting its order. The Board of Adjustment shall make its decision in compliance with M.S. § 15.99.

(B) *Conditions.* The Board of Adjustment may impose conditions on the granting of any variance. Conditions are to be directly related to the variance, bear a rough proportionality to the impact created by the variance, and shall be what the Board of Adjustment considers reasonable and necessary to protect the public health, safety and welfare.

(C) *Floodplain standards.* For floodplain standards, see the Floodplain Overlay District regulations in §§152.143 through 152.156.

(D) *Final notice to applicant.* The Department shall send written notice of the Board of Adjustment's action to the applicant.

(E) *File with Commissioner of Natural Resources.* A copy of any order issued by the Board of Adjustment for property within the Floodplain or Shoreland District shall be filed with the Commissioner of Natural Resources within ten days of issuance. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance shall 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.

(F) *Board decision final.* All decisions by the Board of Adjustment in granting variances or in hearing appeals from any

administrative order, requirement, decision or determination shall be final.

(G) *Appeal to District Court.* Any aggrieved person or persons, or any department, board or commission of the jurisdiction, or of the state shall have the right to appeal the decision to the Carver County District Court on questions of law and fact. The appeal shall be made within 30 days after receipt by the applicant of notice of the decision.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.217 EXPIRATION/EXTENSION OF VARIANCE.**

If the work, as permitted by the variance, is not completed within one year after the granting of the variance, then the variance shall become null and void, unless a request for extension of time in which to complete the work has been granted by the Board of Adjustment. In order to obtain an extension the applicant must file a written request with the Department at such time as the request can be placed on the Board of Adjustment agenda prior to the expiration of the variance. The request for extension shall state facts showing a good faith attempt to complete the work permitted in the variance. There shall be no charge for the filing of the request.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.218 REHEARING.**

An applicant cannot request the re-hearing of a variance request or appeal for a period of one year. An applicant may request the re-hearing of a request for a variance or an appeal that has been denied when substantial new information is obtained which is relevant to the issue. The Board of Adjustment shall then re-hear the issue at another duly called public hearing.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

### **PLANNING COMMISSION**

#### **§ 152.230 PLANNING COMMISSION ESTABLISHED.**

The Carver County Planning Commission is hereby established and invested with such authority as is hereinafter provided and as provided by M.S. §§ 394.21 through 394.37, as they may be amended from time to time.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.231 MEMBERSHIP.**

(A) The members of the Carver County Planning Commission shall be appointed by the County Board of Commissioners. At least two members shall be residents of the portion of the county outside the corporate limits of municipalities. One member shall be appointed in accordance with a recommendation by the town board chairs or designees as an "at-large" position. No more than one voting member of the Commission shall be an officer or employee of the county.

(B) Number. The Planning Commission shall consist of seven members. One of these members shall be a member of the County Board of Commissioners.

(C) Terms. The term of each member shall be for three years except the County Board member. The terms shall be staggered so that no more than two terms are filled at the beginning of each calendar year.

(D) Compensation. The members of the Commission may be compensated in an amount determined by the County Board and may be paid their necessary expenses in attending meetings of the Commission and in the conduct of business of the Commission.

(E) Qualifications. No voting member of the Planning Commission shall have received during the two years prior to appointment, any substantial portion of his or her income from business operations involving the development of land within Carver County for urban and urban related purposes.

(F) Ex officio member. The County Board may designate any county officer or employee as an ex officio member of the Commission.

(G) Vacancy. Should any vacancy occur among members of the Planning Commission by reason of death, resignation, disability or otherwise, immediate notice thereof shall be given to the Chairman of the County Board by the secretary of the Commission. Any filled vacancy shall be for the unexpired term.

(H) Conflict of interest. Any question of when a particular issue involves a conflict of interest is sufficient to disqualify a regular Commission member from voting thereon shall be decided by a majority vote of all members except the member who is being challenged.

(I) Removal. The County Board of Commissioners may remove any members of the Planning Commission for nonperformance of duty or misconduct in office and may fill vacancies for any unexpired term.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

## **§ 152.232 ORGANIZATION.**

The Planning Commission shall elect a chairman and secretary from among its members. It may also elect any other officers it deems necessary. The Commission may also appoint a person not a member of the Commission to take and keep minutes and be responsible for general clerical duties of the Commission.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

## **§ 152.233 MEETINGS.**

The Planning Commission shall meet on a regular basis as determined by the Commission. Special meetings may be held at the call of the chairman. Written notice of any special meeting shall be posted giving the date, time, place and purpose of the meeting at least three days before the meeting. Written notice shall be mailed at least three days before the meeting to anyone who has filed a written request for notice of special meetings. In calculating three days, if the last day falls on a Saturday, Sunday or legal holiday, the next regular business day shall be counted as the third day.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

## **§ 152.234 AUTHORITY AND DUTIES OF COMMISSION.**

(A) *Advisory body.* The Planning Commission shall act as an advisory body to the County Board. The Commission shall forward all findings and recommendations to the County Board within 60 days of its determination.

(B) *Duties.* The Planning Commission shall have authority to perform duties and any other duties and responsibilities as may be assigned by the County Board from time to time.

(1) *Comprehensive plan.* Cooperate with the County Planning staff in preparing and recommending to the Board for adoption of a comprehensive plan and amendments thereto.

(2) *Implementation.* Make recommendations for plan execution (implementation) in the form of official controls and other measures, and amendments thereto.

(3) *Conditional use permits and interim use permits.* Review all applications for conditional use permits, interim use permits, plans for subdivision, requests for amendment to official controls and submit findings and recommendations to the Board. Notwithstanding the other provisions of this chapter, the Planning Commission shall have the authority to order the issuance of conditional use permits for residential related uses and structures pursuant to § 152.077.

(4) *Public hearings.* Conduct public hearings on adoption or amendment to official controls, conditional use permits and subdivision applications.

(Ord. 47, passed 7-23-02; Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 97-2021, passed 7-20-21)

## **CONDITIONAL AND INTERIM USE PERMITS**

### **§ 152.245 APPLICATION.**

(A) Prior to submission of a CUP or IUP application, the person applying for a CUP or IUP shall submit a concept plan and meet with the Department to discuss the application. Through the pre-application, the Department may summarize the informational requirements and issues related to the specific CUP or IUP request. The person applying for a CUP or IUP shall submit an application to the Department. The applicant shall demonstrate compliance with the requirements for the CUP or IUP and shall include on the application all information required by the Department.

(B) *Floodplain standards.* For floodplain standards, see the Floodplain Overlay District regulations in §§152.143 through 152.156.

(C) When a request for a CUP or IUP is within the Shoreland Overlay District, the applicant must meet the requirements set forth in §§ 152.108 and 152.135.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.246 HEARING REQUIRED.**

The Planning Commission shall hold a public hearing in conformance with §152.285 on all applications for a CUP or IUP.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.247 CONSIDERATION OF ADVERSE EFFECTS.**

(A) The Planning Commission and staff shall consider possible adverse effects of the proposed conditional or interim use and what additional requirements may be necessary to reduce adverse effects.

(B) Its judgment shall be based upon (but not limited to) the following factors:

(1) Relationship to county plans;

- (2) The geographical area involved;
- (3) Whether such use is a permitted conditional or interim use within the zoning district;
- (4) The character of the surrounding area;
- (5) The demonstrated need for the use;
- (6) Whether the proposed use would cause undue odors, dust, flies, vermin, smoke, gas, noise or vibration or would impose hazards to life or property in the neighborhood;
- (7) Whether the use would inherently lead to or encourage disturbing influences in the neighborhood;
- (8) Whether stored equipment or materials would be screened and whether there would be continuous operation within the visible range of surrounding residences. The availability of other more suitable locations; and
- (9) The duration of the proposed interim use.

(C) When a request for a CUP or IUP is within the Shoreland Overlay District, the applicant must meet the requirements set forth in §§ 152.108 and 152.135.

(D) *Floodplain standards.* For floodplain standards, see the Floodplain Overlay District regulations in §§152.143 through 152.156.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.248 RECOMMENDATIONS FOR CONDITIONS.**

(A) The Planning Commission shall consider conditions relating to the granting of the CUP or IUP as it deems necessary to carry out the intent and purpose of this chapter or may recommend that the request be denied. Recommendation and any conditions shall be supported by written findings.

(B) The conditions may include, but are not limited to, the following:

- (1) Increasing the required lot size or yard dimension;
- (2) Limiting the height, size or location of the buildings;
- (3) Controlling the location and number of vehicle access points;
- (4) Increasing the street width;
- (5) Increasing the number of required off-street parking spaces;
- (6) Limiting the number, size, location or lighting of signs;
- (7) Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property;
- (8) Designating sites for open space;
- (9) Modification of waste disposal and water supply facilities;
- (10) Limitations on kinds of use and operation;
- (11) Imposition of operational controls, sureties, and deed restrictions;
- (12) Requirements for construction of channel modifications, dikes, levees, and other protective measures;
- (13) *Shoreland standards.* For shoreland standards, see the Shoreland Overlay District regulations in §§152.108 and 152.135;
- (14) *Floodplain standards.* For floodplain standards, see the Floodplain Overlay District regulations in §§152.143 through 152.156.

(Ord. 47, passed 7-23-02; Am. Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.249 TIME OF RECOMMENDATION; TRANSMITTAL TO BOARD.**

The Planning Commission shall make a recommendation to the County Board in a timeframe so as to comply with M.S. § 15.99, as it may be amended from time to time. Following the closing of the public hearing and formulation of the Planning Commission's recommendation, the Department shall report the findings and recommendations of the Planning Commission to the County Board.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.250 COUNTY BOARD ACTION.**

(A) The County Board shall take action on the CUP or IUP following receipt of the findings and recommendations by the



Planning Commission so as to comply with M.S. § 15.99, as it may be amended from time to time. Should the Planning Commission fail to provide findings and a recommendation in a timely manner, the Board shall take action so as to comply with M.S. § 15.99, as it may be amended from time to time.

(B) Decision on the permit application shall be by order of the Board ordering approval or denial of the permit. Approval shall consist of an order directing the Land Management Department to issue the permit and shall include any conditions placed on the permit. Denial shall be accomplished through the issuance of an order not to issue the CUP or IUP and deny the application. Orders to either approve or deny a permit application shall stipulate the appropriate findings of fact supporting the approval and if conditions in addition to those specifically required by this chapter are attached findings supporting the conditions shall be included.

(C) *Optional hearing.* The County Board shall have the option to set and hold a public hearing in accordance with § 152.285.

(D) *Conditions.* In ordering the issuance of a CUP or IUP, the County Board shall include any conditions required to attain the objectives of the comprehensive plan, comply with official controls, and protect the public interest. Such conditions may include requiring the applicant to provide a surety, and in the case of IUPs, setting a time limit for the use to exist or operate. When appropriate, restrictive covenants may be entered into regarding these matters.

(E) *Notice to applicant.* The Department shall send written notice of the County Board's action to the applicant. The permit shall become effective upon the date the applicant agrees to the conditions and signs the permit. Failure of the applicant to sign and return the permit within 90 days of the Board's issuance of the order shall be cause for cancellation of the permit.

(F) *Effect of denial.* Whenever an application for a CUP or IUP has been considered and denied by the County Board, a similar application for a CUP or IUP affecting substantially the same property shall not be considered again by the Planning Commission or County Board for at least six months from the date of its denial; and a subsequent application for the same land use shall likewise not be considered again by the Planning Commission or County Board for an additional six months from the date of the second denial unless a decision to reconsider the matter is made by not less than four-fifths vote of the County Board.

(G) *File with Commissioner of Natural Resources; floodplain standards.* For floodplain standards, see the Floodplain Overlay District regulations in §§ 152.143 through 152.156.

(H) *File with County Recorder.* A certified copy or original of any CUP or IUP shall be filed with the County Recorder. The CUP or IUP shall include the legal description of the property involved, owner's name and any conditions stipulated upon approval by the County Board.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.251 REQUIRED FINDINGS.**

An order for the issuance of a CUP or IUP can be adopted only if all of the following are found as fact. Any conditions imposed by the permit or actions required as part of the order shall be considered in making findings:

(A) The conditional or interim use is permitted as a permitted conditional or interim use within the zoning district, and meets all requirements of this chapter and any other county, regional, state, or federal laws, ordinances, rules or regulations.

(B) The conditional or interim use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted.

(C) The establishment of a conditional or interim use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

(D) The effects of the proposed use will not be detrimental to the health, safety and welfare of Carver County or to the occupants of the immediate neighborhood.

(E) That adequate utilities, access roads, drainage and other facilities have been or are being provided.

(F) That adequate measures have been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use if these measures are applicable.

(G) That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance if these measures are applicable.

(H) The use or development conforms to the County Comprehensive Plan.

(I) The use or development is compatible with the land uses in the neighborhood.

(J) A public hearing was held pursuant to §152.285 and M.S. § 394.26, as it may be amended from time to time.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.252 CONFORMITY REQUIRED, EXPIRATION EXTENSION, REVIEW, DURATION.**

(A) *Conformity with permit.* Any use permitted under the terms of any CUP or IUP shall be established and conducted in conformity with the terms of the permit and of any condition designated in connection therewith. Any deviation from the conditions or uses approved may be considered grounds for suspension or termination of the CUP or IUP by the County Board. The action shall occur by order of the County Board. The Board may call a public hearing prior to termination of a permit.

(B) *Expiration of CUP or IUP.* Unless significant work has been done within six months from the date of adoption of the Board order, the permit shall become null and void, unless a petition for extension of time in which to complete the work has been granted by the County Board. In cases where significant action clearly has not been taken to place a permit into effect and an extension has not been granted by the County Board, the Department shall, after appropriate investigation and 30-day written notice to the present property owner, file a notice of termination in the Office of the County Recorder. In cases where a use provided for by a CUP or IUP will no longer be conducted due to an irreversible change in circumstance or when the current owner of the property so requests, the Department shall, after a 30-day notice to the present property owner, file the appropriate termination documents in the Office of the County Recorder.

(C) *Request for extension.* A holder of a conditional or interim use may request an extension of the time to do significant work to place the permit into effect for up to one year. The request shall be in writing and shall be filed with the Department at least 30 days before the CUP or IUP is due to become null and void. The request for extension shall state facts showing a good faith attempt to do significant work toward meeting the specifications and conditions of the permit. The request shall be presented to the County Board for a decision.

(D) *Permit review.* Conditional or interim use permits may be reviewed on a periodic basis or when it is brought to the attention of the Department that the permittee is deviating from any conditions or uses approved for the CUP or IUP. Periodic permit review shall fall into one of the following classifications:

(1) *Administrative review.* The Department may conduct a site inspection, review current aerial photos, review current permit conditions, review complaint and database records, and/or request information from the landowner or permittee. The Department may also contact the affected township for input on the standing of the permit. All permits are subject to administrative review.

(2) *Compliance review.* The Department would typically conduct an annual site inspection; review the conditions of the permit to determine compliance status; contact the permit holder regarding associated insurance and/or surety documentation; and notify the affected township of the compliance review. Permits requiring any type of renewal under previous ordinances, or permits with a condition specifying the compliance review requirement shall fall into this classification.

(E) *Duration of permit.* A CUP shall remain in effect for so long as the conditions agreed upon are observed. At the time designated for the IUP to expire, the Department will conduct an inspection of the site. If the Department finds that the use is still compatible, and is not creating an adverse affect on the surrounding area, the applicant may apply for an extension. A reapplication for an IUP shall be administered in the same manner as the original IUP application.

(F) *New owner, permittee or operator.* A new landowner or individual assuming the role as permittee is required to contact the Department to review the conditions and current status of the CUP, and to determine whether there is a need for additional applications pertaining to amendments or additional permits.

(G) *Amendments.* Nothing in this section shall prevent the Board from enacting or amending official controls to change the status of conditional or interim uses.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

## **AMENDMENTS**

### **§ 152.265 AMENDMENT OF ZONING CODE.**

The provisions of this chapter may be amended by the Board of County Commissioners of Carver County.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.266 INITIATION OF AMENDMENT.**

A request for amendment, rezoning, extension or addition to the regulations of this chapter can be initiated by the following: a petition from a resident or residents or property owner or owners within the jurisdiction of this chapter; a recommendation of the Planning Commission; action by the County Board.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **§ 152.267 PRE-APPLICATION MEETING.**

An applicant for an amendment to the zoning code may request a meeting with the Planning Commission prior to making a formal application. The applicant should make available to the staff and the Planning Commission sufficient information to present a general idea of the proposal. The applicant may request that the meeting be placed on the Commission agenda any time before the agenda is mailed to the members of the Planning Commission.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

## **§ 152.268 APPLICATION.**

(A) An application for amendment or rezoning shall be filed with the Department and be accompanied with the filing fee as may be established by the County Board.

(B) Required information accompanying application to change the wording of this chapter shall contain the following:

- (1) Stated reason for change requested;
- (2) Statement of compatibility to the comprehensive plan;
- (3) Text of portion of the existing ordinance to be amended;

(4) Proposed amended text and statements outlining any other effects that the amendment may have on other areas of this chapter; and

(5) Additional information as may be requested by the Planning Commission or Department.

(C) Required information accompanying applications to change district boundaries shall contain the following:

(1) The names and addresses of the petitioner or petitioners and their signatures to the petition;

(2) A specific description of the area proposed to be rezoned, and the names and addresses of all owners of property within the area, and a description of the property owned by each;

(3) The present district classification of the area and the proposed district classification;

(4) Proposed use of land (a statement of the type, extent, area, and the like);

(5) Map and plot plan or survey;

(6) Compatibility with the comprehensive plan (a statement of conditions warranting changes in zoning);

(7) A legal description of the property to be rezoned;

(8) Map, plot plan or survey plot of property to be rezoned (showing location, dimensions, zoning of adjacent properties, existing uses and buildings of adjacent properties) within 500 feet in incorporated areas, and ½-mile in unincorporated areas and drawn to scale; and

(9) Additional information as may be requested by the Planning Commission or county staff.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

## **§ 152.269 HEARING REQUIRED.**

A public hearing shall be conducted as provided in §152.285.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

## **§ 152.270 FINDINGS OF FACT.**

Prior to submitting its recommendation to the County Board the Planning Commission shall support its recommendations by making findings of fact based on evidence from all sources.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

## **§ 152.271 TRANSMITTAL TO BOARD.**

(A) Following the closing of the public hearing and action by the Planning Commission, the Department shall forward the Planning Commission findings and recommendations on the proposed amendment or rezoning to the County Board.

