

CODE OF ORDINANCES

OF THE

CITY OF

ELKHART, IOWA

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**CODE OF ORDINANCES
OF THE
CITY OF ELKHART, IOWA**

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SUPPLEMENT RECORD

[illegible]

CODE OF ORDINANCES CITY OF ELKHART, IOWA

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CHAPTER 1

CODE OF ORDINANCES

1.01 Title
1.02 Definitions
1.03 City Powers
1.04 Indemnity
1.05 Personal Injuries
1.06 Rules of Construction
1.07 Extension of Authority

1.08 Amendments
1.09 Catchlines and Notes
1.10 Altering Code
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1.12 Warrants
1.13 General Standards for Action
1.14 Standard Penalty

1.01 TITLE. This code of ordinances shall be known and may be cited as the Code of Ordinances of the City of Elkhart, Iowa.

1.02 DEFINITIONS. Where words and phrases used in this Code of Ordinances are defined in the *Code of Iowa*, such definitions apply to their use in this Code of Ordinances unless such construction would be inconsistent with the manifest intent of the Council or repugnant to the context of the provision. Other words and phrases used herein have the following meanings, unless specifically defined otherwise in another portion of this Code of Ordinances or unless such construction would be inconsistent with the manifest intent of the Council or repugnant to the context of the provision:

1. “Alley” means a public right-of-way, other than a street, affording secondary means of access to abutting property.
2. “City” means the City of Elkhart, Iowa.
3. “Clerk” means the city clerk of Elkhart, Iowa.
4. “Code” means the specific chapter of this Code of Ordinances in which a specific subject is covered and bears a descriptive title word (such as the Building Code and/or a standard code adopted by reference).
5. “Code of Ordinances” means the Code of Ordinances of the City of Elkhart, Iowa.
6. “Council” means the city council of Elkhart, Iowa.
7. “County” means Polk County, Iowa.
8. “May” confers a power.
9. “Measure” means an ordinance, amendment, resolution or motion.
10. “Must” states a requirement.
11. “Occupant” or “tenant,” applied to a building or land, includes any person who occupies the whole or a part of such building or land, whether alone or with others.
12. “Ordinances” means the ordinances of the City of Elkhart, Iowa, as embodied in this Code of Ordinances, ordinances not repealed by the ordinance adopting this Code of Ordinances, and those enacted hereafter.
13. “Person” means an individual, firm, partnership, domestic or foreign corporation, company, association or joint stock association, trust or other legal entity,

and includes a trustee, receiver, assignee, or similar representative thereof, but does not include a governmental body.

14. “Public way” includes any street, alley, boulevard, parkway, highway, sidewalk, or other public thoroughfare.

15. “Shall” imposes a duty.

16. “Sidewalk” means that surfaced portion of the street between the edge of the traveled way, surfacing, or curb line and the adjacent property line, intended for the use of pedestrians.

17. “State” means the State of Iowa.

18. “Statutes” or “laws” means the latest edition of the *Code of Iowa*, as amended.

19. “Street” or “highway” means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

Words that are not defined in this Code of Ordinances or by the *Code of Iowa* have their ordinary meaning unless such construction would be inconsistent with the manifest intent of the Council, or repugnant to the context of the provision.

1.03 CITY POWERS. The City may, except as expressly limited by the Iowa Constitution, and if not inconsistent with the laws of the Iowa General Assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the City and of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents, and each and every provision of this Code of Ordinances shall be deemed to be in the exercise of the foregoing powers and the performance of the foregoing functions.

(Code of Iowa, Sec. 364.1)

1.04 INDEMNITY. The applicant for any permit or license under this Code of Ordinances, by making such application, assumes and agrees to pay for any injury to or death of any person or persons whomsoever, and any loss of or damage to property whatsoever, including all costs and expenses incident thereto, however arising from or related to, directly, indirectly, or remotely, the issuance of the permit or license, or the doing of anything thereunder, or the failure of such applicant, or the agents, employees, or servants of such applicant, to abide by or comply with any of the provisions of this Code of Ordinances or the terms and conditions of such permit or license, and such applicant, by making such application, forever agrees to indemnify the City and its officers, agents, and employees, and agrees to save them harmless from any and all claims, demands, lawsuits, or liability whatsoever for any loss, damage, injury, or death, including all costs and expenses incident thereto, by reason of the foregoing. The provisions of this section shall be deemed to be a part of any permit or license issued under this Code of Ordinances or any other ordinance of the City, whether expressly recited therein or not.

1.05 PERSONAL INJURIES. When action is brought against the City for personal injuries alleged to have been caused by its negligence, the City may notify in writing any person by whose negligence it claims the injury was caused. The notice shall state the pendency of the action, the name of the plaintiff, the name and location of the court where the action is pending, a brief statement of the alleged facts from which the cause arose, that the City believes that the person notified is liable to it for any judgment rendered against the City, and asking the person to appear and defend. A judgment obtained in the suit is conclusive in

any action by the City against any person so notified, as to the existence of the defect or other cause of the injury or damage, as to the liability of the City to the plaintiff in the first named action, and as to the amount of the damage or injury. The City may maintain an action against the person notified to recover the amount of the judgment together with all the expenses incurred by the City in the suit.

(Code of Iowa, Sec. 364.14)

1.06 RULES OF CONSTRUCTION. In the construction of this Code of Ordinances, the rules of statutory construction as set forth in Chapter 4 of the *Code of Iowa* shall be utilized to ascertain the intent of the Council, with the understanding that the term “statute” as used therein will be deemed to be synonymous with the term “ordinance” when applied to this Code of Ordinances.

1.07 EXTENSION OF AUTHORITY. Whenever an officer or employee is required or authorized to do an act by a provision of this Code of Ordinances, the provision shall be construed as authorizing performance by a regular assistant, subordinate, or a duly authorized designee of said officer or employee.

1.08 AMENDMENTS. All ordinances that amend, repeal, or in any manner affect this Code of Ordinances shall include proper reference to chapter, section, subsection, or paragraph to maintain an orderly codification of ordinances of the City.

(Code of Iowa, Sec. 380.2)

1.09 CATCHLINES AND NOTES. The catchlines of the several sections of this Code of Ordinances, titles, headings (chapter, section and subsection), editor’s notes, cross references, and State law references, unless set out in the body of the section itself, contained in this Code of Ordinances, do not constitute any part of the law and are intended merely to indicate, explain, supplement, or clarify the contents of a section.

1.10 ALTERING CODE. It is unlawful for any unauthorized person to change or amend, by additions or deletions, any part or portion of this Code of Ordinances, or to insert or delete pages, or portions thereof, or to alter or tamper with this Code of Ordinances in any manner that will cause the law of the City to be misrepresented.

1.11 SEVERABILITY. If any section, provision, or part of this Code of Ordinances is adjudged invalid or unconstitutional, such adjudication will not affect the validity of this Code of Ordinances as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

1.12 WARRANTS. If consent to enter upon or inspect any building, structure, or property pursuant to a municipal ordinance is withheld by any person having the lawful right to exclude, the City officer or employee having the duty to enter upon or conduct the inspection may apply to the Iowa District Court in and for the County, pursuant to Section 808.14 of the *Code of Iowa*, for an administrative search warrant. No owner, operator or occupant, or any other person having charge, care, or control of any dwelling unit, rooming unit, structure, building, or premises shall fail or neglect, after presentation of a search warrant, to permit entry therein by the municipal officer or employee.

1.13 GENERAL STANDARDS FOR ACTION. Whenever this Code of Ordinances grants any discretionary power to the Council or any commission, board, or officer or employee of the City and does not specify standards to govern the exercise of the power, the

power shall be exercised in light of the following standard: The discretionary power to grant, deny, or revoke any matter shall be considered in light of the facts and circumstances then existing and as may be reasonably foreseeable, and due consideration shall be given to the impact upon the public health, safety and welfare, and the decision shall be that of a reasonably prudent person under similar circumstances in the exercise of the police power.

1.14 STANDARD PENALTY. Unless another penalty is expressly provided by this Code of Ordinances for violation of any particular provision, section, or chapter, any person failing to perform a duty required by this Code of Ordinances or otherwise violating any provision of this Code of Ordinances or any rule or regulation adopted herein by reference shall, upon verdict against that person, be subject to a judgment of at least \$65.00 but not to exceed \$625.00.[†]

(Code of Iowa, Sec. 364.3[2] and 903.1[1a])

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[†] **EDITOR'S NOTE:** For civil penalty for violations of this Code of Ordinances, see Chapter 3.

CHAPTER 2

CHARTER

2.01 Title
2.02 Form of Government
2.03 Powers and Duties of City Officers

2.04 Number and Term of Council
2.05 Term of Mayor
2.06 Copies on File

2.01 TITLE. This chapter may be cited as the charter of the City of Elkhart, Iowa.

2.02 FORM OF GOVERNMENT. The form of government of the City is the Mayor-Council form of government.

(Code of Iowa, Sec. 372.4)

2.03 POWERS AND DUTIES OF CITY OFFICERS. The Council and Mayor and other City officers have such powers and shall perform such duties as are authorized or required by State law and by the ordinances, resolutions, rules, and regulations of the City.

2.04 NUMBER AND TERM OF COUNCIL. The Council consists of five Council Members elected at large for overlapping terms of four years.

(Code of Iowa, Sec. 376.2)

2.05 TERM OF MAYOR. The Mayor is elected for a term of two years.

(Code of Iowa, Sec. 376.2)

2.06 COPIES ON FILE. The Clerk shall keep an official copy of the charter on file with the official records of the Clerk and the Secretary of State, and shall keep copies of the charter available at the Clerk's office for public inspection.

(Code of Iowa, Sec. 372.1)

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CHAPTER 3

MUNICIPAL INFRACTIONS

3.01 Municipal Infraction
3.02 Environmental Violation
3.03 Penalties

3.04 Civil Citations
3.05 Alternative Relief
3.06 Alternative Penalties

3.01 MUNICIPAL INFRACTION. A violation of this Code of Ordinances or any ordinance or code herein adopted by reference or the omission or failure to perform any act or duty required by the same, with the exception of those provisions specifically provided under State law as a felony, an aggravated misdemeanor, or a serious misdemeanor, or a simple misdemeanor under Chapters 687 through 747 of the *Code of Iowa*, is a municipal infraction punishable by civil penalty as provided herein.[†]

(Code of Iowa, Sec. 364.22[3])

3.02 ENVIRONMENTAL VIOLATION. A municipal infraction that is a violation of Chapter 455B of the *Code of Iowa* or of a standard established by the City in consultation with the Department of Natural Resources, or both, may be classified as an environmental violation. However, the provisions of this section shall not be applicable until the City has offered to participate in informal negotiations regarding the violation or to the following specific violations:

(Code of Iowa, Sec. 364.22[1])

1. A violation arising from noncompliance with a pretreatment standard or requirement referred to in 40 C.F.R. §403.8.
2. The discharge of airborne residue from grain, created by the handling, drying, or storing of grain, by a person not engaged in the industrial production or manufacturing of grain products.
3. The discharge of airborne residue from grain, created by the handling, drying, or storing of grain, by a person engaged in such industrial production or manufacturing if such discharge occurs from September 15 to January 15.

3.03 PENALTIES. A municipal infraction is punishable by the following civil penalties:

(Code of Iowa, Sec. 364.22[1])

1. Standard Civil Penalties.
 - A. First offense – not to exceed \$750.00
 - B. Each repeat offense – not to exceed \$1,000.00

Each day that a violation occurs or is permitted to exist constitutes a repeat offense.

2. Special Civil Penalties.
 - A. A municipal infraction arising from noncompliance with a pretreatment standard or requirement, referred to in 40 C.F.R. §403.8, by an industrial user is punishable by a penalty of not more than \$1,000.00 for each day a violation exists or continues.

[†] **EDITOR'S NOTE:** For criminal penalty for violations of this Code of Ordinances, see Section 1.14.

B. A municipal infraction classified as an environmental violation is punishable by a penalty of not more than \$1,000.00 for each occurrence. However, an environmental violation is not subject to such penalty if all of the following conditions are satisfied:

- (1) The violation results solely from conducting an initial startup, cleaning, repairing, performing scheduled maintenance, testing, or conducting a shutdown of either equipment causing the violation or the equipment designed to reduce or eliminate the violation.
- (2) The City is notified of the violation within 24 hours from the time that the violation begins.
- (3) The violation does not continue in existence for more than eight hours.

3.04 CIVIL CITATIONS. Any officer authorized by the City to enforce this Code of Ordinances may issue a civil citation to a person who commits a municipal infraction. A copy of the citation may be served by personal service as provided in Rule of Civil Procedure 1.305, by certified mail addressed to the defendant at defendant's last known mailing address, return receipt requested, or by publication in the manner as provided in Rule of Civil Procedure 1.310 and subject to the conditions of Rule of Civil Procedure 1.311. A copy of the citation shall be retained by the issuing officer, and the original citation shall be sent to the Clerk of the District Court. The citation shall serve as notification that a civil offense has been committed and shall contain the following information:

(Code of Iowa, Sec. 364.22[4])

1. The name and address of the defendant.
2. The name or description of the infraction attested to by the officer issuing the citation.
3. The location and time of the infraction.
4. The amount of civil penalty to be assessed or the alternative relief sought, or both.
5. The manner, location, and time in which the penalty may be paid.
6. The time and place of court appearance.
7. The penalty for failure to appear in court.
8. The legal description of the affected real property, if applicable.