(B) *Special conditions in floodplain; Floodplain standards.* For floodplain standards, see the Floodplain Overlay District regulations in §§ 152.143 through 152.156.

(Ord. 47, passed 7-23-02; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

## **§ 152.272 COUNTY BOARD ACTION.**

The following shall be the procedure for amending this chapter or rezoning:

(A) *Time for action.* The County Board shall take action on the proposed amendment following receipt of the recommendations by the Planning Commission so as to comply with M.S. § 15.99, as it may be amended from time to time. Should the Planning Commission fail to provide findings and a recommendation in a timely manner, the Board shall take action so as to comply with M.S. § 15.99, as it may be amended from time to time.

(B) *Findings of fact.* Before adopting an ordinance to amend the zoning code or denying the petition for amendment the Board shall examine the hearing record and any other relevant information or reports. The Board shall adopt a resolution stating its reasons for approval or denial. To approve an application the Board shall find as follows:

- (1) The amendment is in conformance with the comprehensive plan;
- (2) The amendment is not in conflict with any other official controls; and
- (3) The amendment will not be detrimental to the health, safety or general welfare.

(C) *Amendments to the chapter shall be adopted by ordinance.* Changes in district boundaries shall be by ordinance. Following passage of the ordinance, the Department shall make appropriate changes on the zoning map.

(D) *Notice to applicant.* The Department shall send written notice of the County Board action to the applicant.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.273 FILE WITH COMMISSIONER OF NATURAL RESOURCES.**

*Floodplain standards.* For floodplain standards, see the Floodplain Overlay District regulations in §§152.143 through 152.156.

(Ord. 47, passed 7-23-02; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.274 EFFECT OF DENIAL.**

In the event the proposed change in the zoning use district boundaries is denied by the County Board, no request for the same district change on the same property will be considered for at least one year.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### **PUBLIC HEARINGS**

#### **§ 152.285 PUBLIC HEARINGS.**

(A) A public hearing shall be held as required by M.S. § 394.26, as it may be amended from time to time. In addition to the notice requirements of M.S. § 394.26, as it may be amended from time to time, notice shall be given to the Commissioner of the Department of Natural Resources if the affected property is within the Floodplain or Shoreland District.

(B) *Floodplain standards.* For floodplain standards, see the Floodplain Overlay District regulations in §§152.143 through 152.156.

(Ord. 47, passed 7-23-02; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.286 NOTICE REQUIREMENTS.**

(A) Public notice shall be given as required in M.S. § 375.51 and M.S. § 394.26, as they may be amended from time to time. If an affected property is in the Shoreland or Floodplain Districts, the Commissioner of the Department of Natural Resources shall also be given notice.

(B) *Floodplain standards.* For floodplain standards, see the Floodplain Overlay District regulations in §§152.143 through 152.156.

(Ord. 47, passed 7-23-02; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.287 PROPERTY OWNER RECORDS.**

For the purpose of giving mailed notice, the person responsible for mailing the notice shall use the latest list of property owners available in the county GIS system. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the records of the proceedings.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.288 FAILURE TO GIVE NOTICE.**

The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this subchapter has been made.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.289 APPLICANT TO APPEAR.**

The applicant or representative thereof must appear before the body holding the hearing in order to answer questions concerning their request.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

#### **§ 152.290 ADDITIONAL INFORMATION.**

The body holding the hearing and county staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning

operational factors, the information to be declared necessary to establish performance conditions in relation to all pertinent sections of this chapter.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### § 152.291 ENVIRONMENTAL CONCERN.

The applicant for a conditional use permit or variance which, in the opinion of the body holding the hearing, may result in a material adverse effect on the environment may be requested by the body to demonstrate the nature and extent of the effect.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

### § 152.999 PENALTY.

(A) *Enforcement.* The Department is authorized to administer and enforce this chapter. In the event of a violation or threatened violation of this chapter, the Department, County Board or any member thereof may institute appropriate actions or proceedings to prevent, restrain, correct, or abate the violations or threatened violations and it shall be the duty of the County Attorney to institute the action.

(B) *Violation a misdemeanor.* Except where separately provided for in this chapter or in state statute or rule, 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, interim or conditional uses, administrative permits, certificates of zoning compliance, certificates of nonconformance, County Board or Board of Adjustment order, or other certificates or permits issued pursuant to the provisions of this chapter, shall constitute a misdemeanor and shall be punishable as defined by law. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

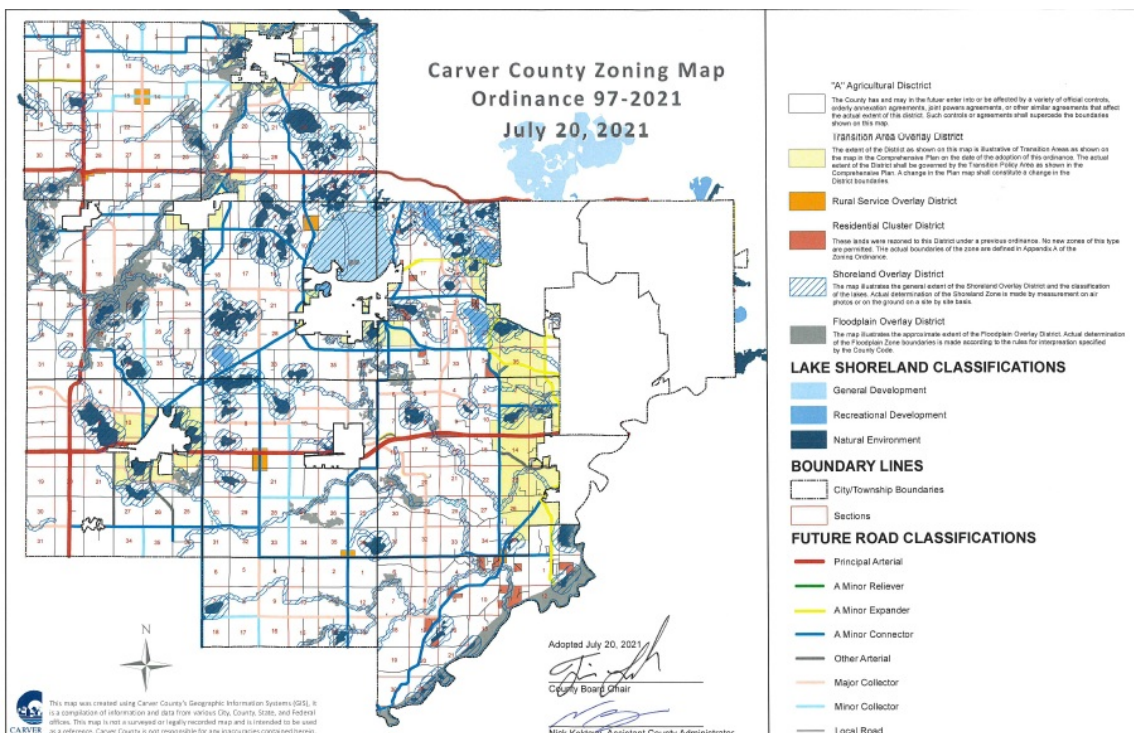
(C) *Remedies.* In responding to a suspected chapter violation, the county may utilize the full array of enforcement actions available to it including, but not limited to prosecution and fines, after-the-fact permits, stop work orders, notice of violation, orders for corrective measures, or if the property is in the Floodplain Overlay District, a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The county may institute appropriate actions or proceedings, including injunctive relief to prevent, restrain, correct or abate the violations or threatened violations. The county may recover costs incurred for corrective action in a civil action in any court of competent jurisdiction or, at the discretion of the County Board, the costs may be certified to the County Auditor as a special tax against the real property.

(D) *Fines.* All fines for violation shall be paid to the county and shall be credited to the general revenue fund.

(E) *Mandamus.* Any taxpayer or taxpayers of the county may institute mandamus proceedings in District Court to compel specific performances by the proper official or officials of any duty required by this chapter.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

## APPENDIX: ZONING MAP



## CHAPTER 153: WATER RESOURCE MANAGEMENT

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### Section

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### **GENERAL PROVISIONS**

#### **§ 153.01 DISCLAIMER, INTERPRETATION AND OTHER GENERAL PROVISIONS.**

(A) *Disclaimer.* This chapter does not imply that areas within or outside of the CCWMO will be free from water related damages. This chapter does not create liability on the part of the county or its officers or employees for water related damage that may result from reliance on this chapter or any administrative decisions made under it.

(B) *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.

(C) *Supremacy.* This chapter is not intended to abrogate any easements, restrictions, or covenants, relating to the use of land or imposed on lands within the community by private declaration or agreement, but where the provisions of this chapter are more restrictive than any such easement, restriction, or covenant, or the provision of any private agreement, the provisions of this chapter shall prevail.

(D) *Liability.* The responsible party is responsible for safely and legally completing the project. Neither the issuance of approval under the provisions of this chapter nor the compliance with the provisions hereto or with any condition imposed by the issuing authority, shall relieve any person from responsibility for damage to persons or property resulting therefrom, or as otherwise imposed by law, nor impose any liability upon the county for damages to persons or property.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

## § 153.02 DEFINITIONS.

(A) Definitions as set forth in Appendix B of the Minnesota Permit R100001 (the General Permit Authorization to Discharge Storm Water Associated With Construction Activity Under The National Pollutant Discharge Elimination System) as amended from time to time which are hereby adopted and incorporated by reference.

(B) 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 to give this chapter its most reasonable application. The following words and terms, whenever they occur in this chapter are defined as follows:

**ADDITIONS.** A land altering activity where new impervious surface is being added over green space in an area where some impervious surface already exists.

**APPLICATION.** A completed application for activities regulated by this permit.

**ATLAS 14.** National Oceanic and Atmospheric Administration's (NOAA) precipitation event frequency and magnitude estimates.

**BEST MANAGEMENT PRACTICE (BMP).** A structural or non-structural method used to treat runoff, including methods such as ponding or infiltration or filtration through a rain garden.

**BIORETENTION.** The process of capturing stormwater runoff, holding it, and removing suspended particles from the runoff via plant uptake and by passing it through a porous media. Also see **FILTRATION**.

**BLUFF.** A topographic feature such as a hill, cliff, or embankment in which the average grade of any portion of the slope is 25% or greater and there is at least a 25-foot rise in elevation.

**BLUFF TOP.** The top of a bluff is a point on the upper part of a bluff where the average slope levels off to 18% or less.

**CCWMO.** Carver County Water Management Organization.

**COMPENSATORY STORAGE.** The replacement of floodplain storage lost by placement of fill below the 100-year flood elevation. Measured by the volume of material excavated below the floodplain elevation that is required to offset floodplain fill.

**CONSTRUCTION ACTIVITY.** A disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling, and excavating.

**COUNTY.** Shall refer to Carver County as the water management authority within the CCWMO.

**DISCHARGE.** The conveyance, channeling, runoff, or drainage of stormwater, including snow melt, from a construction site.

**DOWNSTREAM CAPACITY.** The ability of the natural and structural conveyance system to accommodate additional flows from the site discharge points to the nearest receiving major waterbody without causing nuisance conditions or flooding. This includes capacity of the conveyance system to accommodate additional rates, volumes, velocities and duration of flow.

**DOWNSTREAM FACILITY.** A constructed/altered water body created specifically for the purpose of treating stormwater runoff which may be located off the project site and would receive runoff from the project site.

**EMERGENCY WORK.** Work needed to protect life, limb, and property.

**EROSION.** The wearing away of soil by rainfall, surface water runoff, wind, or ice movement.

**EROSION CONTROL.** Methods employed to prevent erosion. Examples include, but are not limited to soil stabilization practices, horizontal slope grading, temporary or permanent cover, and construction phasing.

**EXISTING CONDITIONS.** The condition of a site (amount of impervious, soil condition, topography, vegetative cover, etc.) prior to the start of a land altering activity.

**FEEDLOT.** Refer to the county feedlot regulations.

**FILL.** The deposit of soil or other earth materials by artificial means.

**FILTRATION.** The process of capturing stormwater runoff, holding it, and removing suspended particles from the runoff by passing it through porous media. Also see **BIORETENTION**.

**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.

**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.

**FLOODWAY.** The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which are reasonably required to carry or store the regional flood discharge.

**HIGH WATER LEVEL (HWL).** The calculated peak elevation of a water body for the greater of the 100-year, 24-hour rainfall or 100-year, ten-day snowmelt event.

**IMPERVIOUS.** A constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.

**INFILTRATION AREAS.** A stormwater runoff impoundment designed to capture stormwater runoff volume, hold this volume and infiltrate it into subsurface soil.

**LAND ALTERING ACTIVITY.** Projects, permits or other activities which result in construction activity.

**LINEAR TRANSPORTATION PROJECT.** Construction of a new road, trail, utility, or sidewalk or reconstruction of an existing road, trail, utility, or sidewalk. May include an increase in the area of impervious surface.

**LOCAL GOVERNMENT UNIT, LGU or LOCAL UNIT.** Has the meaning given it in M.S. §473.852, as it may be amended from time to time.

**MAJOR WATERBODY.** See **PROTECTED WATERS AND WATERWAYS.**

**MAJOR SUBWATERSHED.** Major watersheds within the Carver County Watershed Management Organization are defined as the drainage areas for the following waterbodies: Bevens Creek, Carver Creek, East Chaska Creek, West Chaska Creek, and the South Fork of the Crow River.

**MILL AND OVERLAY.** A street maintenance technique that removes the top layer (typically 1-3 inches) of a street by the grinding action of a large milling machine. After the top layer is removed, a new layer of bituminous pavement is put in its place. Underlying base, subbase, and subgrade are not disturbed.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4).** A conveyance or system of conveyances (roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, storm drains, etc.) that is also:

(a) Owned or operated by a public entity (which can include cities, townships, counties, military bases, hospitals, prison complexes, highway departments, universities, etc.) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the Clean Water Act that discharges to waters of the United States;

(b) Designed or used for collecting or conveying stormwater;

(c) Which is not a combined sewer; and

(d) Which is not part of a publicly owned treatment works.

**NEW CONSTRUCTION.** A land altering activity that creates impervious surface in an area where prior to the activity there was minimal or no impervious surface.

**NEW DEVELOPMENT.** A land altering activity that creates impervious surface in an area where there was minimal or no impervious surface.

**NEW ROAD CONSTRUCTION.** Construction of a new road that creates impervious surface in an area where there was minimal or no impervious surface.

**NORMAL WATER LEVEL (NWL).** The elevation of water at its fixed outlet elevation

**PAVEMENT RECLAMATION.** A street maintenance technique that consists of uniformly crushing, pulverizing and re-mixing the pavement section of a road along with a small portion of the underlying base material and relaying it in one operation. The existing subgrade and the large majority of the subbase are left undisturbed.

**PAVEMENT REHABILITATION.** A street maintenance technique that consists of structural enhancements that extend the service life of an existing pavement and/or improve its load carrying capacity. Rehabilitation techniques include restoration treatments and structural overlays but do not typically involve major corrections to base or subbase.

**PERVIOUS.** A surface that is readily penetrated or permeated by rainfall or runoff resulting in infiltration and reduced runoff.

**POND.** A graded area which collects and stores water.

**PRETREATMENT.** Sediment removal designed to capture or trap coarse sediments to preserve storage, prevent clogging and extend the life of facilities. Pretreatment may include but is not limited to vegetated filter strips, small sedimentation basins, forebays, and grit chambers.

**PROPERTY OWNER.** The person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease holder, the party or individual identified as the lease holder; or the contracting government agency responsible for the construction activity.

**PROTECTED WATERS AND WATERWAYS.** Water bodies or watercourses so identified on the Public Waters



Wetlands Inventory Map published by the Department of Natural Resources, State of Minnesota or watercourses determined by the county to have a watershed of two square miles or more.

**PUBLIC WATER.** See **PROTECTED WATERS AND WATERWAYS**.

**RECEIVING WATERBODY.** A body of water such as a stream, river, lake, or wetland which receives stormwater.

**REDEVELOPMENT.** A land altering activity that creates new or replaces existing impervious surface on a parcel that is fully or partially occupied by buildings and/or other impervious surface.

**RESPONSIBLE PARTY.** The property owner or his or her agent.

**RIGHT-OF-WAY (R-O-W).** A strip of land acquired by reservation, dedication, prescription, or condemnation and intended to be occupied or used by a road, street, trail, water line, sewer line, electrical transmission line or similar public and/or utility service. Unless otherwise specified, the term **RIGHT-OF-WAY (R-O-W)** as used in this chapter refers to road or street right-of-way.

**ROAD RECONSTRUCTION.** Full removal reconstruction of the road bed and road surface (including pavement structure, base, and subbase). May or may not include an increase in the amount of impervious surface.

**SEDIMENT.** The product of an erosion process; solid material both mineral and organic that is in suspension, is being transported, or has been moved by water, air or ice, and has come to rest on the earth's surface either above or below water level.

**SEDIMENT CONTROL.** Methods employed to prevent sediment from leaving the site. Sediment control practices include, but are not limited to silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection and temporary or permanent sedimentation basins.

**SENSITIVE AREAS.** Areas within 150 feet of DNR protected waters; areas within 150 feet of watercourses as defined; a designated floodplain; bluffs and areas within 100 feet of the bluff top; Wellhead Protection Areas as adopted by LGU; areas within 100 feet of a delineated wetland boundary or wetlands as shown on the National Wetland Inventory (NWI); areas within 100 feet of protected properties such as DNR wildlife areas, USFW property, and parkland.

**SOIL.** The unconsolidated mineral and organic mineral material on the immediate surface of the earth.

**STABILIZED.** The exposed ground surface has been covered by staked sod, riprap, wood fiber blanket, or other material which prevents erosion from occurring. Grass seed is not stabilization.

**STORM EVENT.** As defined in Technical Paper 40 from NOAA, *Rainfall Frequency Atlas of the United States for Durations from 30 minutes to 24 Hours and Return Periods from 1 to 100 Years* (1961).