If the citation affects real property and charges a violation relating to the condition of the property, including a building code violation, a local housing regulation violation, a housing code violation, or a public health or safety violation, after filing the citation with the Clerk of the District Court, the City shall also file the citation in the office of the County Treasurer.

3.05 ALTERNATIVE RELIEF. Seeking a civil penalty as authorized in this chapter does not preclude the City from seeking alternative relief from the court in the same action. Such alternative relief may include, but is not limited to, an order for abatement or injunctive relief.

(Code of Iowa, Sec. 364.22[8])

3.06 ALTERNATIVE PENALTIES. This chapter does not preclude a peace officer from issuing a criminal citation for a violation of this Code of Ordinances or regulation if criminal penalties are also provided for the violation. Nor does it preclude or limit the authority of the City to enforce the provisions of this Code of Ordinances by criminal sanctions or other lawful means.

(Code of Iowa, Sec. 364.22[11])

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CHAPTER 5

OPERATING PROCEDURES

5.01 Oaths
5.02 Bonds
5.03 Powers and Duties
5.04 Books and Records
5.05 Transfer to Successor
5.06 Meetings

5.07 Conflict of Interest
5.08 Resignations
5.09 Removal of Appointed Officers and Employees
5.10 Vacancies
5.11 Gifts

5.01 OATHS. The oath of office shall be required and administered in accordance with the following:

1. Qualify for Office. Each elected or appointed officer shall qualify for office by taking the prescribed oath and by giving, when required, a bond. The oath shall be taken, and bond provided, after such officer is certified as elected but not later than noon of the first day that is not a Sunday or a legal holiday in January of the first year of the term for which the officer was elected.

(Code of Iowa, Sec. 63.1)

2. Prescribed Oath. The prescribed oath is: "I, (name), do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all duties of the office of (name of office) in Elkhart as now or hereafter required by law."

(Code of Iowa, Sec. 63.10)

3. Officers Empowered to Administer Oaths. The following are empowered to administer oaths and to take affirmations in any matter pertaining to the business of their respective offices:

- A. Mayor
- B. City Clerk
- C. Members of all boards, commissions, or bodies created by law.

(Code of Iowa, Sec. 63A.2)

5.02 BONDS. Surety bonds are provided in accordance with the following:

1. Required. The Council shall provide by resolution for a surety bond or blanket position bond running to the City and covering the Mayor, Clerk, Treasurer, and such other officers and employees as may be necessary and advisable.

(Code of Iowa, Sec. 64.13)

2. Bonds Approved. Bonds shall be approved by the Council.

(Code of Iowa, Sec. 64.19)

3. Bonds Filed. All bonds, after approval and proper record, shall be filed with the Clerk.

(Code of Iowa, Sec. 64.23[6])

4. Record. The Clerk shall keep a book, to be known as the “Record of Official Bonds” in which shall be recorded the official bonds of all City officers, elective or appointive.

(Code of Iowa, Sec. 64.24[3])

5.03 POWERS AND DUTIES. Each municipal officer shall exercise the powers and perform the duties prescribed by law and this Code of Ordinances, or as otherwise directed by the Council unless contrary to State law or City charter.

(Code of Iowa, Sec. 372.13[4])

5.04 BOOKS AND RECORDS. All books and records required to be kept by law or ordinance shall be open to examination by the public upon request, unless some other provisions of law expressly limit such right or require such records to be kept confidential. Access to public records that are combined with data processing software shall be in accordance with policies and procedures established by the City.

(Code of Iowa, Sec. 22.2 & 22.3A)

5.05 TRANSFER TO SUCCESSOR. Each officer shall transfer to his or her successor in office all books, papers, records, documents and property in the officer’s custody and appertaining to that office.

(Code of Iowa, Sec. 372.13[4])

5.06 MEETINGS. All meetings of the Council, any board or commission, or any multi-membered body formally and directly created by any of the foregoing bodies shall be held in accordance with the following:

1. Notice of Meetings. Reasonable notice, as defined by State law, of the time, date, and place of each meeting and its tentative agenda shall be given.

(Code of Iowa, Sec. 21.4)

2. Meetings Open. All meetings shall be held in open session unless closed sessions are held as expressly permitted by State law.

(Code of Iowa, Sec. 21.3)

3. Minutes. Minutes shall be kept of all meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

(Code of Iowa, Sec. 21.3)

4. Closed Session. A closed session may be held only by affirmative vote of either two-thirds of the body or all of the members present at the meeting and in accordance with Chapter 21 of the *Code of Iowa*.

(Code of Iowa, Sec. 21.5)

5. Cameras and Recorders. The public may use cameras or recording devices at any open session.

(Code of Iowa, Sec. 21.7)

6. Electronic Meetings. A meeting may be conducted by electronic means only in circumstances where such a meeting in person is impossible or impractical and then only in compliance with the provisions of Chapter 21 of the *Code of Iowa*.

(Code of Iowa, Sec. 21.8)

5.07 CONFLICT OF INTEREST. A City officer or employee shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the City, unless expressly permitted by law. A contract entered into in violation of this section is void. The provisions of this section do not apply to:

(Code of Iowa, Sec. 362.5)

1. Compensation of Officers. The payment of lawful compensation of a City officer or employee holding more than one City office or position, the holding of which is not incompatible with another public office or is not prohibited by law.

(Code of Iowa, Sec. 362.5[3a])

2. Investment of Funds. The designation of a bank or trust company as a depository, paying agent, or for investment of funds.

(Code of Iowa, Sec. 362.5[3b])

3. City Treasurer. An employee of a bank or trust company, who serves as Treasurer of the City.

(Code of Iowa, Sec. 362.5[3c])

4. Stock Interests. Contracts in which a City officer or employee has an interest solely by reason of employment, or a stock interest of the kind described in subsection 8 of this section, or both, if the contracts are made by competitive bid in writing, publicly invited and opened, or if the remuneration of employment will not be directly affected as a result of the contract and the duties of employment do not directly involve the procurement or preparation of any part of the contract. The competitive bid qualification of this subsection does not apply to a contract for professional services not customarily awarded by competitive bid.

(Code of Iowa, Sec. 362.5[3e])

5. Newspaper. The designation of an official newspaper.

(Code of Iowa, Sec. 362.5[3f])

6. Existing Contracts. A contract in which a City officer or employee has an interest if the contract was made before the time the officer or employee was elected or appointed, but the contract may not be renewed.