**STRUCTURE.** Anything constructed or erected on or connected to the ground.

**SWCD.** The Carver County Soil and Water Conservation District.

**TEAR DOWNS.** A land altering activity where existing impervious surface is being replaced with new impervious surface.

**TOPSOIL.** The uppermost layer of soil, containing organic matter and micro-organisms.

**WATERBODY.** All waterbasins, watercourses, and wetlands as defined in these rules.

**WATERBASIN.** An enclosed natural depression with definable banks capable of containing water which may be partly filled with waters.

**WATERCOURSE.** Any channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods water may leave the confining beds and banks but under low and normal flows water is confined within the channel. A watercourse may be perennial or intermittent.

**WATERS OF THE STATE.** All streams, lakes, ponds, marshes, wetlands, watercourses, waterways, drainage systems and all other bodies or accumulations of waters, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portions thereof.

**WATERS OF THE STATE** do not include stormwater detention basins, or wetlands constructed for the purposes of treating stormwater, which do not discharge to surface waters. (Includes, but is not limited to, any lake, stream or wetland; any natural or artificial water diversion or detention area; any surface or subsurface drainage facility or stormwater conveyance).

**WATERSHED.** The drainage area under the jurisdiction of a watershed management organization.

**WETLAND CONSERVATION ACT (WCA).** As defined by Minnesota Wetland Conservation Rules, Minn. Rules Ch. 8420, as it may be amended from time to time.

**WETLANDS.** All wetlands identified as wetlands under M.S. § 103G.005, subd 19. The term does not include "public waters wetlands" as defined under M.S. § 103G.005, subd 15a.

(C) All distances, unless otherwise specified, shall be measured horizontally.

(D) Any words not defined in this section shall have the meanings given them in *Merriam-Webster's Collegiate Dictionary*,

11th Edition.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

### **§ 153.03 STATUTORY AUTHORIZATION AND PURPOSE.**

(A) This chapter is adopted pursuant to M.S. §§ 103B.211 through 103B.255 and Minn. Rules 8410, as they may be amended from time to time.

(B) The overall purpose of this chapter is to protect, preserve and manage natural surface and groundwater systems within Carver County in the face of rapid urban growth and intensive agricultural activity. The chapter also presents sustainable and equitable means to effectively reach those goals by providing guidance and specific standards for decision-makers, residents, landowners, educators, and implementing staff at the local level.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

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## **GENERAL REQUIREMENTS AND REVIEW PROCESS**

### **§ 153.10 GENERAL REQUIREMENT FOR COMPLIANCE.**

(A) Effective date. This chapter shall take effect immediately upon its passage and publication according to law.

(B) The standards contained in this chapter shall be the minimum standards for the issues covered by this chapter for any land altering activity in the CCWMO. All land altering activities shall conform to the standards in this chapter unless specifically exempted below. For long term land altering activity that does not have a defined start and stop timeframe (such as routine agricultural activity), standards under other state and federal programs may apply. Some projects or activities fall below the thresholds that require formal review and approval process. The fact that formal review and approval is not required does not excuse these activities from compliance with this chapter.

(C) The following activities shall not be subject to the requirements of this chapter or to the specific requirement as shown below:

(1) Routine agricultural activity. Tilling, planting, harvesting, and associated activities. Other agricultural activities are not exempt such as feedlots, storage sheds;

(2) Emergency work to protect life, limb, or property;

(3) Installation of fence, sign, telephone, electric or other kinds of posts or poles;

(4) *Downstream facility exemption.* A project is exempt from the rate control, water quality, and volume control standards of this chapter upon determination by the county that a downstream facility is in place or has been ordered and the facility is designed with adequate capacity to meet the treatment requirements for the project;

(5) Road projects consisting of mill and overlay activities, pavement rehabilitation, pavement reclamation, and normal maintenance are exempt from the rate control, water quality, and volume control requirements of this chapter;

(6) New trails or sidewalk projects that create impervious surfaces 12 feet or less in width, are created independently from road projects, and will be bordered on the downgradient side(s) by a pervious buffer averaging at least one-half the width of the sidewalk or trail are exempt from requirements;

(7) Redevelopment projects that reduce cumulative site impervious by 10% or more are exempt from the rate control, water quality, and volume control requirements of this chapter; and

(8) Individual residential lots that are part of a common plan of development with an approved stormwater or erosion and sediment control permit shall not require an individual permit unless an individual permit was required under the approval conditions for the common plan of development.

(D) For previously approved projects, the conditions which require permit review and reapproval are described below:

(1) If the amount of impervious surface approved in the stormwater permit increases, a new combined erosion control and stormwater permit shall be required and the project shall meet the rules in place and the standards in place at the time of re-application;

(2) If 18 months have passed since the date of approval without construction activity on the site or if 18 months have passed since the last construction activity on the site, permit review and reapproval are required;

(3) *Common plan of development.* Individual commercial or industrial lots or phases of a residential development that are part of a common plan of development that has received an approved combined erosion control and stormwater permit from the county on or before the effective date of this chapter shall be required to obtain a permit as described below:

(a) If previously approved stormwater infrastructure has been fully constructed and/or alterations will not result in reductions in approved treatment amounts, a new erosion control permit shall be obtained. Verification that the stormwater treatment infrastructure is functioning shall be required.

(b) If previously approved stormwater treatment infrastructure has not been constructed, a new combined erosion

control and stormwater permit shall be obtained. The project shall meet standards in place at the time of re-application.

(4) *Projects proposed for replatting.* Projects with a previously approved combined erosion control and stormwater permit that are proposed for replatting shall be required to obtain a permit as described below:

(a) If previously approved stormwater treatment infrastructure has been fully constructed or alterations will not result in reductions in approved treatment amounts, if the stormwater treatment infrastructure is functioning as designed, and the amount of proposed impervious surface remains the same or decreases, the project will be considered exempt from the current stormwater treatment requirements and a new erosion control permit shall be obtained.

(b) If previously approved stormwater treatment infrastructure has not been constructed, a new combined erosion control and stormwater permit shall meet standards in place at the time of re-application.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

## **§ 153.11 REVIEW PROCESS.**

The county shall have the authority to administer and enforce this chapter.

(A) *Thresholds and requirements for review and approval.* The need for review and approval and procedures will be dependent on the scale of the project and its location relative to sensitive areas. Regardless of whether or not an activity meets a threshold for review, all land altering activities shall take appropriate erosion control measures to prevent the sedimentation of receiving waterbodies or discharges of sediment onto neighboring properties.

(1) *Activities requiring an erosion control permit.*

(a) Any of the following activities shall require an erosion control permit:

1. Projects with one to less than five acres of construction activity and not in a sensitive area; or
2. Projects with less than one acre of construction activity that are part of a larger common plan of development or sale if the larger common plan ultimately has construction activity equal to or greater than one and less than five acres; or
3. Projects with less than one acre of construction activity within a sensitive area; or
4. Projects which require the release of material off-site or into waters of the state; or
5. Projects which create new crossings, culverts, alterations of flows or other obstructions to waters of the state with flows over ten cubic feet per second (cfs); or
6. Projects which create new culverts or other discharges with flows over ten cubic feet per second (cfs).

(b) Activities described in § 153.11(A)(1)(a)1-4 require review and approval by the county based on standards in § 153.55.

(c) Activities described in § 153.11(A)(1)(a) 5-6 require review and approval by the county based on standards in §§ 153.55 and 153.56(G).

(2) *Activities requiring a combined erosion control and stormwater permit.*

(a) Any of the following activities shall require a combined erosion control and stormwater permit:

1. Projects with five acres or more of construction activity; or
2. Projects with less than five acres of construction activity that is part of a larger common plan of development or sale if the larger common plan ultimately has construction activity of five acres or more; or
3. Projects with one to less than five acres of construction activity occurring within a sensitive area; or
4. Projects with one acre or more of cumulative impervious surface constructed after September 1, 2002; or
5. Projects with 10,000 square feet or more of cumulative impervious surface constructed after September 1, 2002 and located within a sensitive area; or
6. Projects which include structural stormwater treatment.

(b) These activities require review and approval by the county based on standards in §§153.55 through 153.60.

(B) *General review process.* The following steps are recommended prior to LGU preliminary plat approval in order to expedite the review process.

(1) *Determination of project level.* Project level shall be determined based on thresholds described above. Projects that meet the thresholds described above shall continue with the process described below.

(2) *Pre-application meeting.* An initial development review team (DRT) meeting between the responsible party, SWCD, county and LGU should be held as early as possible in the process. Typically submittal of a concept plan for review initiates this process.

(3) *Application submittal.* A permit application which includes all required exhibits described in §153.40 shall be

submitted to the county. This should occur in conjunction with an application to the LGU.

(4) *Application review and determination of completeness.* The county shall make a determination regarding the completeness of an application within ten business days of the receipt of the application and notify the applicant if the application is not complete. The county will make its decision in accordance with M.S. § 15.99, as it may be amended from time to time.

(5) *Approval.* The responsible party shall not commence any construction activity subject to this chapter until approval has been given by Carver County. If the county determines that the application meets the requirements of this chapter, the county may issue approval which authorizes the project or activity.

(a) *Time period of approval.* Construction activity must commence within 18 months of the date of approval, or permit reapproval or reverification is required.

(b) *Form of approval.* Approval will typically be in the form of a letter from the county to the applicant.

(c) *Incomplete/insufficient applications.* If the application does not meet the requirements, the county may issue approval contingent upon compliance with this chapter. If non-compliance is substantial, the county may require a re-application.

(d) *Permit modifications.* An approved application may be modified following review and approval by the county. In reviewing modifications, the county may require additional submittals.

(6) *Denial.* If the responsible party fails to meet requirements the county may deny the application. Reason for denial shall be in writing.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

## **APPLICATION REQUIREMENTS**

### **§ 153.40 FEES.**

Responsible parties for approval of a project shall provide a fee as set forth in the Carver County fee schedule.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

### **§ 153.41 SUBMITTAL REQUIREMENTS.**

An application containing the following information shall be submitted by the responsible party of a site or an authorized representative. The responsible party must sign the application and cannot transfer authority. An application will typically include the following information. At county discretion, less information may be required to constitute a complete application.

(A) *Location map.* The map shall show the site location with property lines in relation to surrounding roads, other geographic features, buildings and other structures.

(B) *Topography.* Topography showing two-foot contours for the site, invert elevations of existing storm sewer, and/or spot elevations of the conveyance system from drainage discharge points to the nearest receiving waterbody and for a minimum of 100 feet beyond the site boundary. Topography showing ten-foot contours for sub-watersheds upstream and downstream of the project site. Where topography in the region is characteristically flat or hydrologic flow path is undetermined, two-foot contours may be required.

(C) *Vegetation map.* In areas where there has been a natural resource or similar inventory, the map shall show the location of trees and vegetation on-site, with identification of those trees and vegetation intended to be retained.

(D) *Stormwater management plan.* The stormwater management plan shall contain the following:

(1) Existing and proposed sub-watershed boundaries, upstream and downstream hydrologic flow paths, all on-site water features (including waters of the state), drainage patterns, flow directions, floodplain, and shoreland shown on separate figures;

(2) Location and amount of existing and proposed impervious area including roads, trails, parking areas, and building areas;

(3) Location, alignment and elevation of existing and proposed stormwater facilities;

(4) Construction plans and specifications for all proposed facilities designed to meet requirements of §§153.55 through 153.60;

(5) Hydrologic calculations for runoff volume, velocities, and peak flow rates using Atlas 14 precipitation depths and storm distributions for the two-year rainfall event; ten-year, 24-hour storm event; 100-year, 24-hour storm event; and 100-year, ten-day snowmelt event for existing and proposed conditions;

(6) All hydrologic, hydraulic, and water quality computations completed to design the proposed facilities, including a demonstration of conformance with the water quality and volume control requirements of § 153.56;

(7) Curve numbers used to calculate runoff; curve numbers used to calculate runoff shall be based on TR 55, Second Edition, June 1986, Table 2 2a with the following changes:

(a) Cover type "open space" will be based on the amount of top soil as well as grass cover. Less than six inches of top soil equals poor condition; and more than six inches of topsoil equals good condition;

(b) Curve numbers used for cover types "urban districts" and "residential districts" assume at least six inches of topsoil and six inches of non-compacted subsoil soil based on the standards in § 153.60.

(8) Existing and proposed normal water level, high water level, and emergency overflow elevations for the site;

(9) For sites requiring extended detention, calculations showing the two-year storm discharge reduced by 50% of existing conditions to demonstrate compliance with the extended detention requirement. The minimum outlet diameter shall be six inches.

(10) Plans, specifications and computations for stormwater management facilities submitted for review shall be signed by a professional engineer licensed in the State of Minnesota.

(E) Erosion and sediment control plan shall have both existing and final proposed conditions drawn to scale, shall be consistent with the manual *Protecting Water Quality in Urban Areas* (Minnesota Pollution Control Agency, 2000) as revised, and shall include the following:

(1) Proposed area of grading or other land-disturbing activities and delineation of the limits of disturbance including areas of grubbing, clearing, tree removal, grading, excavation, fill and other disturbance;

(2) Quantity of soil or earth material to be removed, placed, stored or otherwise moved on-site;

(3) Locations and descriptions of proposed runoff control, erosion prevention, sediment control and temporary and permanent soil stabilization measures;

(4) A sequence of land alteration activity and corresponding implementation of erosion control practices, monitoring, maintenance and removal of erosion and sediment control measures; and permanent site stabilization measures. Prior to commencing activity (following all necessary approvals), the responsible party shall provide the SWCD with a construction schedule which will include approximate dates for the following:

(a) Completion of installation of perimeter erosion and sediment controls;

(b) Completion of required seeding and mulching activities;

(c) Completion of land-disturbing activities and putting into place measures for final soil stabilization and revegetation;

(d) When the site will be permanently stabilized and re-vegetated;

(e) When all temporary erosion and sediment controls will be removed from the site.

(F) *SWPPP*. The Stormwater Pollution Prevention Plan (SWPPP) developed for the site to meet National Pollution Discharge Elimination System/State Disposal System (NPDES/SDS) Phase II requirements shall be submitted as part of these applications.

(G) *Wetland protection*. The plan shall have both existing and final proposed conditions drawn to scale and shall contain the following:

(1) Delineated boundaries of wetlands as determined under the Wetland Conservation Act;

(2) Boundaries of wetland transition setbacks, if applicable per §153.57;

(3) Computations/calculations used to design the wetland transition setback;

(4) Upon request, evidence of permits and process required under the Wetland Conservation Act (WCA).

(H) *Topsoil management plan*.

(I) Additional information as relevant and necessary to evaluate an application may be required. Requests for additional information shall be submitted in writing to the responsible party and shall specify requirements for submittal to the county.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

## **STANDARDS**

### **§ 153.55 EROSION AND SEDIMENT CONTROL DESIGN AND OPERATIONAL STANDARDS.**

(A) Carver County adopts and incorporates by reference the erosion and sediment control design and operational standards as set forth in Minnesota Permit R100001 (the general permit authorization to discharge storm water associated with construction activity under the National Pollutant Discharge Elimination System), as amended from time to time.

(B) Land altering activity shall not result in the detrimental deposition of sediment or construction materials into the waters of the state or onto neighboring property. Erosion and sediment control facilities must be installed prior to commencing any construction activity.

(C) Erosion and sediment control measures must be designed and maintained to prevent the detrimental deposition of sediment or construction materials into the waters of the state or onto neighboring property. There are a variety of

publications available that describe BMP's that can be used to meet these standards. Examples of BMP's can be found in:

- (1) Minnesota Stormwater Manual, Minnesota Pollution Control Agency, as amended from time to time; and
- (2) *Erosion Control Handbook*, Minnesota Department of Transportation, 2006.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

#### **§ 153.56 STORMWATER MANAGEMENT STANDARDS.**

(A) Stormwater BMPs must be designed and maintained to meet these standards. Examples of BMP's can be found in:

- (1) *Minnesota Stormwater Manual*, Minnesota Pollution Control Agency, as amended from time to time;
- (2) Appendix A: Volume and Water Quality Calculations; and

(3) Carver County Water Management Ordinance and BMP Guidelines, Carver County Water Management Department, as amended from time to time.

(B) *Summary of stormwater management requirements by project type.*

(1) *New development.*

(a) New development sites adding one acre or more of new impervious must meet the treatment requirements described below for rate, water quality, and volume.

(b) In sensitive areas, new development sites creating 10,000 square feet or more of new impervious would have to meet the treatment requirements described below for rate, water quality, and volume for new impervious created as part of the project.

(2) *Redevelopment.*

(a) *Additions.*

1. Sites adding one acre or more of new impervious must meet the treatment requirements described below for rate, water quality/and volume for new impervious created as part of the project.

2. In sensitive areas, sites adding 10,000 square feet or more of new impervious would have to meet the treatment requirements described below for rate, water quality, and volume for all impervious created as part of the project.

3. Treatment areas must be designed for the volume of water draining to the feature.

(b) *Tear downs.*

1. Tear down sites replacing one acre or more of existing impervious must meet the treatment requirements described below for rate, water quality, and volume for all impervious created as part of the project.

2. In sensitive areas, tear down sites replacing 10,000 square feet or more of existing impervious would have to meet the treatment requirements described below for rate, water quality, and volume for all impervious created as part of the project.

3. Tear down sites that reduce existing impervious by 10% or more are exempt from the treatment requirements described below for rate, water quality, and volume.

4. Treatment areas must be designed for the volume of water draining to the feature.

(c) *Combination sites.* Combination sites must meet the requirements for tear down sites as described in part § 153.56(B)(2)(b) above.

(3) *Linear Transportation Projects.*

(a) *Linear Project Permit Thresholds and Treatment Requirements.*

1. *New road construction.* Linear transportation projects adding one acre or more of new impervious (10,000 square feet in a sensitive area) must meet treatment requirements described below for rate, water quality, and volume for all new impervious created as part of the project.

2. *Road reconstruction.* Linear transportation projects fully reconstructing the road bed and surface must meet the treatment requirements described below.

a. *Decrease in impervious surface.* Projects that reconstruct one acre or more of existing impervious (10,000 square feet in a sensitive area) but that reduce impervious by 10% or more are exempt from the treatment requirements described below for rate, water quality, and volume.

b. *No change in impervious surface.* Projects that reconstruct one acre or more of existing impervious (10,000 square feet in a sensitive area) but result in no net change in impervious surface must provide treatment that results in 10% reduction from pre-project conditions (for a 1.0 inch storm) for water quality (total suspended solids and total phosphorus), and volume.

c. *Increase in impervious surface.* Projects that reconstruct or create one acre or more of impervious (10,000 square feet in a sensitive area) and result in an increase in impervious surface (e.g. an expansion of an existing roadway) must meet the following treatment requirements:

(i) New impervious. Must meet treatment requirements described below for rate, water quality, and volume for all new impervious created as part of the project; and

(ii) Existing impervious. Must provide treatment that results in a 10% reduction from pre-project conditions (for a 1.0 inch storm) for water quality (total suspended solids and total phosphorus), and volume for impervious areas reconstructed as part of the project.

(b) Exemptions for linear transportation projects.

1. Mill and overlay, pavement rehabilitation, and pavement reclamation projects are exempt from the rate control, water quality, and volume control requirements of this chapter.

2. New trails or sidewalk projects that create impervious surfaces 12 feet or less in width, are created independently from road projects, and will be bordered on the downgradient side(s) by a pervious buffer averaging at least one-half the width of the sidewalk or trail are exempt from requirements.

(c) *Treatment locations/sequencing.*

1. *Treatment locations.*

a. Water quality treatment must be provided prior to discharging stormwater runoff to a receiving waterbody. If it is not feasible to provide full water quality treatment prior to discharge to a receiving waterbody, structural treatment for TSS removal must be provided at a minimum. Full water quality treatment shall then be provided at a 2:1 ratio at a discharge point to a different receiving waterbody within the project area.

b. Volume control can be provided at any feasible location within the same major watershed of the project.

2. Treatment areas must be designed for the volume of water draining to the feature.

(d) *Alternative compliance for linear projects.* Specific site conditions may make volume control difficult, undesirable, or impossible. Linear projects are eligible for alternative compliance for volume control as described in § 153.56(E)(3).

(C) *Rate control standard.*

(1) *Peak rates.* The peak rates shall not increase from existing conditions for the two-, ten-, or 100-year storm events, and the 100-year, ten-day snowmelt event. Peak rates shall be calculated using Atlas 14 precipitation depths and storm distributions.

(2) *Conveyance system.* At a minimum, the storm sewer conveyance system shall be designed for a ten-year, 24-hour storm event. The pond and pond outlet structure shall handle the 100-year, 24-hour storm event. An emergency overflow structure, downstream drainage route and capacity shall be submitted for review.

(3) *Extended detention.* To protect receiving channels, extended detention must be provided for the runoff generated from the two-year event for sites with direct discharges to streams. To demonstrate compliance with the extended detention requirement, calculations showing the two-year storm discharge reduced by 50% of existing conditions shall be submitted. The minimum outlet diameter shall be six inches.

(D) *Water quality standard.*

(1) *Design storm event.* The stormwater management plan must provide water quality treatment for 1.0 inch of rainfall from the site's new impervious surface as described in parts (2) and (3) below.

(2) *Phosphorus removal standards.*

(a) The stormwater management plan must remove 90% of the phosphorus generated by the site under developed conditions.

(b) Treatment areas must be sized appropriately for the area draining to the feature.

(3) *Total suspended solids (TSS) removal standards.*

(a) The stormwater management plan must remove 90% of the total suspended solids generated by the site under developed conditions.

(b) Treatment areas must be sized appropriately for the area draining to the feature.

(4) *Design standards.* BMPs shall be designed according to the design standards included in Appendix A: Volume and Water Quality Calculations. Compliance with the water quality treatment standard will be calculated by the applicant using Appendix A: Volume and Water Quality Calculations or industry standard water quality models.

(5) *Credit banking.* Water quality treatment provided in excess of 1.0 inch requirement may be banked for use on another project. Excess banked water quality credit amounts shall not exceed the volume of two inches over the impervious surfaces of the drainage area to the BMP or the volume provided within the BMP, whichever is less. Transfer of banked water quality credits between applicants is allowed within the same major watershed. Applicants shall submit a letter to the

county outlining the conditions of the transfer and confirming the volume of the transfer. The county must review and approve all credit transfers.

(E) *Volume control standard.*

(1) *Volume control standards.*

(a) The stormwater management plan must provide volume control for 1.0 inch from the impervious surface.

(b) Treatment areas must be sized appropriately for the watershed area tributary to the feature.

(2) *BMP volume calculations.* Compliance with the 1.0 inch volume control standard will be calculated by the applicant using Appendix A: Volume and Water Quality Calculations or an approved equivalent.

(3) *Site conditions eligible for alternative compliance.* Specific site conditions may make volume control difficult, undesirable, or impossible. Some of these conditions are listed in Table 1 and may qualify the applicant for alternative compliance sequencing. The applicant may also submit a request to the county for alternative compliance sequencing for site conditions not listed below. All requests for alternative compliance shall indicate the specific site conditions present and include a grading plan, utility plan, and the submittal requirement listed in Table 1.

**Table 1. Alternative Compliance Site Conditions**

<i>Type</i>	<i>Specific Site Condition</i>	<i>Volume Reduction Limitation</i>	<i>Submittal Requirement</i>
Potential Contamination	Potential stormwater hotspots/industrial facilities	Infiltration prohibited	
	Contaminated soils	Infiltration prohibited	Soil analysis
	Vehicle fueling and maintenance areas	Infiltration prohibited	Site map with vehicle fueling/maintenance areas shown
Physical Limitations	Low permeability soils	Infiltration restricted	1) Carver County Soil Survey data showing greater than 50% of site is hydrologic group C and D soils; or 2) Carver County Soil survey data showing greater than 50% of site has the following Unified Soil Classifications: MH, ML, GS, SC, CL, OL, CH, OH; or 3) Documentation that site has been previously disturbed by construction activity; or 4) Documentation of field infiltration tests showing infiltration rate of less than 0.3 inches per hour.
	Bedrock or groundwater within three vertical feet of bottom of volume control practice	Infiltration restricted	Soil borings required
Land Use Limitations	Wellhead protection areas	Infiltration restricted	Site map with wellhead protection areas shown

(4) *Alternative compliance sequencing for volume control.* To the maximum extent practicable, the volume control standard shall be fully met on-site. If it is not possible because of site conditions listed above, alternative compliance may be achieved by any combination of the methods described below.

(a) First, the applicant shall provide 0.5 inches volume control on-site through volume reduction methods listed in Appendix A: Volume and Water Quality Calculations or in the application guidance materials. If the applicant meets the 0.5 inch volume control requirements on-site, the project is compliant, and no further sequencing steps are necessary.

(b) Second, if the applicant is unable to provide 0.5 inches of volume control on-site, the applicant shall comply by providing on-site volume control to the maximum extent practicable and then shall provide the remainder through one or



both of the methods described below. Once the applicant meets the 0.5 inch volume control requirement through a combination of on-site and off-site practices, the project is compliant, and no further sequencing steps are necessary.

1. *Off-site treatment.* Volume reduction may be accomplished at another site as long as it yields the same volume reduction benefit, and is approved by the county prior to construction. Off-site compliance shall be achieved in the same major sub-watershed as the project site.

2. *Banking.* For the remaining volume reduction required, the applicant shall comply with the volume control standard through the use of qualified banking credits. Volume reduction may be accomplished through the use of banked credits as long as it yields the same volume reduction benefit, and is approved by the county prior to construction. Banking credits shall be achieved in the same major watershed as the project site.

(5) *Credit banking.* Volume control provided in excess of the 1.0 inch requirement may be banked for use on another project. Excess banked volume reduction amounts shall not exceed the volume provided within the BMP. Transfer of banked volume credits between applicants is allowed. Applicants shall submit a letter to the county outlining the conditions of the transfer and confirming the volume of the transfer. The county must review and approve all credit transfers.

(F) *High water elevation standard.*

(1) As described below, all applications shall provide vertical separation between low openings of new and existing structures and the 100-year, 24-hour high water elevations or 100-year, ten-day high water elevations of facilities constructed as part of the project, whichever is greater. Emergency overflows are required for all ponds.

(a) Low opening of new and existing structures must have a minimum of two feet of separation from pond high water level.

(b) Low floor of new and existing structures must have a minimum of one foot of vertical separation from pond high water level.

(c) In rare cases where an emergency overflow (overland or pipe) is not feasible, the low opening vertical separation is increased to three feet.

(2) The requirements described above can be waived for non-habitable structures if an LGU allows for less vertical separation from high water elevations based on flood-proofing standards included in a building code.

(3) If side or rear yard overflow swales are constructed, the cities should document through the building permitting and inspection process that high water levels for side or rear yard overflow swales are below the low openings of structures.

(G) *Upstream and downstream impacts.*

(1) *Upstream.* Drainage flowing onto the site from upstream areas must be managed and accommodated. Alterations to flow paths which impound or slow down water will not be allowed unless it can be shown that the upstream system can accommodate the change. Proposed rates, volumes, velocities and duration of flow may be requested in order to document that any impacts are nonexistent or insignificant.

(2) *Downstream.*

(a) To the extent possible, existing drainage areas and discharge points from the site should be maintained post-development and concentrated flows onto neighboring properties should be avoided or mitigated. The downstream conveyance system (natural or structural) must be able to accommodate, to the nearest major receiving waterbody, increased volumes caused by development.

(b) If diversions from existing drainage areas and alterations to discharge points are proposed, the responsible party shall provide additional documentation (rates, volumes, velocities, duration of flow, etc.) to demonstrate that the downstream conveyance system can accommodate the change. The responsible party shall provide evidence of easements or other agreements concerning water flow if a plan involves increased impervious or directing concentrated runoff from onto a neighboring property.

(c) New 6/6/2012. If diversions from existing drainage areas, alterations to discharge points, increased duration of flow, or additional runoff volumes are proposed, the responsible party shall provide additional documentation (rates, volumes, velocities, duration of flow, etc) to demonstrate that the downstream conveyance system can accommodate the change. The responsible party shall provide evidence of mitigation, easements or other agreements concerning water flow if a plan involves increased impervious or directing concentrated runoff from onto a neighboring property.

(H) *Requirements for maintenance and access.*

(1) *Maintenance of stormwater facilities.* All stormwater management structures and facilities must be designed to allow access for maintenance and must be properly maintained in perpetuity to ensure that they continue to function according to the approved design.

(2) *Maintenance agreement.* No stormwater plan may be approved unless a maintenance agreement is provided that defines maintenance responsibilities following completion of the project, specifies types and frequency of inspection and maintenance activities, and specifies who will conduct inspections and maintenance activities. A sample agreement and list of inspection/maintenance activities are included in the Carver County Water Resource Management Ordinance and BMP Guidelines.

(a) Prior to project close out return of the financial security, an agreement shall be in place regarding maintenance responsibilities.

(b) Maintenance responsibilities must be assumed by either the local government unit (LGU) or by the responsible party.

(c) If the Local Government Unit (LGU) is assuming maintenance responsibilities, a single Memorandum of Agreement for each LGU may be used to cover all stormwater management structures and facilities required by this chapter within the LGU's jurisdiction.

(d) The agreement must be executed and recorded in a format acceptable to the county. The recordable executed agreement must be submitted to the county prior to release of financial security for the project.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

### **§ 153.57 WETLAND PROTECTION.**

(A) *Wetland conservation act implementation.* Carver County adopts and incorporates by reference the Minnesota Wetland Conservation Act and its implementing rules as set forth in Minn. Rules chapter 8420, as amended periodically.

(B) *Wetland transition setbacks.*

(1) *Requirement.* Establishment or preservation of an unmanicured, vegetated, transition setback is required adjacent and contiguous to wetlands for projects meeting the thresholds described in § 153.11(A)(2)(a). Activities meeting the exemption requirements of Minnesota Rule 8420 are exempt from these requirements. Wetlands or portions of wetlands impacted and mitigated through Minnesota Rule 8420 are exempt from these setback requirements.

(2) *Determining setback widths.*

(a) *Base width.* The base width for a wetland transition setback is 20 feet.

(b) *Minimum width.* The minimum width for a wetland transition setback is 20 feet.

(c) *Applied width.* The setback width shall be adjusted to reflect site conditions based on the criteria below. The maximum applied width is 50 feet.

1. *Stormwater treatment.* The base width must be increased by ten feet in areas where untreated stormwater/runoff from impervious surfaces is directed to the wetland and not treatment facilities.

2. *Slopes.* For every 5% increase in average setback slope from 5%, the base width must be increased five feet in the area where the slope increase exists.

<b>Average Setback Slope</b>	<b>Increase in Setback Width</b>
0 - 5% slope	No increase
5 - 10% slope	Add 5 feet to base width
10 - 15% slope	Add 10 feet to base width
>15% slope	Add 15 feet to base width

3. *High quality wetland.* If the wetland received a ranking of "high" value in the Carver County Wetland Function and Value Assessment or an equivalent wetland function and value assessment, the base width must be increased ten feet (provide link to map of wetland function and value assessment).

(d) *Flexibility in applied width.* The CCWMO retains the right to allow the setback width to vary and the minimum width to be reduced based on demonstrated site constraints, to allow unique BMPs, or to allow other activities that protect and enhance the wetland. Adjustments to the applied width may not result in a reduction to the total setback area and the adjusted setback must provide wetland protection at least equivalent to a setback of uniform width (e.g. the setback area may be reduced in one area of the wetland if the area is replaced at a 1:1 ratio elsewhere around the same wetland).

(e) *Setback area transfers.* The total setback area may be reduced on a wetland if the area is replaced at a 2:1 ratio around another wetland on site.

(f) For linear projects, non-impervious portions of the right of way are allowed within the setback.

(3) *Setback vegetation requirements.*

(a) Setback vegetation shall not be cultivated, cropped, pastured, mowed, fertilized, subject to the placement of mulch or yard waste, or otherwise disturbed, except for:

1. Periodic cutting or burning that promotes the health of the setback or to maintain the proposed natural community,

2. Removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards,

3. Actions to address disease or invasive species,
4. Mowing for purposes of public safety,
5. Mowing or clearing of trees and shrubs from a path no more than 12 feet in width to allow access to the wetland,
6. Temporary disturbance for placement or repair of buried utilities, or
7. Other actions to maintain or improve setback quality, each as approved by the WMO.

(b) Pesticides and herbicides may be used in accordance with Minnesota Department of Agriculture rules and guidelines.

(c) Once vegetation is established in a setback, no fill, debris or other material shall be excavated from or placed within a setback.

(d) Areas of the transition setback that will be disturbed by grading activities during construction, shall be planted according to the following standards:

1. Soils must be decompacted to a depth of 18 inches and organic matter must be incorporated into soils before seeding or planting. Decompaction shall be accomplished solely by incorporation of organic matter within the drip line or critical root zone of trees or within ten feet of underground utilities.

2. Transition setback areas shall be planted with a native seed mix and/or native plantings approved by the WMO.

(4) *Recording of setback.* The setback shall be documented by a declaration or other document approved by the WMO or municipality and recorded in the office of the County Recorder before the permit will be issued.

(5) *Monumentation.* The setback shall be indicated by permanent, free-standing markers at the setback's upland edge, with a design and text approved by the WMO in writing. A marker shall be placed where each lot line crosses the setback, with additional markers at major points of deflection.

(6) *Maintenance.* The setback shall be maintained in accordance with the provisions outlined in the Carver County Water Management Ordinance and BMP Guidelines.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

#### **§ 153.58 SHORELANDS.**

(A) This chapter applies only in situations where a protected water exists but the LGU responsible for land use planning and zoning has not adopted a DNR-approved shoreland ordinance.

(B) All development and land use changes shall meet the setback requirements of Minn. Rules Parts 6120.3300 and 6120.3400, as they may be amended from time to time.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

#### **§ 153.59 FLOODPLAIN.**

(A) This section applies in situations where the floodway and 100-year flood elevation have been defined by the Federal Emergency Management Agency (FEMA).

(B) Regulation.

- (1) Fill in the floodway. Placement of fill in the floodway shall not be allowed.

- (2) Fill in the 100-year flood elevation.

- (a) Placement of up to 50 cubic yards of fill below the 100-year flood elevation for the purposes of restoring or stabilizing soils, banks, or slopes shall be allowed.

- (b) Placement of more than 50 cubic yards of fill below the 100-year flood elevation for the purposes of restoring or stabilizing soils, banks, or slopes or any amount of fill placed below the 100-year flood elevation for other purposes shall not be allowed unless it is shown that the proposed fill can be mitigated through provision of compensatory storage, or will not cause a net decrease in flood storage.

- (c) Placement of fill for the construction of linear public projects that are necessary in order to meet state or federal safety standards or requirements are not required to provide compensatory storage but must demonstrate that the fill will not cause a net decrease in flood storage.

(C) Requirements for compliance.

- (1) Fill placed below the 100-year flood elevation must not hydraulically separate one area of the floodplain from another.

- (2) Demonstration that the placement of fill will not cause a net decrease in storage must be provided by a professional engineer licensed in the State of Minnesota.

(3) Compensatory storage must be created prior to or concurrent with the placement of fill.

(4) Siting of compensatory storage must follow this priority order:

- (a) On the same property as the affected floodplain;
- (b) On properties adjacent to the affected floodplain;
- (c) In the same major watershed as the affected floodplain.

(5) Meeting the requirements of this section does not constitute compliance with an existing DIMR-approved local floodplain ordinance.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

**§ 153.60 TOPSOIL MANAGEMENT.**

*Requirement.* A minimum of six inches of topsoil must be provided in all green space areas of the project. Topsoil shall meet one of the topsoil standards described in § 153.60(A) below. When available on-site, topsoil shall be managed to protect and/or restore soil permeability to non-compacted soil conditions following construction.