(Code of Iowa, Sec. 362.5[3g])

7. Volunteers. Contracts with volunteer firefighters or civil defense volunteers.

(Code of Iowa, Sec. 362.5[3h])

8. Corporations. A contract with a corporation in which a City officer or employee has an interest by reason of stock holdings when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by the officer or employee or the spouse or immediate family of such officer or employee.

(Code of Iowa, Sec. 362.5[3i])

9. Contracts. Contracts made by the City upon competitive bid in writing, publicly invited and opened.

(Code of Iowa, Sec. 362.5[3d])

10. Cumulative Purchases. Contracts not otherwise permitted by this section, for the purchase of goods or services that benefit a City officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of \$2,500.00 in a fiscal year.

(Code of Iowa, Sec. 362.5[3k])

11. Franchise Agreements. Franchise agreements between the City and a utility and contracts entered into by the City for the provision of essential City utility services.

(Code of Iowa, Sec. 362.5[3l])

12. Third Party Contracts. A contract that is a bond, note or other obligation of the City and the contract is not acquired directly from the City but is acquired in a transaction with a third party who may or may not be the original underwriter, purchaser, or obligee of the contract.

(Code of Iowa, Sec. 362.5[3m])

5.08 RESIGNATIONS. An elected officer who wishes to resign may do so by submitting a resignation in writing to the Clerk so that it shall be properly recorded and considered. A person who resigns from an elective office is not eligible for appointment to the same office during the time for which the person was elected if, during that time, the compensation of the office has been increased.

(Code of Iowa, Sec. 372.13[9])

5.09 REMOVAL OF APPOINTED OFFICERS AND EMPLOYEES. Except as otherwise provided by State or City law, all persons appointed to City office or employment may be removed by the officer or body making the appointment, but every such removal shall be by written order. The order shall give the reasons, be filed in the office of the Clerk, and a copy shall be sent by certified mail to the person removed, who, upon request filed with the Clerk within 30 days after the date of mailing the copy, shall be granted a public hearing before the Council on all issues connected with the removal. The hearing shall be held within 30 days after the date the request is filed, unless the person removed requests a later date.

(Code of Iowa, Sec. 372.15)

5.10 VACANCIES. A vacancy in an elective City office during a term of office shall be filled in accordance with Section 372.13[2] of the *Code of Iowa*.

5.11 GIFTS. Except as otherwise provided in Chapter 68B of the *Code of Iowa*, a public official, public employee or candidate, or that person's immediate family member, shall not, directly or indirectly, accept or receive any gift or series of gifts from a "restricted donor" as defined in Chapter 68B and a restricted donor shall not, directly or indirectly, individually or jointly with one or more other restricted donors, offer or make a gift or a series of gifts to a public official, public employee, or candidate.

(Code of Iowa, Sec. 68B.22)

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CHAPTER 6

CITY ELECTIONS

6.01 Nominating Method to Be Used
6.02 Nominations by Petition
6.03 Adding Name by Petition

6.04 Preparation of Petition and Affidavit
6.05 Filing; Presumption; Withdrawals; Objections
6.06 Persons Elected

6.01 NOMINATING METHOD TO BE USED. All candidates for elective municipal offices shall be nominated under the provisions of Chapter 45 of the *Code of Iowa*.

(Code of Iowa, Sec. 376.3)

6.02 NOMINATIONS BY PETITION. Nominations for elective municipal offices of the City may be made by nomination paper or papers signed by not less than 10 eligible electors, residents of the City.

(Code of Iowa, Sec. 45.1)

6.03 ADDING NAME BY PETITION. The name of a candidate placed upon the ballot by any other method than by petition shall not be added by petition for the same office.

(Code of Iowa, Sec. 45.2)

6.04 PREPARATION OF PETITION AND AFFIDAVIT. Nomination papers shall include a petition and an affidavit of candidacy. The petition and affidavit shall be substantially in the form prescribed by the State Commissioner of Elections, shall include information required by the *Code of Iowa*, and shall be signed in accordance with the *Code of Iowa*.

(Code of Iowa, Sec. 45.3, 45.5 & 45.6)

6.05 FILING; PRESUMPTION; WITHDRAWALS; OBJECTIONS. The time and place of filing nomination petitions, the presumption of validity thereof, the right of a candidate so nominated to withdraw and the effect of such withdrawal, and the right to object to the legal sufficiency of such petitions, or to the eligibility of the candidate, shall be governed by the appropriate provisions of Chapter 44 of the *Code of Iowa*.

(Code of Iowa, Sec. 45.4)

6.06 PERSONS ELECTED. The candidates who receive the greatest number of votes for each office on the ballot are elected, to the extent necessary to fill the positions open.

(Code of Iowa, Sec. 376.8[3])

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CHAPTER 7

FISCAL MANAGEMENT

7.01 Purpose
7.02 Finance Officer
7.03 Cash Control
7.04 Fund Control

7.05 Operating Budget Preparation
7.06 Budget Amendments
7.07 Accounting
7.08 Financial Reports

7.01 PURPOSE. The purpose of this chapter is to establish policies and provide for rules and regulations governing the management of the financial affairs of the City.

7.02 FINANCE OFFICER. The Clerk is the finance and accounting officer of the City and is responsible for the administration of the provisions of this chapter.

7.03 CASH CONTROL. To assure the proper accounting and safe custody of moneys the following shall apply:

1. Deposit of Funds. All moneys or fees collected for any purpose by any City officer shall be deposited through the office of the finance officer. If any said fees are due to an officer, they shall be paid to the officer by check drawn by the finance officer and approved by the Council only upon such officer's making adequate reports relating thereto as required by law, ordinance, or Council directive.

2. Deposits and Investments. All moneys belonging to the City shall be promptly deposited in depositories selected by the Council in amounts not exceeding the authorized depository limitation established by the Council or invested in accordance with the City's written investment policy and State law, including joint investments as authorized by Section 384.21 of the *Code of Iowa*.

(Code of Iowa, Sec. 384.21, 12B.10, 12C.1)

3. Petty Cash Fund. The finance officer shall be custodian of a petty cash fund for the payment of small claims for minor purchases, collect-on-delivery transportation charges, and small fees customarily paid at the time of rendering a service, for which payments the finance officer shall obtain some form of receipt or bill acknowledged as paid by the vendor or agent. At such time as the petty cash fund is approaching depletion, the finance officer shall draw a check for replenishment in the amount of the accumulated expenditures and said check and supporting detail shall be submitted to the Council as a claim in the usual manner for claims and charged to the proper funds and accounts. It shall not be used for salary payments or other personal services or personal expenses.