(A) *Topsoil standards.*

(1) *Carver County topsoil standard.*

**Table 2. Carver County Topsoil Standard.**

<b>Requirement</b>	<b>Range</b>	<b>Test Method</b>
Material passing the ¾ in [19 mm]	100%	ASTM D 422
Material passing No 4 in [4.75 mm]	85%	-
Clay	5% - 30%	ASTM D 422
Silt	5% - 35%	ASTM D 422
Sand	38% - 75%	ASTM D 422
Organic matter	3% - 15%	ASTM D 2974
pH	6.1 - 7.5	ASTM G 51
Compaction	- 1,400 kilopascals (kPa) / 200 pounds per square inch (psi) in the upper 12 inches of soil, or - bulk density of less than 1.4 grams per cubic centimeter (g/cm <sup>3</sup> ) in the upper 12 inches of soil	Field test

(2) *Match existing soils.* For sites that have not been previously graded, a site specific topsoil standard can be developed using one of the methods described below:

(a) *Soil survey data.* A site specific topsoil standard can be developed using information on physical soil properties from the Natural Resource Conservation Service’s Web Soil Survey for Carver County. The proposed site specific standard must be submitted prior to permit approval;

(b) *On-site testing.* A site specific topsoil standard may be developed using on- site sampling results. One sample shall be collected of the top 12 inches of soil from each soil map unit within the disturbed area of the project. Samples shall be collected and analyzed for percent clay, percent sand, percent silt, organic matter content, and pH. A site specific standard shall then be developed using a weighted average of the samples collected on-site. Sample results and the proposed site specific standard must be submitted prior to permit approval; or

(c) *Organic matter, pH, and compaction standards.* All site specific standards shall include the ranges described in the Carver County Topsoil Standard for organic matter, pH, and compaction.

(B) *Topsoil replacement methods.*

(1) (a) *Stockpile existing material and respread.* When available, on-site topsoil (A soil horizon) shall be stripped and stockpiled for later reapplication. Stockpiled topsoil shall meet the standard selected for the project. If stockpiled material does not meet the selected standard for the project, the material shall be amended to meet the selected standard or topsoil meeting the selected standard shall be imported to the site.

(b) *Stockpile testing.* The stockpile shall be tested prior to respreading. Sample results must be submitted to county staff a minimum of two business days prior to respreading.

(2) *Submittal requirements.* A "Topsoil Management Plan" shall be submitted and shall include information on the topsoil management strategies to be utilized to maintain soil permeability at or above required standards.

(Ord. 83-2016, passed 9-20-16)

## **ENFORCEMENT**

### **§ 153.70 AUTHORITY/RESPONSIBILITY.**

The county shall have the overall authority to enforce the provisions of this chapter. If the LGU has an approved and adopted Local Water Plan and elects to take on principal responsibility for enforcement of this chapter, an individual agreement will be negotiated to determine principal review and enforcement responsibility based on the LGU's ability to implement this chapter.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

### **§ 153.71 METHOD OF ENFORCEMENT.**

The county may take the following actions as appropriate:

- (A) Issue stop work orders;
- (B) Issue a notice of violation;
- (C) Issue an order for correction;
- (D) Withhold the scheduling of inspections and/or the issuance of a certificate of occupancy;
- (E) Revoke any approval issued by the county to the responsible party for the site in question;
- (F) Take such action as necessary in a court of competent jurisdiction to attain compliance;
- (G) Use financial security as provided under § 153.73;

(H) Institute appropriate actions or proceedings, including injunctive relief to prevent, restrain, correct or abate such violations or threatened violations. The county may recover costs incurred for corrective action in a civil action in any court of competent jurisdiction and such costs may be certified by court order to the County Auditor as a special tax against the real property.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

### **§ 153.72 INSPECTIONS.**

After issuance of a permit, the county or SWCD may perform such field inspections and monitoring of the approved activity as the county or SWCD deems necessary to determine compliance with the conditions of the permit and this ordinance. Any portion of the activity not in compliance shall be promptly corrected. In applying for a permit, the applicant consents to the county or SWCDs entry upon the land for field inspections and monitoring.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

### **§ 153.73 FINANCIAL SECURITY.**

(A) *Purpose.* The purpose of the financial security is to ensure installation and maintenance of erosion and sediment control measures and installation of practices intended to meet the filtration/bioretenion/infiltration requirement. The responsible party will provide a financial security for projects requiring an erosion and sediment control permit per § 153.11(A)(1) or a stormwater permit per § 153.11(A)(2). Federal, state, county, city, and township governments will not be required to provide financial security.

(B) *Form and amount.*

(1) The responsible party shall provide security for the performance of the work described and delineated on the approved erosion and sediment control plan and/or the approved stormwater management plan and any related remedial work.

(a) *Security for erosion control permit.* Security in the amount of \$1,000 per acre disturbed shall be provided.

(b) *Security for combined erosion control and stormwater permit.* Security in the amount of \$5,000 per acre disturbed shall be provided.

(c) *Minimum amount.*

1. The minimum security required for an erosion control permit is \$1,000.

2. The minimum security required for a combined erosion control and stormwater permit is \$5,000.

(d) *Maximum amount.* For projects disturbing up to 40 acres, the maximum combined security required of an individual responsible party is \$25,000. For projects disturbing 40 or more acres, the maximum combined security required of an individual responsible party is \$50,000.

(2) The form and conditions of the securities:

(a) Deposit, either with the county, a responsible escrow agent or trust company, at the option of the county, irrevocable letter of credit, cash escrow, or other assurance. The financial assurance must be in a form acceptable to the county and from a surety licensed to do business in the State of Minnesota.

(b) The financial assurance shall be in favor of the county and conditioned upon the applicant's performance of the authorized activity in compliance with the permit and applicable laws, including this chapter, and the payment when due of any fees or other charges authorized or required by the permit and this chapter. The financial assurance shall state that in the event the conditions of the financial assurance are not met, the county may make a claim against it. The county shall be authorized to make a claim or draw against the security after any default by the responsible party under the permit or these rules.

(C) *Maintaining the financial security.*

(1) If at any time during the course of the work the financial security amount falls below 50% of the required deposit, the responsible party shall make another deposit in the amount necessary to restore the cash deposit to the required amount.

(2) If the responsible party does not bring the financial security back up to the required amount within seven days after notification by the county that the amount has fallen below 50% of the required amount the county may take such legal action as specified in § 153.74.

(D) *Action against the financial security.*

(1) The county shall be authorized to make a claim or draw against the security after any default by the responsible party under the permit or this chapter.

(2) The county may use funds from this security to finance remedial work undertaken by the county or a private contractor and to reimburse the county for all costs incurred in the process of remedial work including, but not limited to, staff time and attorney's fees under the following circumstances:

(a) The responsible party ceases land altering activities and abandons the work site prior to completion of the grading plan;

(b) The responsible party fails to conform to the erosion and sediment control plan and/or the approved stormwater management plan as approved by the county;

(c) The erosion and sediment control techniques utilized under the erosion and sediment control plan and/or the approved stormwater management plan are not maintained during site construction; or

(d) The responsible party fails to reimburse the county for corrective action.

(E) *Returning the financial security.* The security deposited with the county for faithful performance of the erosion and sediment control plan and any related remedial work to finance necessary remedial work shall be released after construction is complete, the site has been re-vegetated, all erosion and sediment measures have been removed, the practices identified in the approved stormwater management plan have been installed and are working as designed, and a final inspection has been completed by the county.

(F) *Partial return of the financial security.* The county may return a portion of the financial security submitted to assure performance if the county determines that the entire amount is no longer required to ensure compliance with permit conditions and rules.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

#### **§ 153.74 RELIEF.**

Any request for relief from a standard of this chapter must be decided by the Carver County Board of Adjustment. The standards and procedures set forth in §§ 152.214 through 152.218 shall apply to any request for relief in this chapter.

(A) Carver County Board of Adjustment cannot grant relief from any Minnesota Permit R100001 (the general permit authorization to discharge storm water associated with construction activity under the National Pollutant Discharge Elimination System) requirements. Such requests for relief must be heard by the Minnesota Pollution Control Agency (MPCA).

(B) Carver County Board of Adjustment cannot grant relief which is in conflict with or violates the Water Management Plan.

(C) In cases where an LGU has a similar standard, the Carver County Board of Adjustment cannot grant relief in instances where the LGU has not granted similar relief.

(D) Notice must also be given to the following:

(1) Property owners located downstream of the applicant property;

- (2) Property owners located downstream of the applicant property to the nearest receiving waterbody; and
- (3) Property owners located upstream affected by the project.

(Ord. 57-2005, passed 1-10-06; Am. Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

## **APPENDIX A: VOLUME AND WATER QUALITY CALCULATIONS**

(A) *Purpose.* This appendix provides assistance to applicants in calculating volume and water quality credits for best management practices (BMPs) to meet the requirements outlined in Chapter 153. For additional information on designing BMPs, please see the Carver County Water Resource Management Ordinance and BMP Guidelines.

(B) *Calculation for volume and water quality treatment volume.* The treatment volume is a storm event of 1.0 inch. The treatment is divided into volume reduction and water quality treatment as described below.

- (1) *Volume reduction.* The volume to be controlled on site is 1.0 inch from the site impervious.
- (2) *Water quality treatment.* The water quality treatment volume is calculated as 1.0 inch from the site impervious.

(C) *Volume credits.* Practices that can be used to meet the 1.0 inch volume requirement are described below. Methods for calculating the volume retained are included for each practice.

- (1) *Amended soils.* The volume retained is calculated using 0.5 inches over the amended area.
- (2) *Bioretention basins.* The volume retained is calculated as 40% of the ponded volume. No volume credit will be given for bioretention practices within three feet of vertical separation from the seasonally high groundwater or sited immediately adjacent to wet ponds and/or bioretention practices controlled by the same outlet as a wet pond (e.g. bioretention shelves or benches).
- (3) *Dry swale.* The volume retained is calculated as 40% of the ponded volume. No volume credit will be given for bioretention practices within three feet of vertical separation from the seasonally high groundwater or sited immediately adjacent to wet ponds and/or bioretention practices controlled by the same outlet as a wet pond (e.g. bioretention shelves or benches).

(4) *Stormwater reuse (irrigation).* To meet the volume requirement, the volume to be retained on-site must be utilized on-site once per week for a period of 20 weeks during the growing season. The volume reduction for stormwater reuse is calculated by the area irrigated times the irrigation rate.

- (5) *Preservation or restoration of upland vegetation.*

- (a) *Volume retained.* The volume retained is calculated using 0.5 inches over the area preserved.
- (b) The area to be preserved should consist of existing trees or predominantly native vegetation. Areas to be restored must be restored to predominantly native vegetation.
- (c) The area to be preserved must be placed under easement to ensure that it continues to provide treatment in perpetuity.

(6) *Green roof.* The area of the green roof is excluded from the total impervious calculation, thereby reducing the total treatment volume.

(7) *Pervious pavement.* The volume reduction for pervious pavement is calculated as 50% of the volume below the tile outlet elevation (assumes 50% pore space below tile). The area of pervious pavement is also excluded from the total impervious calculation.

- (8) *Infiltration.* The volume retained is calculated as 80% of the ponded volume.

(9) *Bioretention shelf/bench.* No volume credit will be given for bioretention practices sited immediately adjacent to wet ponds and/or bioretention practices controlled by the same outlet as a wet pond (e.g. bioretention shelves or benches).

(10) *Disconnecting impervious surfaces.* Volume reduction for disconnecting impervious surface is dependent upon the pervious area being routed and must have amended soils to receive volume reduction credits. Volume reduction is 0.5 inches over the area of amended soils. Impervious areas must be discharging to the amended soils as a uniform sheet flow, with a max flow path of 100 feet.

(D) *Water quality credits.* Practices that can be used to meet the water quality treatment requirement are described below. Methods for calculating the amount of water quality treatment provided are included for each practice. In order to be eligible for the water quality credit described below, BMPs must meet the design standards in the Carver County BMP guidelines.

- (1) *Removal requirements.* The following removal percentages are required for the site.
  - (a) 90% Total Phosphorus (TP) removal for 1.0 inch off site impervious.
  - (b) 90% Total Suspended Sediment (TSS) removal for 1.0 inch off site impervious.
- (2) *TP and TSS removal percentages.* The CCWMO assumes the following removal percentages for total phosphorus:

(a) *Stormwater pond.* For stormwater ponds designed to meet NURP design criteria, 60% TP removal can be assumed and 80% TSS removal can be assumed.

(b) *Bioretention basin.* For bioretention basins designed to meet the design criteria in the Carver County BMP Guidelines, 75% TP removal can be assumed and 90% TSS removal can be assumed.

(c) *Iron-enhanced sand filter.* For iron-enhanced sand filter systems designed to meet design criteria in the Carver County BMP Guidelines, 90% TP removal can be assumed and 90% TSS removal can be assumed.

(d) *Hydrodynamic separator.* TSS removal is 50% of the watershed being treated by the device. No credit is given for TP removal.

(e) *Disconnecting impervious surfaces.* 45% TP reduction and 75% TSS reduction with a maximum area equal to the area of impervious area discharging to the area. Discharge must be uniformed sheet flow with a max flow path of 100 feet.

(f) *Volume practices.*

1. *Stormwater reuse.* 50% TP and 50% TSS requirements can be met through reuse when treating one inch of stormwater.

2. *Infiltration.* 100% TP and TSS removal can be assumed for the volume naturally infiltrating.

(E) *Alternative design approaches.*

(1) *Alternative designs.* Alternative designs may be approved if, upon review, the county determines the design will provide treatment equal to or greater than the practices described in this appendix. Applicants wishing to utilize an alternative design must submit plans and specifications for the proposed design along with calculations showing compliance with the stormwater standards of Chapter 153 of this code. Calculations should be generated using industry standard models. In order to be eligible for the volume credit described below, BMPs must meet the design standards in the Carver County BMP guidelines.

(2) *Site specific soil determinations.* On-site information may be accepted in lieu of the Hydrologic Soil Group determinations found in the Carver County Soil Survey. The on-site determination must be completed by a state-licensed soil scientist. Information submitted must present a detailed soil profile description including, but not limited to, horizon depths, Munsell colors, USDA textural classifications, bulk density analysis, and saturated hydraulic conductivity tests to a minimum depth of eight feet. Geotechnical soil borings alone are not acceptable. If requested, an on-site meeting can be held for further determination. If the initial determination is disputed, the applicant must submit a minimum number of soil profile locations in the disputed area based on one per soil group and one per five acres or as agreed upon between the county and the applicant in the disputed area. A final determination of on-site soils will be made by a consensus of the county, Carver SWCD and the LGU following review by state soil licensed staff and/or consultant.

(3) *Infiltration rates.* Design infiltration rates from the most recent version of the Minnesota Stormwater Manual shall be used to calculate the area and draw-down time period for infiltration BMPs. Percolation tests can be conducted and submitted to determine the actual rate of infiltration after the sub-grading is established.

(F) *References.* Additional information and design guidelines are available in the following documents:

(1) "Carver County Water Resource Management Ordinance and BMP Guidelines," as amended from time to time.

(2) MPCA's "Minnesota Stormwater Manual", as amended from time to time.

(Ord. 75-2012, passed 6-26-12; Am. Ord. 83-2016, passed 9-20-16)

## **APPENDIX B: MAINTENANCE**

(A) *Purpose.* This appendix provides assistance to applicants in meeting the maintenance requirements outlined in Chapter 153.

(B) *Maintenance of municipal-owned stormwater practices.* Municipalities may choose to meet the maintenance requirements outlined in Chapter 153 by incorporating a maintenance schedule and standard inspection checklist into a local water management plan. The maintenance section of the plan should include the following:

(1) Map or list of municipal-owned stormwater facilities;

(2) *Inspection Schedule.* Following initial vegetation establishment and documentation that the practice is functioning as designed, sites should be inspected every five years; and

(3) *Standard inspection checklist.*

(C) *Sample documents.* The following example documents are provided to assist applications in creating a maintenance plan that meets the requirements of Chapter 153.

(1) Sample maintenance agreement

(2) Example list of stormwater practice inspection activities.

### **Sample Maintenance Agreement**



**Responsible Party:**      Name \_\_\_\_\_

(Name, address, telephone and email) Address \_\_\_\_\_

City, State ZIP \_\_\_\_\_

Phone Number \_\_\_\_\_

Email Address \_\_\_\_\_

**Location (County):**    Carver

This agreement dated \_\_\_\_\_ between \_\_\_\_\_ (Responsible Party), and Carver County is entered into in order to maintain structural stormwater practices and/or wetland transition setbacks as outlined within this agreement.

This Agreement covers structural stormwater practices and/or wetland transition setbacks located on PID(s) # \_\_\_\_\_. The term of this Agreement shall be the life of the practices outlined below.

#### Recitals

- A) Structural Stormwater Practice(s) covered by this agreement.
- B) Legal description of wetland transition setbacks covered by this agreement.
- C) Inspection frequency and responsible parties.
- D) Items of interest that will be inspected and criteria for determination of pass or fail.
- E) Corrective actions that will take place if items of interest fail inspection.

#### I. RESPONSIBLE PARTY RESPONSIBILITIES

##### A) Structural Stormwater Practice Responsibilities.

- i. The Responsible Party is responsible for maintaining the practice(s) for the lifetime of the practice(s) to ensure that the conservation objective is/are met.
- ii. The Responsible Party agrees to allow the Carver County Staff access to the project area for evaluation and monitoring of the practice(s).
- iii. The Responsible Party is responsible for maintaining and restoring the practice(s). The Responsible Party shall secure all necessary permits for the practice(s).
- iv. The Responsible Party will submit to Carver County Staff proof of failed inspections within 30 days and proof of repair within 60 days.

##### B) Wetland Transition Setback Responsibilities.

- i. The Responsible Party agrees to establish native, noninvasive vegetation within the transition setback. Vegetation shall be considered established when approximately 80% or greater aerial coverage of native, noninvasive species is achieved.
- ii. The Responsible Party agrees to take reasonable steps to control invasion by nonnative or invasive species.

#### II. CARVER COUNTY RESPONSIBILITIES

A) Carver County assumes no liability for injury or damage, other than that caused by its own negligence, in the project area. Carver County assumes no jurisdiction over the project area for purposes of controlling trespass, noxious weeds, granting rights-of-way, or other incidents of ownership.

B) Carver County Staff or Carver County Soil and Water Staff may monitor the practice(s) periodically to evaluate short- and long-term performance. Data collected as a result of this monitoring effort will be made available to both the Landowner and to the general public. Any items of concern that are failing during these visits will be reported to Landowner within seven days.

#### III. MISCELLANEOUS:

A) This Agreement will be canceled upon transfer of the property to another owner during this period. This Agreement may be amended by mutual consent of Carver County and the Responsible Party. Carver County shall have no obligation to restore the land to its original condition upon expiration or termination of this Agreement.

B) Nothing contained in this agreement is intended or shall be construed in any manner as creating or establishing a partnership, joint venture, or agency relationship between parties.

C) Except if arising from or out of Carver County Staffs fault or negligence, the Landowner agrees to indemnify and defend Carver County Staff, its successors, and assigns against and will hold harmless Carver County Staff, its successors, and assigns from any claims, expenses, or damages, including attorney's fees, arising from the Landowner performance of this agreement.

D) This agreement shall be binding upon and inure to the benefit of the Responsible Party and Carver County Staff, and their respective successors and assigns: provided, however, that neither party may assign this agreement without the prior written consent of the other. Any modification, alteration, amendments, deletions, or waivers of the provisions of this agreement will be valid only when mutually agreed upon in writing by both parties.

E) This agreement will be effective as of the date of all signatures required below have been provided. The date of the last signature will be the date of this agreement and will be inserted in the first paragraph on page 1.

\_\_\_\_\_  
Responsible Party                      Date

**EXAMPLE LIST OF STORMWATER PRACTICE INSPECTION ACTIVITIES**

<b>VISUAL INSPECTION ACTIVITY</b>	<b>RECOMMENDED INSPECTION FREQUENCY</b>	<b>PASS</b>	<b>FAIL</b>	<b>CORRECTIVE ACTIONS</b>
1. Inspect for trash and debris at inlet, outlet, outlet structure, basin, and contributing drainage areas	Twice per year and following large storm events	No trash or debris present	Trash or debris present	Remove trash and debris from basin, inlet, outlet, outlet structure, and contributing drainage areas
2. Inspect for erosion in basin, inlet and outlet	Twice per year and following large storm events	Slopes around basin, inlet and outlet are stable	Slopes around basin, inlet, and outlet show significant signs of erosion	Repair erosion
3a. Measure depth of sediment in basin, inlet and outlet 3b. Calculate rate of accumulation and compare to expected design life of basin	Twice per year and following large storm events	Rate of accumulation less than expected	Rate of accumulation greater than expected	Remove sediment from inlet/outlet/basin
4. Inspect vegetation	Twice per year and following large storm events	Vegetation well established Vegetation dominated by non-invasive species	More than 50% of vegetation dead/dying Vegetation dominated by invasive species	Reseed/replant Treat/remove invasive species
5. Inspect inlet and outlet structural components (flared- end sections), including orifice and weir wall inside outlet structure, and clean-outs	As part of all inspection visits	Structural components in good working order	Structural components failing or starting to fail (weir wall seal failing, and the like)	Replace failing structural components with equal installed per manufacturer's specifications
6. Inspect filtration and infiltration features for standing water during growing season	48 and/or 72 hours following storm events -Twice during first growing season after construction -Once per year for subsequent years	Filtration/infiltration feature draws down within 48 hours following storm event	Filtration/infiltration feature does not draw down within 48 hours following storm event	Dewater Clean out tile Install sand or rock chimney Replace filter media

(Ord. 75-2012, passed 6-26-12)

**CHAPTER 154: SIGN REGULATIONS**

Section

**Purpose and Definitions**

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- 154.03 Severability
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- 154.40 Noncommercial speech
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### ***PURPOSE AND DEFINITIONS***

#### **§ 154.01 FINDINGS, PURPOSE AND EFFECT.**

(A) *Findings.* The County Board hereby finds as follows:

- (1) Exterior signs have a substantial impact on the character and quality of the environment.
- (2) Signs provide an important medium through which individuals may convey a variety of messages.
- (3) Signs can create traffic hazards, aesthetic concerns and detriments to property values, thereby threatening the public health, safety and welfare.

(4) The county's zoning regulations have, since as early as 1970, included the regulation of signs in an effort to provide adequate means of expression and to promote economic viability, while protecting the county and its citizens from a proliferation of signs of a type, size, location and character that would adversely impact upon the aesthetics of the county and threaten the health, safety and welfare of the county. The regulation of the physical characteristics of signs has had a positive impact on traffic safety and the appearance of the county.

(B) *Purpose and intent.* It is not the purpose or intent of this chapter to regulate the message displayed on any sign; nor is it the purpose or intent of this chapter to regulate any building design or any display not defined as a sign, or any sign which cannot be viewed from outside a building. The purpose and intent of this section is to:

- (1) Regulate the number, location, size, type, illumination and other physical characteristics of signs within the county in order to promote the public health, safety and welfare.
- (2) Maintain, enhance and improve the aesthetic environment by preventing visual clutter that is harmful to the

appearance of the county.

(3) Improve the visual appearance of the county while providing for effective means of communication, consistent with constitutional guarantees and the county's goals of public safety and aesthetics.

(4) Provide for fair and consistent enforcement of the sign regulations set forth herein under the zoning authority of the county.

(C) *Effect.* A sign may be erected, mounted, displayed or maintained in the county if it is in conformance with the provisions of these regulations. The effect of this chapter, as more specifically set forth herein, is to:

(1) Allow certain small, unobtrusive signs incidental to the principal use of a site when in compliance with the requirements of this chapter.

(2) Prohibit signs whose location, size, type, illumination or other physical characteristics negatively affect the environment and where the communication can be accomplished by means having a lesser impact on the environment and the public health, safety and welfare.

(3) Provide for the enforcement of the provisions of this chapter.

(Ord. 58-2007, passed 3-27-07)

#### **§ 154.02 APPLICATION AND JURISDICTION.**

The provisions of this chapter shall apply to all land within the county which is not within the boundaries of an incorporated city or within any orderly annexation area where the city and township and county have a separate agreement concerning sign regulations within the orderly annexation area.

(Ord. 58-2007, passed 3-27-07)

#### **§ 154.03 SEVERABILITY**

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter. The County Board hereby declares that it would have adopted this chapter in each section, subsection, sentence, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

(Ord. 58-2007, passed 3-27-07)

#### **§ 154.04 DEFINITIONS.**

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

**ABANDONED SIGN.** Any sign and/or its supporting sign structure which remains without a message or whose display surface remains blank for a period of one year or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. Signs applicable to a business temporarily suspended because of a change in ownership or management of such business shall not be deemed abandoned unless the property remains vacant for a period of one year or more. Any sign remaining after demolition of a principal structure shall be deemed to be abandoned. Signs which are present because of being legally established nonconforming signs or signs which have required a conditional use permit or a variance shall also be subject to the definition of **ABANDONED SIGN**.

**AWNING.** A roof-like cover, often of fabric, plastic, metal or glass designed and intended for protection from the weather or as a decorative embellishment, and which projects from a wall or roof of a structure primarily over a window, walk, or the like. Any part of an awning which also projects over a door shall be counted as an awning.

**AWNING SIGN.** A building sign or graphic printed on or in some fashion attached directly to the awning material.

**BALLOON SIGN.** A sign consisting of a bag made of lightweight material supported by helium, hot, or pressurized air which is greater than 24 inches in diameter.

**BUILDING.** Any structure used or intended for supporting or sheltering any use or occupancy.

**BUILDING SIGN.** Any sign attached or supported by any structure used or intended for supporting or sheltering any use or occupancy.

**CABINET SIGN.** Any wall sign that is not of channel or individually mounted letter construction.

**CANOPY.** A roof-like cover, often of fabric, plastic, metal, or glass on a support, which provides shelter over a doorway.

**CANOPY SIGN.** Any sign that is part of or attached to a canopy, made of fabric, plastic, or structural protective cover over a door or entrance. A **CANOPY SIGN** is not a marquee and is different from service area canopy signs.

**CHANGEABLE COPY SIGN, ELECTRONIC.** A sign or portion thereof that displays electronic, non-pictorial text information in which each alphanumeric character, graphic, or symbol is defined by a small number of matrix elements using different combinations of light emitting diodes (LED's), fiber optics, light bulbs or other illumination devices within the display area. **CHANGEABLE COPY SIGNS, ELECTRONIC** include computer programmable, microprocessor controlled electronic

displays. **CHANGEABLE COPY SIGNS, ELECTRONIC** do not include time and temperature signs. **CHANGEABLE COPY SIGNS, ELECTRONIC** include projected images or messages with these characteristics onto buildings or other objects.

**COMMERCIAL SPEECH.** Speech advertising a business, profession, commodity, service or entertainment.

**ELECTRONIC CHANGEABLE COPY SIGNS.** See **CHANGEABLE COPY SIGN, ELECTRONIC.**

**ELEVATION.** The view of the side, front, or rear of a given structure(s).

**ELEVATION AREA.** The area of all walls that face any lot line.

**ERECT.** Activity of constructing, building, raising, assembling, placing, affixing, attaching, creating, painting, drawing or any other way of bringing into being or establishing.

**FLAG.** Any fabric or similar lightweight material attached at one end of the material, usually to a staff or pole, so as to allow movement of the material by atmospheric changes and which contains distinctive colors, patterns, symbols, emblems, insignia, or other symbolic devices.

**FLASHING SIGN.** A directly or indirectly illuminated sign which exhibits changing light or color effect by any means, so as to provide intermittent illumination which includes the illusion of intermittent flashing light by means of animation. Also any mode of lighting which resembles zooming, twinkling, or sparkling.

**FREESTANDING SIGN.** Any sign which has supporting framework that is placed on, or anchored in, the ground and which is independent from any building or other structure.

**FRONTAGE.** The line of contact of a property with the public right-of-way.

**GRADE.** Grade shall be construed to be the final ground elevation after construction. Earth mounding criteria for landscaping and screening is not part of the final grade for sign height computation.

**GROUND SIGN.** Any freestanding sign with its sign face mounted on the ground or mounted on a base at least as wide as the sign and which has a total height not exceeding eight feet.

**HEIGHT OF SIGN.** The height of the sign shall be computed as the vertical distance measured from the base of the sign at grade to the top of the highest attached component of the sign.

**HOTEL, MOTEL, MOTOR HOTEL.** Any building or combination of buildings contained six or more rooms used for sleeping purposes by guest on a transient basis.

**ILLUMINATED SIGN.** Any sign which contains an element designed to emanate artificial light internally or externally.

**INTERIOR SIGN.** A sign which is located within the interior of any building, or within an enclosed lobby or court of any building, and a sign for and located within the inner or outer body, court or entrance of any theater.

**ISSUING AUTHORITY.** Carver County.

**LEGALLY ESTABLISHED NONCONFORMING SIGN.** Any sign and its support structure lawfully erected prior to the effective date of this chapter which fails to conform to the requirements of this chapter. A sign which was erected in accordance with a variance granted prior to the adoption of this chapter and which does not comply with the chapter shall be deemed to be a legal nonconforming sign. A sign which was unlawfully erected shall be deemed to be an illegal sign.

**MARQUEE.** Any permanent roof-like structure projecting beyond a theater building or extending along and projecting beyond the wall of that building, generally designed and constructed to provide protection from the weather.

**MARQUEE SIGN.** Any building sign painted, mounted, constructed or attached in any manner, on a marquee.

**MONUMENT SIGN.** Any freestanding sign with its sign face mounted on the ground or mounted on a base at least as wide as the sign and which has a height exceeding eight feet.

**MULTIPLE TENANT SITE.** Any site which has more than one tenant, and each tenant has a separate ground level exterior public entrance.

**NONCOMMERCIAL SPEECH.** Dissemination of messages not classified as commercial speech which include, but are not limited to, messages concerning political, religious, social, ideological, public service and informational topics.

**OFF-PREMISE SIGN.** A commercial speech sign which directs the attention of the public to a business, activity conducted, or product sold or offered at a location not on the same premises where such business sign is located. For purposes of this chapter, easements and other appurtenances shall be considered to be outside such platted parcel of land and any sign located or proposed to be located in an easement or other appurtenance shall be considered an off-premise sign.

**ON-PREMISE MESSAGES.** Identify or advertise an establishment, person, activity, goods, products or services located on the premises where the sign is installed.

**PARAPET (WALL).** That portion of building wall that rises above the roof level.

**POLE SIGN.** See **PYLON SIGN.**

**PORTE COCHERE.** A roofed structure or roof-like cover, extending from the entrance of a building and which provides shelter over a doorway.

**PRINCIPAL BUILDING.** The building in which the principal primary use of the lot is conducted. Lots with multiple principal uses may have multiple principal buildings, but storage buildings, garages, and other clearly accessory uses shall not be considered principal buildings.

**PROJECTING SIGN.** Any sign which is affixed to a building or wall in such a manner that its leading edge extends more than two feet beyond the surface or such building or wall face.

**PROPERTY OWNER.** Legal owner of property as officially recorded by Carver County.

**PUBLIC NOTICES.** Official notices posted by public officers, employees or their agents in the performance of their duties, or as directed by such officers, employees or agents.

**PUBLIC STREET RIGHT-OF-WAY.** The planned right-of-way for a public street.

**PYLON SIGN.** Any freestanding sign which has its supportive structure(s) anchored in the ground and which has a sign face elevated above ground level by pole(s) or beam(s) and with the area below the sign face open.

**ROOF.** The exterior surface and its supporting structure on the top of a building or structure. The structural make-up of which conforms to the roof structures, roof construction and roof covering sections of the Uniform Building Code.

**ROOF LINE.** The upper-most edge of the roof or in the case of an extended facade or parapet, the upper-most height of said facade.

**ROOF SIGN.** Any sign erected and constructed wholly on and above the roof of a building, supported by the roof structure, and extending vertically above the highest portion of the roof.

**ROOF SIGN, INTEGRAL.** Any building sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design, so that no part of the sign extends vertically above the highest portion of the roof and so that no part of the sign is separated from the rest of the roof by a space of more than six inches.

**ROTATING SIGN.** A sign or portion of a sign which turns about on an axis.

**SETBACK, FRONT.** The minimum horizontal distance permitted between the public right-of-way and a structure on the premises. In instances in which a property fronts on more than one street, front setbacks are required on all street frontages.

**SETBACK, REAR.** The minimum horizontal distance permitted between the property line opposite the principal street frontage and a structure on the premises.

**SETBACK, SIDE.** The minimum horizontal distance permitted between the side lot line and a structure on the premises.

**SHIMMERING SIGNS.** A sign which reflects an oscillating sometimes distorted visual image.

**SIGN.** Any letter, word or symbol, poster, picture, statuary, reading matter or representation in the nature of advertisement, announcement, message or visual communication, whether painted, posted, printed, affixed or constructed, including all associated brackets, braces, supports, wires and structures, which is displayed for informational or communicative purposes.

**SIGN FACE.** The surface of the sign upon, against, or through which the message of the sign is exhibited.

**SIGN STRUCTURE.** Any structure including the supports, uprights, bracing and framework which supports or is capable of supporting any sign.

**SITE.** A plot or parcel of land, or combination of contiguous lots or parcels of land, which are intended, designated, and/or approved to function as an integrated unit.

**STRINGER.** A line of string, rope, cording, or an equivalent to which is attached a number of pennants.

**SUSPENDED SIGN.** Any building sign that is suspended from the underside of a horizontal plane surface and is connected to this surface.

**TOTAL SITE SIGNAGE.** The maximum permitted combined area of all freestanding and wall identification signs allowed on a specific property.

**VISIBLE.** Capable of being seen by a person of normal visual acuity (whether legible or not) without visual aid.

**WALL.** Any structure which defines the exterior boundaries or courts of a building or structure and which has a slope of 60° or greater with the horizontal plane.

**WALL SIGN.** Any building sign attached parallel to, but within two feet of a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface.

**WINDOW SIGN.** Any building sign, pictures, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window.

(Ord. 58-2007, passed 3-27-07)

## **ADMINISTRATION AND ENFORCEMENT**

### **§ 154.10 PERMIT REQUIRED.**

(A) No sign shall be erected, altered, reconstructed, maintained or moved in the county without first securing a permit from the county or as part of a conditional use permit issued pursuant to Chapter 152 of this code. The content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit. Application for a permit shall be in writing addressed to the issuing authority and shall contain the following information:

- (1) Names and addresses of the owners of the display structure and property;
- (2) The location, including the address at which any signs are to be erected and the road/street on which they are to front;
- (3) The cost of the sign;
- (4) Type of sign (i.e. wall sign, monument sign, and the like);
- (5) Certification by applicant indicating the application complies with all requirements of this chapter; and
- (6) If the proposed sign is along state trunk highway or interstate highway, the application shall be accompanied by proof that the applicant has obtained a permit from the state for the sign.

(B) The issuing authority shall approve or deny the sign permit within a time frame that complies with M.S. § 15.99.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11)

### **§ 154.11 EXEMPTIONS.**

The following signs shall not require a permit. These exemptions, however, shall not be construed as relieving the owner of the sign from the responsibility of its erection and maintenance, and its compliance with the provisions of this chapter or any other law or ordinance regulating the same.

(A) The changing of the display surface on a painted or printed sign only. This exemption, however, shall apply only to poster replacement and/or on-site changes involving sign painting elsewhere than directly on a building.

(B) Signs six square feet or less in size.

(C) Street signs, official traffic control signs or devices, railroad signs or signals, emergency vehicle signals, or any other signs authorized by the responsible road authority or public entity.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11)

### **§ 154.12 FEES.**

Sign permit fees are set forth in the Carver County Fee Schedule.

(Ord. 58-2007, passed 3-27-07)

### **§ 154.13 REPAIRS.**

Any sign located in the county which may now be or hereafter become out of order, rotten or unsafe, and every sign which shall hereafter be erected, altered, resurfaced, reconstructed or moved contrary to the provisions of this chapter, shall be removed or otherwise properly secured in accordance with the terms of this chapter by the owners thereof or by the owners of the grounds on which said sign shall stand, upon receipt of proper notice so to do, given by the issuing authority. No rotten or other unsafe sign shall be repaired or rebuilt except in accordance with the provisions of this chapter and upon a permit issued by the issuing authority.