7.04 FUND CONTROL. There shall be established and maintained separate and distinct funds in accordance with the following:

1. Revenues. All moneys received by the City shall be credited to the proper fund as required by law, ordinance, or resolution.

2. Expenditures. No disbursement shall be made from a fund unless such disbursement is authorized by law, ordinance, or resolution, was properly budgeted, and supported by a claim approved by the Council.

3. Emergency Fund. No transfer may be made from any fund to the Emergency Fund.

(IAC, 545-2.5[384,388], Sec. 2.5[2])

4. Debt Service Fund. Except where specifically prohibited by State law, moneys may be transferred from any other City fund to the Debt Service Fund to meet payments of principal and interest. Such transfers must be authorized by the original budget or a budget amendment.

(IAC, 545-2.5[384,388] Sec. 2.5[3])

5. Capital Improvements Reserve Fund. Except where specifically prohibited by State law, moneys may be transferred from any City fund to the Capital Improvements Reserve Fund. Such transfers must be authorized by the original budget or a budget amendment.

(IAC, 545-2.5[384,388] Sec. 2.5[4])

6. Utility and Enterprise Funds. A surplus in a Utility or Enterprise Fund may be transferred to any other City fund, except the Emergency Fund and Road Use Tax Funds, by resolution of the Council. A surplus may exist only after all required transfers have been made to any restricted accounts in accordance with the terms and provisions of any revenue bonds or loan agreements relating to the Utility or Enterprise Fund. A surplus is defined as the cash balance in the operating account or the unrestricted retained earnings calculated in accordance with generally accepted accounting principles in excess of:

- A. The amount of the expense of disbursements for operating and maintaining the utility or enterprise for the preceding three months; and

- B. The amount necessary to make all required transfers to restricted accounts for the succeeding three months.

(IAC, 545-2.5[384,388], Sec. 2.5[5])

7. Balancing of Funds. Fund accounts shall be reconciled at the close of each month and a report thereof submitted to the Council.

7.05 OPERATING BUDGET PREPARATION. The annual operating budget of the City shall be prepared in accordance with the following:

1. Proposal Prepared. The finance officer is responsible for preparation of the annual budget detail, for review by the Mayor and Council and adoption by the Council in accordance with directives of the Mayor and Council.
2. Boards and Commissions. All boards, commissions, and other administrative agencies of the City that are authorized to prepare and administer budgets must submit their budget proposals to the finance officer for inclusion in the proposed City budget at such time and in such form as required by the Council.
3. Submission to Council. The finance officer shall submit the completed budget proposal to the Council no later than February 15 of each year.
4. Council Review. The Council shall review the proposed budget and may make any adjustments it deems appropriate in the budget before accepting such proposal for publication, hearing, and final adoption.
5. Notice of Hearing. Upon adopting a proposed budget the Council shall set a date for public hearing thereon to be held before March 15 and cause notice of such hearing and a summary of the proposed budget to be published not less than 10 or

more than 20 days before the date established for the hearing. Proof of such publication must be filed with the County Auditor.

(Code of Iowa, Sec. 384.16[3])

6. Copies of Budget on File. Not less than 20 days before the date that the budget must be certified to the County Auditor and not less than 10 days before the public hearing, the Clerk shall make available a sufficient number of copies of the detailed budget to meet the requests of taxpayers and organizations and have them available for distribution at the offices of the Mayor and City Clerk and have a copy posted at one of the places designated for the posting of notices.

(Code of Iowa, Sec. 384.16[2])

7. Adoption and Certification. After the hearing, the Council shall adopt, by resolution, a budget for at least the next fiscal year and the Clerk shall certify the necessary tax levy for the next fiscal year to the County Auditor and the County Board of Supervisors. The tax levy certified may be less than, but not more than, the amount estimated in the proposed budget. Two copies each of the detailed budget as adopted and of the tax certificate must be transmitted to the County Auditor.

(Code of Iowa, Sec. 384.16[5])

7.06 BUDGET AMENDMENTS. A City budget finally adopted for the following fiscal year becomes effective July 1 and constitutes the City appropriation for each program and purpose specified therein until amended as provided by this section.

(Code of Iowa, Sec. 384.18)

1. Program Increase. Any increase in the amount appropriated to a program must be prepared, adopted, and subject to protest in the same manner as the original budget.

(IAC, 545-2.2[384, 388])

2. Program Transfer. Any transfer of appropriation from one program to another must be prepared, adopted, and subject to protest in the same manner as the original budget.

(IAC, 545-2.3[384, 388])

3. Activity Transfer. Any transfer of appropriation from one activity to another activity within a program must be approved by resolution of the Council.

(IAC, 545-2.4[384, 388])

4. Administrative Transfers. The finance officer shall have the authority to adjust, by transfer or otherwise, the appropriations allocated within a specific activity without prior Council approval.

(IAC, 545-2.4[384, 388])

7.07 ACCOUNTING. The accounting records of the City shall consist of not less than the following:

1. Books of Original Entry. There shall be established and maintained books of original entry to provide a chronological record of cash received and disbursed.

2. General Ledger. There shall be established and maintained a general ledger controlling all cash transactions, budgetary accounts and for recording unappropriated surpluses.

3. Checks. Two signatures are required on all City checks. Checks shall be prenumbered and signed by any two of the following: Clerk, Mayor, Mayor Pro Tem,

or City Administrator, following Council approval, except as provided by subsection 5 hereof.

4. Budget Accounts. There shall be established such individual accounts to record receipts by source and expenditures by program and activity as will provide adequate information and control for budgeting purposes as planned and approved by the Council. Each individual account shall be maintained within its proper fund and so kept that receipts can be immediately and directly compared with revenue estimates and expenditures can be related to the authorizing appropriation. No expenditure shall be posted except to the appropriation for the function and purpose for which the expense was incurred.

5. Immediate Payment Authorized. The Council may by resolution authorize the Clerk to issue checks for immediate payment of amounts due, which if not paid promptly would result in loss of discount, penalty for late payment or additional interest cost. Any such payments made shall be reported to the Council for review and approval with and in the same manner as other claims at the next meeting following such payment. The resolution authorizing immediate payment shall specify the type of payment so authorized and may include (but is not limited to) payment of utility bills, contractual obligations, payroll, and bond principal and interest.

6. Utilities. The finance officer shall perform and be responsible for accounting functions of the municipally owned utilities.

7.08 FINANCIAL REPORTS. The finance officer shall prepare and file the following financial reports:

1. Monthly Reports. There shall be submitted to the Council each month a report showing the activity and status of each fund, program, sub-program, and activity for the preceding month.