(Ord. 58-2007, passed 3-27-07)

### **§ 154.14 REMOVAL.**

In the event of the failure of the owner or person, company or corporation having control of any sign, or the owner of the ground on which the sign is located, to remove or repair said sign within 60 days after the use is terminated, a notice shall be given to the person or entity identified in the sign application and the sign may be removed by the county at the expense of the owner or manager of the sign, or the owner of the ground upon which the sign stands.

(Ord. 58-2007, passed 3-27-07)

### **§ 154.15 VIOLATIONS.**

(A) *Violations.* Any person, firm or corporation who shall violate any of the provisions of this chapter or who shall fail to comply with any of the provisions of this chapter or who shall make any false statement in any document required to be submitted under the provisions of this chapter, shall be guilty of a misdemeanor. Each day that a violation continues shall constitute a separate offense.

(B) *Stop work orders.* Whenever any work is being done contrary to the provisions of this chapter, the county may order the work stopped by written notice personally served upon the property owner or applicant named in the permit. All activities shall cease and desist until subsequent authorization to proceed is received from the county or a court of competent jurisdiction.

(C) *Injunctive relief and other remedies.* In the event of a violation or a threat of a violation of this chapter, the county may institute appropriate actions or proceedings, including injunctive relief, to prevent, restrain, correct or abate such violations or threat of violations. The county may recover costs incurred for corrective action in a civil action in any court of competent jurisdiction, and such costs may be certified by court order to the County Auditor as a special tax against the real property. These and other remedies, as determined appropriate by the county, may be imposed upon the applicant, permittee, installer, property owner, or other responsible person in addition to or separate from other enforcement actions.

(Ord. 58-2007, passed 3-27-07)

## **GENERAL PROVISIONS**

### **§ 154.20 SIZE.**

(A) No sign shall exceed 32 square feet of surface area. The size of a two-sided sign shall be calculated based on the surface area of only one of the sides, provided the sign surfaces are completely flush (i.e. back to back).

(B) No parcel shall have signage exceeding a total aggregate of 36 square feet of surface area for all signs.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11)

### **§ 154.21 REGULATIONS.**

Except as hereinafter provided, no signs shall be erected or maintained at any angle to a building or structure which sign extends or projects over the street or highway. No sign which is erected or maintained flat against any building or structure shall extend or project over the sidewalk, street or highway.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11)

### **§ 154.22 ELECTRICAL SIGNS.**

(A) Electrical signs may be permitted, but devices giving off intermittent, flashing or rotating beam of light shall be prohibited. Flood lighting shall be focused upon the sign. No lighting for signs shall directly reflect light beams onto any public street or residential structure. Signs may not be illuminated beyond any lot line.

(B) Electrical signs must be installed in accordance with the current electrical code and a separate permit from the building official must be obtained prior to placement.

(Ord. 58-2007, passed 3-27-07)

### **§ 154.23 UNAUTHORIZED SIGNS.**

The following signs are unauthorized signs:

(A) Any sign, signal, marking or device which purports to be or is an imitation of or resembles any official traffic-control device or railroad sign or signal, or emergency vehicle signal, or which attempts to direct the movement of traffic or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal.

(B) All off-premise signs.

(C) Signs painted, attached or in any other manner affixed to trees, rocks, or similar natural surfaces, or attached to public utility poles, bridges, towers, or similar public structures.

(D) Changeable copy signs.

(E) Private signs, other than public utility warning signs, are prohibited within public rights-of-way and easements, or on any other public property unless the sign is specifically authorized by the responsible public authority.

(F) Any sign(s) placed near the intersection of public roads, or public roads and railroads, in such a manner as to cause any obstruction of vision to a motorist and/or pedestrian as determined by the appropriate road authority.

(G) Any sign containing obscene pictures or wording.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11)

### **§ 154.24 SETBACKS.**

Signs shall be at least three feet from front and side yard property lines or actual or typical planned right-of-way, whichever is greater.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11)

### **§ 154.25 AREA.**



The area within the frame shall be used to calculate the square footage except that the width of a frame exceeding 12 inches shall constitute sign face, and if such letters or graphics be mounted directly on a wall or fascia or in such way as to be without a frame the dimensions for calculating the square footage shall be the area extending six inches beyond the periphery formed around such letters or graphics in a plane figure bounded by straight lines connecting the outermost points thereof. Except for the allowance for a two-sided, flush sign, each surface utilized to display a message or to attract attention shall be measured as a separate sign and shall be calculated in the overall square footage. Symbols, flags, pictures, wording, figures or other forms of graphics painted on or attached to windows, walls, awnings, free-standing structures, suspended by balloons, or kites or on persons, animals, or vehicles are considered a sign and are included in calculating the overall square footage.

(Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11)

#### **§ 154.26 CANOPIES, MARQUEES AND FIXED AWNINGS.**

Canopies, marquees and fixed awnings are an integral part of the structure to which they are attached. They are allowed if they meet following requirements and the applicable square footage requirements.

(A) An awning, canopy or marquee may not project into the public right-of-way nearer than 30 inches to the street curb or curb line;

(B) Awnings, canopies or marquees may have no part of the structure other than supports nearer the ground surface than seven feet;

(C) The architectural style of the awning, canopy or marquee may be consistent with the building being served;

(D) Awnings, canopy or marquees projecting into the required yards may not be enclosed except with a transparent material permitting through vision; and

(E) Awnings, canopies or marquees built over the public right-of-way must be included in a liability insurance policy holding the county free of all responsibility.

(Ord. 58-2007, passed 3-27-07)

#### **§ 154.27 HEIGHT.**

The top of a sign, including its superstructure, if any, shall be no higher than the roof of the building to which such sign may be attached or 35 feet above ground level, whichever height is less; except that the height of any changeable sign which is attached to or an integral part of a functional structure, such as a water tower, smoke stack, radio or TV transmitting tower, beacon or similar structure shall be no higher than such structure. Signs, including any superstructure standing or erected free of any building or other structure, shall not exceed an overall height of 35 feet from ground level and shall be located on land in an area which is landscaped or if such land is part of an approved parking area, it shall be surfaced or paved as required in the zoning code.

(Ord. 58-2007, passed 3-27-07)

#### **§ 154.28 RETROACTIVE EFFECT.**

This chapter shall apply to all sign applications applied for and/or pending prior to its enactment.

(Ord. 58-2007, passed 3-27-07)

### **NONCONFORMING USES**

#### **§ 154.35 NONCONFORMING SIGNS; COMPLIANCE.**

It is recognized that signs exist within the county which were lawful before this chapter was enacted, which would be prohibited, regulated or restricted under the terms of this chapter or future amendments. It is the intent of this chapter that nonconforming signs shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other signs or uses otherwise prohibited by this chapter. It is further the intent of this chapter to permit legal nonconforming signs existing on the effective date of this chapter, or amendments thereto, to continue as legal nonconforming signs provided such signs are safe, are maintained so as not to be unsightly, and have not been abandoned or removed subject to the following provisions:

(A) No sign shall be enlarged or altered in a way which increases its nonconformity.

(B) Should such sign or sign structure be destroyed by any means to an extent greater than 50% of its replacement cost and no building permit has been applied for within 180 days of when the property was damaged, it shall not be reconstructed except in conformity with the provisions of this chapter.

(C) Should such sign or sign structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the requirements of this chapter.

(D) No existing sign devoted to a use not permitted by the zoning code in the zoning district in which it is located shall be enlarged, extended or moved except in changing the sign to a sign permitted in the zoning district in which is it located.

(E) When a structure loses its nonconforming status all signs devoted to the structure shall be removed and all signs painted directly on the structure shall be repainted in a neutral color or a color which will harmonize with the structure.

(Ord. 58-2007, passed 3-27-07)

## **NONCOMMERCIAL SPEECH**

### **§ 154.40 NONCOMMERCIAL SPEECH.**

Notwithstanding any other provisions of this chapter, all signs of any size containing noncommercial speech may be posted from August 1 in any general election year until ten days following the general election and 13 weeks prior to any special election until ten days following the special election.

(Ord. 58-2007, passed 3-27-07)

### **§ 154.41 SUBSTITUTION CLAUSE.**

The owner of any sign which is otherwise allowed by this chapter may substitute noncommercial copy in lieu of any other commercial or noncommercial copy. This substitution of copy may be made without any additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or favoring of any particular noncommercial message over any other noncommercial message. This provision prevails over any more specific provision to the contrary.

(Ord. 58-2007, passed 3-27-07)

## **APPEALS**

### **§ 154.45 APPEALS.**

(A) *Filing.* A person wishing to appeal any order, requirement, decision or determination made by the county pursuant to this chapter shall, within 30 days of the action that is being appealed, file an appeal with the Department of Land and Water Services. The appeal shall include the order, requirement, decision or determination which is being appealed, the requested remedy, and shall state the reason for the appeal. Land and Water Services shall prepare a report and refer the appeal to the Board of Adjustment for a decision. The appeal shall be heard by the Board of Adjustment at a public hearing within 60 days from the date of filing the appeal. The Board of Adjustment shall give due notice thereof to the appellant, the public and the officer from whom the appeal is taken.

(B) *Stay of action.* An appeal stays all proceedings and furtherance of the action appealed from unless the Board of Adjustment certifies that by reason of the facts stated in the appeal the stay would cause imminent peril to life or property.

(C) *Decision.* The Board of Adjustment may reverse or affirm wholly or partly or may modify the order, requirement, decision or determination and to that end shall have all of the powers of the officer from whom the appeal was taken and may direct issuance of the permit. The Board's decision shall be by the adoption of an order. The order shall include findings of fact supporting the Board's decision.

(Ord. 58-2007, passed 3-27-07)

## **CHAPTER 155: ILLICIT STORMWATER DISCHARGE AND CONNECTION**

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### Section

- 155.01 Purpose, intent, and authority
- 155.02 Responsibility of administration
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- 155.04 Applicability
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- 155.13 Notification of releases
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- 155.18 Injunctive relief and public nuisance
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#### **§ 155.01 PURPOSE, INTENT, AND AUTHORITY.**

(A) *Purpose.* The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of Carver County (county) through the regulation of non-stormwater discharges, and connections to the storm drainage system to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) of the county in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

(B) *Intent.* The chapter is intended to:

- (1) Regulate the contribution of pollutants by stormwater discharges by any user to the county's MS4;
- (2) Prohibit illicit connections and discharges to the county's MS4; and
- (3) Establish the legal authority to carry out all inspection, surveillance and monitoring, and enforcement procedures necessary to ensure compliance with the provisions of this chapter.

(C) *Authority.* This chapter is adopted pursuant to the federal Water Pollution Control Act, also known as the Clean Water Act, (33 U.S.C. § 1251 et seq.), 40 C.F.R. Part 122, M.S. Chapters 115, 116, 145A, 375, and successor statutes, and Minn. Rules Chapter 7090, and successor rules.

(Ord. 92-2019, passed 4-16-19)

#### **§ 155.02 RESPONSIBILITY OF ADMINISTRATION.**

(A) *Responsibility of administration.* The Divisions shall administer, implement and enforce the provisions of this chapter. At appropriate times, the county shall review, revise and update this chapter as necessary. The county shall administer, implement, and enforce the provisions of this chapter.

(B) This chapter authorizes the county to engage in activities, which include but are not limited to the following:

- (1) Mapping the county's MS4 and supporting structures;
- (2) Inspecting the county's outfall structures for non-stormwater discharges;
- (3) Screening, sampling, and identifying any discovered non-stormwater discharges when feasible;
- (4) Identifying areas or activities that are not covered under a NPDES permit and that have a high potential for illicit discharges;
- (5) Determining the need for increased monitoring of areas with repeated occurrences of illicit discharges, or areas having a high risk for illicit discharges; and
- (6) Inspecting facilities suspected of producing illicit discharges, providing supervision of remediation and prevention activities, and reviewing any facility discharge sampling directed under the provisions of this chapter.

(C) *False information.* Omission of any information or submission of false information required by a provision of this chapter is unlawful, and maybe punished as provided by law.

(Ord. 92-2019, passed 4-16-19)

#### **§ 155.03 DEFINITIONS.**

Unless specifically defined in this chapter, the words and phrases used in this chapter shall have the same definition as provided in 33 U.S.C. § 1251 et seq., M.S. Chapters 115, 116, 145A, and Minn. Rules Chapter 7090. Any word or phrases not defined therein or in this chapter shall be construed according to their common usage. For purposes of this chapter, the words "must" and "shall" are to be constructed as mandatory and not permissive.

**AUTHORIZED ENFORCEMENT AGENCY.** Employees or designees of the Manager of the county's Environmental Services Department of the Public Service Division or of the Director of the county's Public Works Division, who are designated to enforce the provisions of this chapter.

**BEST MANAGEMENT PRACTICES (BMPS).** Practices to prevent or reduce pollution of waters of the state, including schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational

practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. **BMPS** also includes treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, or water disposal or drainage from raw materials storage, as defined in Minn. Rule pt. 7001.102, subp. 5, and as amended from time to time.

**CLEAN WATER ACT.** The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and as amended from time to time.

**CONSTRUCTION ACTIVITY.** Activities subject to NPDES construction permits. NPDES stormwater permits must be obtained for any construction activity that disturbs one acre or more of soil, less than one acre of soil if that activity is part of a larger common plan of development or sale that is greater than one acre, or as otherwise required by the Minnesota Pollution Control Agency (MPCA). A **CONSTRUCTION ACTIVITY** includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography, that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity include, but are not limited to clearing and grubbing, grading, filling, excavating, and demolition.

**COUNTY.** Carver County, Minnesota.

**COUNTY BOARD.** The Carver County Board of Commissioners.

**DIVISION or DIVISIONS.** The Carver County Public Services Division and/or the Public Works Division (or their successor), their staff and designated agents.

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

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

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

(2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

**ILLICIT DISCHARGE.** Any disposal or discharge of pollutants or non-stormwater materials into the county's MS4, via surface flow, direct dumping into the storm sewer or water body, or through illegal connection to the county's MS4, except disposal or discharges permitted pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer), and discharges resulting from firefighting activities or other exempted activities listed in §155.006 of this chapter.

**INDUSTRIAL ACTIVITY.** Activities subject to NPDES Industrial Permits as defined in 40 CFR, §122.26(b)(14).

**MAXIMUM EXTENT PRACTICABLE.** A standard for water quality that applies to all MS4 operators regulated under the NPDES program.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4).** The conveyance or system of conveyances (roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains etc.) owned or operated by a public entity such as a city, township, county, highway department, etc., designed or used for collecting or conveying stormwater, and not used for collecting or conveying sewage or wastewater that discharges to water of the state.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES).** The program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (Sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Sections 1317, 1328, 1342, and 1345.

**NON-STORMWATER DISCHARGE.** Any discharge to the storm drainage system that is not composed entirely of stormwater.

**PERSON or OWNER.** Any individual, municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, organization, any receiver, assignee, agent or other legal representative of any of the foregoing, or any other legal entity.

**POLLUTANT.**

(1) Any substance which, when discharged, has potential to or does any of the following:

- (a) Interferes with state designated water uses;
- (b) Obstructs or cause damage to waters of the state;
- (c) Changes water color, odor, or usability as a drinking source through causes not attributable to natural stream

processes affecting surface water or subsurface processes affecting groundwater;

- (d) Add an unnatural surface film on the water;
- (e) Adversely changes other chemical, biological, thermal or physical condition, in any surface water or stream channel;
- (f) Degrades the quality of the ground water; or
- (g) Harms human life, aquatic life, or terrestrial plant and wildlife.

(2) Pollutant includes, but is not limited to: dredged soil, solid wastes, incinerator residue, sewage, garbage, sewage sludge, heat, wrecked or discarded equipment or objects, rock, sand, cellar dirt, chemical wastes, biological materials, radioactive materials, and industrial, municipal, and agricultural waste. Chemical wastes include but are not limited to paints, varnishes, solvents, oil and other automotive fluids. Biological materials include but are not limited to bacteria, fecal coliform, pathogens, and animal wastes. Agricultural wastes include but are not limited to pesticides, herbicides, and fertilizers. Industrial wastes include but are not limited to dissolved and particulate metals, wastes and residues that result from constructing a building or structure, and noxious or offensive matter of any kind.

**POLLUTE.** The discharge of pollutants into waters of the state.

**POLLUTION.** The direct or indirect distribution of pollutions into waters of the state.

**PRECIPITATION.** A deposit on the earth of hail, mist, rain, sleet, or snow; also the quantity of water deposited.

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

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

**STORMWATER.** Any surface flow, runoff, snow melt runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

**STORMWATER POLLUTION PREVENTION PLAN (SWPPP).** A document which describes the BMPs and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant charges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

**SURFACE WATER or WATERS.** All streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses, and irrigation systems whether natural or artificial, public or private, except that surface waters do not include treatment basins or ponds that were constructed from upland.

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

**WATERCOURSE.** Any channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods water may leave the confining beds and banks but under low and normal flows, water is confined to within the channel. A watercourse maybe perennial or intermittent and natural or artificially constructed. A watercourse includes all public waters.

**WATERS OF THE STATE.** All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Minnesota or any portion thereof, as defined in M.S. § 115.01, subd. 22 and as amended from time to time.

**WATERS OF THE UNITED STATES.** As defined in 33 U.S.C. § 1251 et seq. (1972), and as amended from time to time.

(Ord. 92-2019, passed 4-16-19)

#### **§ 155.04 APPLICABILITY.**

This chapter shall apply to all water entering the county's MS4 stormwater system generated on any developed or undeveloped lands within the urbanized area of the county, meaning areas with stormwater conveyance systems and infrastructure, unless explicitly exempted by this chapter. This chapter does not affect any liability or obligation imposed by federal law, Minnesota Statute, Minnesota Rule, or the requirements of other agencies with regulatory authority.

(Ord. 92-2019, passed 4-16-19)

#### **§ 155.05 MOST RESTRICTIVE PROVISION CONTROLS.**

If a requirement imposed by this chapter differs from a comparable condition imposed by any other applicable law, ordinance, rule, regulation, then the provision that establishes the higher standard for the promotion and protection of the public health, safety, and general welfare shall control and apply.