2. Annual Report. Not later than December 1 of each year there shall be published an annual report containing a summary for the preceding fiscal year of all collections and receipts, all accounts due the City, and all expenditures, the current public debt of the City, and the legal debt limit of the City for the current fiscal year. A copy of the annual report must be filed with the Auditor of State not later than December 1 of each year.

(Code of Iowa, Sec. 384.22)

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CHAPTER 8
URBAN RENEWAL

EDITOR'S NOTE		
The following ordinances not codified herein, and specifically saved from repeal, have been adopted establishing Urban Renewal Areas in the City and remain in full force and effect.		
ORDINANCE NO.	ADOPTED	NAME OF AREA
2006-9	November 6, 2006	Elkhart Urban Renewal Area
2015-04	June 15, 2015	2015 Addition to the Elkhart Urban Renewal Area

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CHAPTER 9

URBAN REVITALIZATION

9.01 DESIGNATION OF REVITALIZATION AREA. In accordance with Chapter 404 of the *Code of Iowa*, the following described area of the City is hereby designated as an Urban Revitalization Area.

All real property contained within the incorporated limits of the City of Elkhart, Polk County, State of Iowa, as of October 1, 2012

The Urban Revitalization Plan for the City is on file in the office of the Clerk.

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CHAPTER 15

MAYOR

15.01 Term of Office
15.02 Powers and Duties
15.03 Appointments

15.04 Compensation
15.05 Voting

15.01 TERM OF OFFICE. The Mayor is elected for a term of two years.
(Code of Iowa, Sec. 376.2)

15.02 POWERS AND DUTIES. The powers and duties of the Mayor are as follows:

1. Chief Executive Officer. Act as the chief executive officer of the City and presiding officer of the Council, supervise all departments of the City, except for supervisory duties delegated to the City Administrator, give direction to department heads concerning the functions of the departments, and have the power to examine all functions of the municipal departments, their records and to call for special reports from department heads at any time.

(Code of Iowa, Sec. 372.14[1])

2. Proclamation of Emergency. Have authority to take command of the police and govern the City by proclamation, upon making a determination that a time of emergency or public danger exists. Within the City limits, the Mayor has all the powers conferred upon the Sheriff to suppress disorders.

(Code of Iowa, Sec. 372.14[2])

3. Special Meetings. Call special meetings of the Council when the Mayor deems such meetings necessary to the interests of the City.

(Code of Iowa, Sec. 372.14[1])

4. Mayor's Veto. Sign, veto, or take no action on an ordinance, amendment, or resolution passed by the Council. The Mayor may veto an ordinance, amendment, or resolution within 14 days after passage. The Mayor shall explain the reasons for the veto in a written message to the Council at the time of the veto.

(Code of Iowa, Sec. 380.5 & 380.6[2])

5. Reports to Council. Make such oral or written reports to the Council as required. These reports shall concern municipal affairs generally, the municipal departments, and recommendations suitable for Council action.

6. Negotiations. Represent the City in all negotiations properly entered into in accordance with law or ordinance. The Mayor shall not represent the City where this duty is specifically delegated to another officer by law, ordinance, or Council direction.

7. Contracts. Whenever authorized by the Council, sign contracts on behalf of the City.

8. Professional Services. Upon order of the Council, secure for the City such specialized and professional services not already available to the City. In executing the order of the Council, the Mayor shall act in accordance with this Code of Ordinances and the laws of the State.

9. Licenses and Permits. Sign all licenses and permits that have been granted by the Council, except those designated by law or ordinance to be issued by another municipal officer.

10. Nuisances. Issue written order for removal, at public expense, any nuisance for which no person can be found responsible and liable.

11. Absentee Officer. Make appropriate provision that duties of any absentee officer be carried on during such absence.

15.03 APPOINTMENTS. The Mayor shall appoint the Mayor Pro Tem and the Mayor also appoints, with Council approval, the following officials:

(Code of Iowa, Sec. 372.4)

1. Parks and Recreation Board
2. Building Official
3. Department oversight for each Council Member
4. Council liaisons to boards, committees, and commissions

15.04 COMPENSATION. The salary of the Mayor is \$100.00 per meeting.

(Code of Iowa, Sec. 372.13[8])

15.05 VOTING. The Mayor is not a member of the Council and shall not vote as a member of the Council.

(Code of Iowa, Sec. 372.4)

CHAPTER 16

MAYOR PRO TEM

16.01 Vice President of Council
16.02 Powers and Duties

16.03 Voting Rights
16.04 Compensation

16.01 VICE PRESIDENT OF COUNCIL. The Mayor shall appoint a member of the Council as Mayor Pro Tem, who shall serve as vice president of the Council.

(Code of Iowa, Sec. 372.14[3])

16.02 POWERS AND DUTIES. Except for the limitations otherwise provided herein, the Mayor Pro Tem shall perform the duties of the Mayor in cases of absence or inability of the Mayor to perform such duties. In the exercise of the duties of the office the Mayor Pro Tem shall not have power to appoint, employ, or discharge from employment officers or employees that the Mayor has the power to appoint, employ, or discharge without the approval of the Council.

(Code of Iowa, Sec. 372.14[3])

16.03 VOTING RIGHTS. The Mayor Pro Tem shall have the right to vote as a member of the Council.

(Code of Iowa, Sec. 372.14[3])

16.04 COMPENSATION. If the Mayor Pro Tem performs the duties of the Mayor during the Mayor's absence or disability for a continuous period of 15 days or more, the Mayor Pro Tem may be paid for that period the compensation as determined by the Council, based upon the Mayor Pro Tem's performance of the Mayor's duties and upon the compensation of the Mayor.

(Code of Iowa, Sec. 372.13[8])

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CHAPTER 17

CITY COUNCIL

17.01 Number and Term of Council
17.02 Powers and Duties
17.03 Exercise of Power

17.04 Council Meetings
17.05 Appointments
17.06 Compensation

17.01 NUMBER AND TERM OF COUNCIL. The Council consists of five Council members elected at large for overlapping terms of four years.

(Code of Iowa, Sec. 372.4 & 376.2)

17.02 POWERS AND DUTIES. The powers and duties of the Council include, but are not limited to the following:

1. General. All powers of the City are vested in the Council except as otherwise provided by law or ordinance.

(Code of Iowa, Sec. 364.2[1])

2. Wards. By ordinance, the Council may divide the City into wards based upon population, change the boundaries of wards, eliminate wards, or create new wards.

(Code of Iowa, Sec. 372.13[7])

3. Fiscal Authority. The Council shall apportion and appropriate all funds, and audit and allow all bills, accounts, payrolls and claims, and order payment thereof. It shall make all assessments for the cost of street improvements, sidewalks, sewers and other work, improvement, or repairs that may be specially assessed.