(Ord. 92-2019, passed 4-16-19)

## **§ 155.06 ILLICIT DISCHARGE PROHIBITIONS.**

*Prohibition of illicit discharges.* No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the county's MS4 any pollutants or waters containing any pollutants, other than stormwater. The commencement, conduct, or continuance of any illegal discharge to the storm drain-system is prohibited except as described as follows:

(A) The following discharges are exempt from discharge prohibitions established by this chapter: water line-flushing, or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains, crawl space pumps, air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated to a level of less than one PPM chlorine), firefighting activities, and any other water source not containing pollutants.

(B) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

(C) Dye testing is an allowable discharge, but requires a written notification to the authorized enforcement agency at least three days prior to the time of the test.

(D) Any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the Minnesota Pollution Control Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system. Proof of compliance with said permit may be required in a form acceptable to the Division prior to the allowance of discharges to the MS4.

(Ord. 92-2019, passed 4-16-19)

## **§ 155.07 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.**

(A) Any person subject to an industrial or construction activity NPDES permit shall comply with all provisions of said permit. Proof of compliance with said permit may be required in a form acceptable to the county prior to the allowance of discharges to the county's MS4.

(B) The operator of a facility, including construction sites, required to have an NPDES permit to discharge stormwater associated with industrial activity shall submit a copy of the Notice of Intent (NOI) to the county at the same time the operator submits the original NOI to the United States Environmental Pollution Control Agency or MPCA, as applicable.

(C) The copy of the NOI shall be delivered to the county either in person, or by mailing it to:

Notice of Intent to Discharge Stormwater  
Carver County Environmental Services Department  
Carver County Government Center  
600 East 4th Street  
Chaska, MN 55318

(D) It is a violation of this chapter if a person operates a facility that is discharging stormwater associated with industrial activity without having submitted a copy of the NOI to do so to the county.

(Ord. 92-2019, passed 4-16-19)

## **§ 155.08 ILLICIT CONNECTIONS PROHIBITIONS.**

(A) The construction, use, maintenance or continued existence of illicit connections to the storm drainage system is prohibited.

(B) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(C) It is a violation of this chapter for a person to connect a pipe or line from a premise that conveys sewage to the county's MS4 or to allow such a connection to continue.

(D) Improper connections that violate this chapter must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or to the sanitary sewer system.

(Ord. 92-2019, passed 4-16-19)

## **§ 155.09 MS4 ACCESS.**

(A) *General permission.* Any parcel existing as of the effective date of this chapter is presumed to have permission to discharge stormwater to the county's MS4 system provided it complies with all provisions of NPDES permits, grading permits and/or other development approvals in effect at the time of development, except as provided below.

(B) *Performance standards.* The county may adopt standards applying to the water quality, rate of flow, and volume of discharge of stormwater to the county's MS4 system that apply retroactively to any parcel discharging stormwater to the system.

(C) *Suspension due to illegal discharges in emergency situations.* The county may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the county's MS4 or Waters of the United States or waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the county's MS4 or Waters of the United States or waters of the state, or to minimize danger to persons. This may include, but is not limited to, installation of a storm sewer pipe plug to stop an actual or threatened discharge.

(D) *Suspension due to the detection of illegal discharge.* Any person discharging to the county's MS4 in violation of this chapter may have their access to the county's MS4 terminated if such termination would abate or reduce an illegal discharge. This may include, but is not limited to, installation of a storm sewer pipe plug to abate or reduce an illegal discharge. The authorized enforcement agency will notify a violator in writing of the proposed termination of its access to the county's MS4. The violator may petition the authorized enforcement agency in writing for reconsideration and hearing within five business days following the termination of access to the county's MS4.

(E) A person commits an offense if the person reinstates access to the county's MS4 terminated pursuant to this section, without receiving prior written approval of the authorized enforcement agency.

(Ord. 92-2019, passed 4-16-19)

### **§ 155.10 COMPLIANCE MONITORING OF DISCHARGES.**

(A) *Applicability.* This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

(B) *Right of access to facilities.* The county shall be permitted to enter and inspect property, facilities and construction activity sites subject to regulation under this chapter at all reasonable times and as often as may be necessary to determine compliance with this chapter or to perform any duty.

(1) If such a property, facility or construction site is occupied, then the county shall first present proper identification, and request entry. If such a property, facility or construction site is unoccupied, then the county shall first make reasonable efforts to locate the owner or other person having charge or control, and request entry from said person.

(2) The county shall have every remedy provided by law to secure entry, including but not limited to:

(a) The county may seek issuance of a search warrant from any court of competent jurisdiction if access to any part of the property, facility, or construction site from which stormwater is discharged, is denied to the county and:

1. The county can demonstrate there is probable cause to believe there is a violation of a provision of this chapter;
2. There is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder;
3. There is a need to protect the overall public health, safety, and welfare of the community; and

(b) The county may seek an administrative search warrant. If entry is refused, then the county shall have recourse to every remedy provided by law to secure entry.

(3) Notwithstanding any other provision of law to the contrary, in the event that a violation of a provision of this chapter constitutes an immediate danger to public health or public safety, then the county may enter the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property.

(C) *Inspection and sampling.*

(1) The Divisions shall be permitted to enter, inspect and evaluate the premises or facilities, including construction activity sites subject to regulation under this chapter as often as may be necessary to determine and ensure compliance with this chapter.

(2) If a discharger has security measures in force which require proper identification and clearance before entry onto the premises or facilities subject to regulation under this chapter, then the discharger shall make all necessary arrangements to allow representatives of the county to gain access.

(3) The owner or operator of a premise or facility subject to regulation under this chapter shall:

(a) 1. Allow a Division to access all parts of the premise or facility from which stormwater is discharged, for the purposes of conducting inspections, sampling, examining and copying records required by NPDES permit to discharge stormwater, and the performance of any additional duties defined by federal and state law.

2. Said access shall be granted to a Division as often as may be necessary to determine compliance with the requirements of this chapter. Any owner or operator of a premise or facility having a NPDES permit to discharge stormwater associated with industrial activity, and who denies an authorized enforcement agent access to said premise or facility for the

purpose of conducting any activity authorized by this chapter, violates the chapter.

(b) Remove any temporary or permanent obstruction to safe and easy access to said premise or facility at the written request of a Division, and shall not replace said obstruction. The owner or operator of said premise or facility shall solely bear the costs of removing the obstruction and providing safe and easy access.

(c) Provide samples requested by the Divisions free of charge, to the Divisions to allow necessary and appropriate tests to be conducted.

(d) Allow the Divisions to set up devices, deemed necessary in the opinion of the authorized enforcement agent to conduct monitoring and/or sampling of the stormwater discharge.

(e) Install monitoring and sampling equipment as deemed necessary in the opinion of the authorized enforcement agent to conduct monitoring and/or sampling of the stormwater discharge, upon the premise or facility. Said owner or operator shall maintain the monitoring and sampling equipment in a safe and proper operating condition at all times at its own expense. All devices used to measure stormwater flow and quality shall be calibrated according to the manufacturer's instruction to ensure the devices operate within their specified parameters.

(f) Allow the Divisions to take samples and conduct tests of soils, surface waters, ground water, air, raw materials, products, or other material or residual present at or emanating from the premise or facility, if said samples and tests are deemed necessary to demonstrate whether said premise or facility complies with this chapter. Said premise or facility shall not charge the Divisions for necessary sampling and tests.

(g) Allow the Divisions to have free access at reasonable times to inspect and copy at a reasonable cost, all business records related to the premise's or facility's NPDES permit to discharge stormwater, and to perform any other duty required by federal law.

(h) Allow the Divisions to record and document its findings in any reasonable and appropriate manner, including, but not limited to notes, photographs, photocopies, read outs from analytical instruments, videotapes, audio recordings, and computer storage systems or other electronic media.

(Ord. 92-2019, passed 4-16-19)

#### **§ 155.11 BEST MANAGEMENT PRACTICES.**

(A) The county requires the use of BMPs for any activity, operation, or facility, which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or the waters of the state. This requirement includes facilities and operations covered under a NPDES permit (Industrial, Construction, and Municipal Storm Sewer System) as well as non-permitted facilities. Guidance for selecting and implementing BMPs may be found on the MPCA's website under the Storm Water Program.

(B) The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into county MS4 or watercourses through the use of structural and non-structural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illegal discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the county's MS4. Compliance with all of the terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this division.

(Ord. 92-2019, passed 4-16-19)

#### **§ 155.12 WATERCOURSE PROTECTION.**

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, and other obstacles that would pollute, or contaminate, the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately-owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the county's MS4.

(Ord. 92-2019, passed 4-16-19)

#### **§ 155.13 NOTIFICATION OF RELEASES.**

(A) Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drainage system, or waters of the state, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

(B) In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.

(C) In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in-person, by phone, or by e-mail no later than the next business day. Notifications in-person or by phone shall be confirmed



by written notice addressed and mailed or emailed to the Division within three business days of the notice.

(D) If the illegal discharge emanates from a commercial or industrial establishment, then the owner or operator of such establishment, shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

(Ord. 92-2019, passed 4-16-19)

#### **§ 155.14 ENFORCEMENT - NOTICE OF VIOLATION.**

Whenever the Division has reason to believe that a person has violated a provision or failed to meet a requirement of this chapter, then the authorized enforcement agency may order compliance by written notice of violation to the responsible person. The notice of violation should include as much information as necessary to identify the alleged violator and any remedial measures, requirements for compliance, or penalties to be imposed. The notice of violation may require without limitation:

- (A) The performance of monitoring, analyses, and reporting;
- (B) The elimination of illicit discharges or illicit connections;
- (C) That violating discharges, practices, or operations shall cease and desist;
- (D) The abatement or remediation of stormwater pollution or contamination hazards, and the restoration of any affected property;
- (E) Payment of a fine to cover administrative and remediation costs; and
- (F) The implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, then the notice of violation shall set forth a deadline within which such remediation or restoration must be completed. The notice of violation shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator. A fine and fee structure shall be established by County Board Resolution.

(Ord. 92-2019, passed 4-16-19)

#### **§ 155.15 APPEAL OF NOTICE OF VIOLATION.**

Any person receiving a notice of violation may appeal the determination of the Division. The written notice of appeal must be received within ten business days from the date of the notice of violation, and must state the grounds for the appeal. The hearing shall be held before the County Board, or a hearing examiner appointed by the County Board by resolution. The hearing examiner shall conduct an evidentiary hearing; and shall make and submit findings of fact, conclusions and recommendations to the County Board in a written report. The County Board may adopt, modify or reject a portion of or all of the written report, provided the County Board does not act unreasonably, arbitrarily, or capriciously. The appellant may send a written request for an extension of time to the Chair of the County Board. Unless the County Board grants said request for an extension, the hearing will be held no later than 45 calendar days after the date of service of request for a hearing, exclusive of the date of such service. In any event, such hearing shall be held no later than 90 calendar days after the date of service of request for hearing, exclusive of the date of such service. The decision of the County Board following the hearing shall be final. Any appellant aggrieved by the decision of the County Board may appeal that decision to any court with appropriate jurisdiction. This division does not apply to violations of other federal or state laws, or to incidents in which a hazardous material was spilled, released, or discharged.

(Ord. 92-2019, passed 4-16-19)

#### **§ 155.16 ENFORCEMENT MEASURES AFTER APPEAL.**

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, then representatives of the authorized Division shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

(Ord. 92-2019, passed 4-16-19)

#### **§ 155.17 COST OF ABATEMENT OF VIOLATION.**

After abatement of the violation by the county, the owner of the property will be notified of the cost of abatement, including administrative costs. The owner may file a written objection to the amount of the assessment within ten business days. If the amount due is not paid within a timely manner as determined by the decision of the Division or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this chapter shall become liable to the county by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate determined by the County Board shall be assessed on the balance beginning on the thirtieth day following completion of the work to abate the violation.

(Ord. 92-2019, passed 4-16-19)

### **§ 155.18 INJUNCTIVE RELIEF AND PUBLIC NUISANCE.**

(A) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this chapter, then the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

(B) In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken. The authorized enforcement agency may also recover all attorney fees, court costs and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses, and any additional relief the court may deem necessary and proper.

(Ord. 92-2019, passed 4-16-19)

### **§ 155.19 CRIMINAL PROSECUTION.**

(A) Any person who violates this chapter, or who shall permit such a violation to occur on the premises under their control, or who shall fail to take action to abate the existence of a violation within the specified time period when ordered or notified to do so by the county, shall be guilty of a misdemeanor criminal offense, punishable by a sentence of not more than 90 days or a fine of not more than \$1,000, or both. A separate offense shall be deemed to be committed on each day during or on which a violation occurs or continues to occur. If the court imposes a sentence, then the county may ask the court to include court-ordered restitution for any loss that the county inclined as a direct result of the offense, including but not limited to the expenses associated with enforcing this chapter, and the costs of sampling and monitoring. The imposition of any sentence, including a fine, shall not exempt the offender from compliance with the requirements of this chapter.

(B) In the event of a threat of violation or an actual violation of this chapter, the county may institute appropriate actions or proceedings, including requesting injunctive relief to prevent, restrain, correct or abate such threatened violations or actual violations.

(C) If a person fails to comply with any provision of this chapter, then the county may recover costs incurred for corrective action by any means permissible under the law. In the discretion of the County Board of Commissioners, the costs may be certified to the Director of the Property Tax Department as an assessment against the property on which the violation occurred.

(D) Whenever the county has reason to believe a person has violated a provision of this chapter, then the county may order compliance by written notice of violation. The notice of violation should include as much information as necessary to identify the alleged violator, the nature of the violation, and any remedial measures, requirements for compliance, or penalties to be imposed.

(E) When the county concludes that a person has violated, or continues to violate, any provision of this chapter, or any order issued hereunder, and that the violation(s) has (have) caused or contributed to a threatened or actual discharge to the MS4 or waters of the state which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, then the county may issue an emergency order directing the violator to:

- (1) Immediately cease and desist;
- (2) Immediately comply with all chapter requirements; and

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

(F) In the event a person fails to comply with the requirements of an emergency order issued pursuant to this section, then the county may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the state, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. Issuance of an emergency order shall not prevent the county from, or require the county to, take any other action against the violator.

(G) The county may, without prior notice, suspend the MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present an imminent or substantial danger to the public health and welfare, the environment, the county's MS4, or waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the county may take such steps as may be necessary to minimize the danger.

(H) It is a violation of this chapter to reinstate access to the county's MS4 terminated pursuant to this section, without prior approval of the county.

(Ord. 92-2019, passed 4-16-19)

References to Minnesota Statutes

References to Minnesota Rules

References to Ordinances

## REFERENCES TO MINNESOTA STATUTES

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<b><i>M.S. Cite</i></b>	<b><i>Code Section</i></b>
<b><i>M.S. Cite</i></b>	<b><i>Code Section</i></b>
Chapter 13	55.08
13.37	93.08
13.82	55.07
13D.05	30.01
15.73, subd. 3	93.03
15.99	113.27, 152.216, 152.249, 152.250, 152.272, 153.11, 154.10
16B.59 - 16B.75	150.01
17.81	53.02
17.117	56.02, 56.03, 56.07, 56.09
17.135	50.071
35.71, subd. 3	92.10
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18C.430	54.04
84.81 - 84.91	91.08
85.40 - 85.45	91.08
88.01 - 88.22	53.03
93.44 - 93.51	152.118.2
Chapter 103B	152.003
103B.211 - 103B.255	153.03
Chapter 103E	152.051, 153.40
Chapter 103F	152.003, 152.108, 152.143
103F.48	152.010
Chapter 103G	152.126, 153.57
103G.005, subd. 14	152.145
103G.005, subd. 15	152.010
103G.005, subd. 15a	152.010, 153.02
103G.005(17b)	54.04
103G.005, subd. 19	153.02
103G.245	152.010, 152.118.1, 152.147, 152.153
Chapter 103I	56.02, 56.03
103I.005, subd. 21	56.03, 56.06
103I.301, subd. 1	56.06
Chapter 106	152.054
Chapter 115	54.03, 56.02, 155.01, 155.03
115.01, subd. 22	155.03
Chapter 115A	50.001, 50.006
115A.03	50.002
115A.03(10)	50.002
115A.03(29)	50.002
115.55	52.003

115.55, subd. 3	56.04, 56.05
115.56	52.003
115.57	56.10
115A.90	50.002
115A.99(1)	50.009
115A.882	50.005, 50.006
Chapter 116	54.03, 54.04, 155.01, 155.03
116.03	54.04
116.06	50.002, 53.02
116.07(4)(k)	50.073
116.0711	152.113
116.18, subd. 3c	56.03
116.75 - 116.83	50.075
116B.02(5)	54.04
116B.02(6)	54.04
144.391	111.01
Chapter 145A	50.001, 51.02, 55.01, 55.03, 55.11, 155.01, 155.03
145A.01 through 145A.08	52.003
145A.02, subd. 2	55.03
145A.02, subd. 17	55.03
145A.04	55.06, 55.08
145A.04, subd. 7	55.05
145A.04, subd. 8	55.06
145A.04, subd. 8(b)	55.08
145A.04, subd. 8(c)	55.12
145A.04, subd. 10	55.07
145A.05	50.001
145A.05(7)(a)	130.02
145A.08	55.06, 55.08, 55.12
Chapter 152	55.01
152.01, subd. 4	55.03
152.02	91.03
152.0275, subd. 2	55.10
152.153	152.134
155.55, subd. 6	52.161
157.15(12)	54.04
168.021	152.038
Chapter 169	91.08, 91.09
169.01	50.002
Chapter 176	50.033
176.041	51.25
216B.02	93.03
216B.02, subd. 4	93.03
216B.02, subd. 6	93.03
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97-2021	7-20-21	152.001 - 152.011, 152.025 - 152.038, 152.049 - 152.057, 152.070 - 152.082, 152.095 - 152.098, 152.108, 152.109, 152.111 - 152.118.2, 152.120 - 152.135, 152.143 - 152.156, 152.160 - 152.162, 152.175 - 152.179, 152.190, 152.191, 152.210 - 152.218, 152.230 - 152.234, 152.245 - 152.252, 152.265 - 152.274, 152.285 - 152.291, 152.999