(Code of Iowa, Sec. 364.2[1], 384.16 & 384.38[1])

4. Public Improvements. The Council shall make all orders for the construction of any improvements, bridges, or buildings.

(Code of Iowa, Sec. 364.2[1])

5. Contracts. The Council shall make or authorize the making of all contracts. No contract shall bind or be obligatory upon the City unless approved by the Council.

(Code of Iowa, Sec. 26.10)

6. Employees. The Council shall authorize, by resolution, the number, duties, term of office and compensation of employees or officers not otherwise provided for by State law or the Code of Ordinances.

(Code of Iowa, Sec. 372.13[4])

7. Setting Compensation for Elected Officers. By ordinance, the Council shall prescribe the compensation of the Mayor, Council members, and other elected City officers, but a change in the compensation of the Mayor does not become effective during the term in which the change is adopted, and the Council shall not adopt such an ordinance changing the compensation of any elected officer during the months of November and December in the year of a regular City election. A change in the compensation of Council members becomes effective for all Council members at the beginning of the term of the Council members elected at the election next following the change in compensation.

(Code of Iowa, Sec. 372.13[8])

17.03 EXERCISE OF POWER. The Council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance in the following manner:

(Code of Iowa, Sec. 364.3[1])

1. Action by Council. Passage of an ordinance, amendment, or resolution requires a majority vote of all of the members of the Council. Passage of a motion requires a majority vote of a quorum of the Council. A resolution must be passed to spend public funds in excess of \$100,000.00 on a public improvement project, or to accept public improvements and facilities upon their completion. Each Council member's vote on a measure must be recorded. A measure that fails to receive sufficient votes for passage shall be considered defeated.

(Code of Iowa, Sec. 380.4)

2. Overriding Mayor's Veto. Within 30 days after the Mayor's veto, the Council may pass the measure again by a vote of not less than two-thirds of all of the members of the Council.

(Code of Iowa, Sec. 380.6[2])

3. Measures Become Effective. Measures passed by the Council become effective in one of the following ways:

A. An ordinance or amendment signed by the Mayor becomes effective when the ordinance or a summary of the ordinance is published, unless a subsequent effective date is provided within the ordinance or amendment.

(Code of Iowa, Sec. 380.6[1a])

B. A resolution signed by the Mayor becomes effective immediately upon signing.

(Code of Iowa, Sec. 380.6[1b])

C. A motion becomes effective immediately upon passage of the motion by the Council.

(Code of Iowa, Sec. 380.6[1c])

D. If the Mayor vetoes an ordinance, amendment or resolution and the Council repasses the measure after the Mayor's veto, a resolution becomes effective immediately upon repassage, and an ordinance or amendment becomes a law when the ordinance or a summary of the ordinance is published, unless a subsequent effective date is provided within the ordinance or amendment.

(Code of Iowa, Sec. 380.6[2])

E. If the Mayor takes no action on an ordinance, amendment or resolution, a resolution becomes effective 14 days after the date of passage, and an ordinance or amendment becomes law when the ordinance or a summary of the ordinance is published, but not sooner than 14 days after the date of passage, unless a subsequent effective date is provided within the ordinance or amendment.

(Code of Iowa, Sec. 380.6[3])

"All of the members of the Council" refers to all of the seats of the Council including a vacant seat and a seat where the member is absent, but does not include a seat where the Council member declines to vote by reason of a conflict of interest.

(Code of Iowa, Sec. 380.1[a])

17.04 COUNCIL MEETINGS. Procedures for giving notice of meetings of the Council and other provisions regarding the conduct of Council meetings are contained in Section 5.06 of this Code of Ordinances. Additional particulars relating to Council meetings are the following:

1. Regular Meetings. The time and place of the regular meetings of the Council shall be fixed by resolution of the Council.
2. Special Meetings. Special meetings shall be held upon call of the Mayor or upon the request of a majority of the members of the Council.
(Code of Iowa, Sec. 372.13[5])
3. Quorum. A majority of all Council members is a quorum.
(Code of Iowa, Sec. 372.13[1])
4. Rules of Procedure. The Council shall determine its own rules and maintain records of its proceedings.
(Code of Iowa, Sec. 372.13[5])
5. Compelling Attendance. Any three members of the Council can compel the attendance of the absent members at any regular, adjourned, or duly called meeting, by serving a written notice upon the absent members to attend at once.

17.05 APPOINTMENTS. The Council shall appoint the following officials and prescribe their powers, duties, compensation, and term of office:

1. City Clerk
2. City Administrator
3. City Attorney
4. Planning and Zoning Commission
5. Zoning Board of Adjustment
6. Fire Chief

17.06 COMPENSATION. The salary of each Council member is \$50.00 for each meeting of the Council attended.

(Code of Iowa, Sec. 372.13[8])

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CHAPTER 18

CITY CLERK

18.01 Appointment and Compensation
18.02 Powers and Duties: General
18.03 Publication of Minutes
18.04 Recording Measures
18.05 Other Publications
18.06 Authentication
18.07 Certification

18.08 Records
18.09 Attendance at Meetings
18.10 Licenses and Permits
18.11 Notification of Appointments
18.12 Elections
18.13 City Seal

18.01 APPOINTMENT AND COMPENSATION. The Council shall appoint by majority vote a City Clerk to serve at the discretion of the Council. The Clerk shall receive such compensation as established by resolution of the Council.

(Code of Iowa, Sec. 372.13[3])

18.02 POWERS AND DUTIES: GENERAL. The Clerk or, in the Clerk's absence or inability to act, the Deputy Clerk has the powers and duties as provided in this chapter, this Code of Ordinances, and the law.

18.03 PUBLICATION OF MINUTES. Within 15 days following a regular or special meeting, the Clerk shall cause the minutes of the proceedings thereof to be published. Such publication shall include a list of all claims allowed and a summary of all receipts and shall show the gross amount of the claims.

(Code of Iowa, Sec. 372.13[6])

18.04 RECORDING MEASURES. The Clerk shall promptly record each measure considered by the Council and record a statement with the measure, where applicable, indicating whether the Mayor signed, vetoed or took no action on the measure, and whether the measure was repassed after the Mayor's veto.

(Code of Iowa, Sec. 380.7[1 & 2])

18.05 OTHER PUBLICATIONS. The Clerk shall cause to be published all ordinances, enactments, proceedings and official notices requiring publication as follows:

1. Time. If notice of an election, hearing, or other official action is required by this Code of Ordinances or law, the notice must be published at least once, not less than four or more than 20 days before the date of the election, hearing, or other action, unless otherwise provided by law.

(Code of Iowa, Sec. 362.3[1])

2. Manner of Publication. A publication required by this Code of Ordinances or law must be in a newspaper published at least once weekly and having general circulation in the City, except that ordinances and amendments may be published by posting in the following places:

Elkhart City Hall, 260 NW Main Street
Elkhart Post Office, 263 NW Main Street
Kippy's Place, 364 NW Main Street

The Clerk is hereby directed to post promptly such ordinances and amendments, and to leave them so posted for not less than 10 days after the first date of posting. Unauthorized removal of the posted ordinance or amendment prior to the completion of the ten days shall not affect the validity of said ordinance or amendment. The Clerk shall note the first date of such posting on the official copy of the ordinance and in the official ordinance book immediately following the ordinance.

(Code of Iowa, Sec. 362.3[2])

18.06 AUTHENTICATION. The Clerk shall authenticate all measures except motions with the Clerk's signature, certifying the time and manner of publication when required.

(Code of Iowa, Sec. 380.7[4])

18.07 CERTIFICATION. The Clerk shall certify all measures establishing any zoning district, building lines, or fire limits and a plat showing the district, lines, or limits to the recorder of the County containing the affected parts of the City.

(Code of Iowa, Sec. 380.11)

18.08 RECORDS. The Clerk shall maintain the specified City records in the following manner:

1. Ordinances and Codes. Maintain copies of all effective City ordinances and codes for public use.

(Code of Iowa, Sec. 380.7[5])

2. Custody. Have custody and be responsible for the safekeeping of all writings or documents in which the City is a party in interest unless otherwise specifically directed by law or ordinance.

(Code of Iowa, Sec. 372.13[4])

3. Maintenance. Maintain all City records and documents, or accurate reproductions, for at least five years except that ordinances, resolutions, Council proceedings, records and documents, or accurate reproductions, relating to the issuance, cancellation, transfer, redemption or replacement of public bonds or obligations shall be kept for at least 11 years following the final maturity of the bonds or obligations. Ordinances, resolutions, Council proceedings, records and documents, or accurate reproductions, relating to real property transactions shall be maintained permanently.

(Code of Iowa, Sec. 372.13[3 & 5])

4. Provide Copy. Furnish upon request to any municipal officer a copy of any record, paper or public document under the Clerk's control when it may be necessary to such officer in the discharge of such officer's duty; furnish a copy to any citizen when requested upon payment of the fee set by Council resolution; under the direction of the Mayor or other authorized officer, affix the seal of the City to those public documents or instruments that by this Code of Ordinances are required to be attested by the affixing of the seal.

(Code of Iowa, Sec. 372.13[4 & 5] and 380.7[5])

5. Filing of Communications. Keep and file all communications and petitions directed to the Council or to the City generally. The Clerk shall endorse thereon the action of the Council taken upon matters considered in such communications and petitions.

(Code of Iowa, Sec. 372.13[4])

18.09 ATTENDANCE AT MEETINGS. The Clerk shall attend all regular and special Council meetings and, at the direction of the Council, the Clerk shall attend meetings of committees, boards, and commissions. The Clerk shall record and preserve a correct record of the proceedings of such meetings.

(Code of Iowa, Sec. 372.13[4])

18.10 LICENSES AND PERMITS. The Clerk shall issue or revoke licenses and permits when authorized by this Code of Ordinances, and keep a record of licenses and permits issued which shall show date of issuance, license or permit number, official receipt number, name of person to whom issued, term of license or permit, and purpose for which issued.

(Code of Iowa, Sec. 372.13[4])

18.11 NOTIFICATION OF APPOINTMENTS. The Clerk shall inform all persons appointed by the Mayor or Council to offices in the City government of their positions and the time at which they shall assume the duties of their offices.

(Code of Iowa, Sec. 372.13[4])

18.12 ELECTIONS. The Clerk shall perform the duties relating to elections in accordance with Chapter 376 of the *Code of Iowa*.

18.13 CITY SEAL. The City seal is in the custody of the Clerk and shall be attached by the Clerk to all transcripts, orders and certificates that it may be necessary or proper to authenticate. The City seal is circular in form, in the center of which are the words "ELKHART, IOWA" and around the margin of which are the words "CITY SEAL."

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CHAPTER 19

CITY TREASURER

19.01 Appointment
19.02 Compensation

19.03 Duties of Treasurer

19.01 APPOINTMENT. The City Clerk is the Treasurer and performs all functions required of the position of Treasurer.

19.02 COMPENSATION. The Clerk receives no additional compensation for performing the duties of the Treasurer.

19.03 DUTIES OF TREASURER. The duties of the Treasurer are as follows:
(Code of Iowa, Sec. 372.13[4])

1. Custody of Funds. Be responsible for the safe custody of all funds of the City in the manner provided by law and Council direction.
2. Record of Fund. Keep the record of each fund separate.
3. Record Receipts. Keep an accurate record of all money or securities received by the Treasurer on behalf of the City and specify the date, from whom, and for what purpose received.
4. Record Disbursements. Keep an accurate account of all disbursements, money, or property, specifying date, to whom, and from what fund paid.
5. Special Assessments. Keep a separate account of all money received by the Treasurer from special assessments.
6. Deposit Funds. Upon receipt of moneys to be held in the Treasurer's custody and belonging to the City, deposit the same in depositories selected by the Council.
7. Reconciliation. Reconcile depository statements with the Treasurer's books and certify monthly to the Council the balance of cash and investments of each fund and amounts received and disbursed.
8. Debt Service. Keep a register of all bonds outstanding and record all payments of interest and principal.
9. Other Duties. Perform such other duties as specified by the Council by resolution or ordinance.

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CHAPTER 20

CITY ATTORNEY

20.01 Appointment and Compensation
20.02 Attorney for City
20.03 Power of Attorney
20.04 Ordinance Preparation

20.05 Review and Comment
20.06 Provide Legal Opinion
20.07 Attendance at Council Meetings
20.08 Prepare Documents

20.01 APPOINTMENT AND COMPENSATION. The Council shall appoint by majority vote a City Attorney to serve at the discretion of the Council. The City Attorney shall receive such compensation as established by resolution of the Council.

(Code of Iowa, Sec. 372.13[4])

20.02 ATTORNEY FOR CITY. The City Attorney shall act as attorney for the City in all matters affecting the City's interest and appear on behalf of the City before any court, tribunal, commission, or board. The City Attorney shall prosecute or defend all actions and proceedings when so requested by the Mayor or Council.

(Code of Iowa, Sec. 372.13[4])

20.03 POWER OF ATTORNEY. The City Attorney shall sign the name of the City to all appeal bonds and to all other bonds or papers of any kind that may be essential to the prosecution of any cause in court, and when so signed the City shall be bound upon the same.

(Code of Iowa, Sec. 372.13[4])

20.04 ORDINANCE PREPARATION. The City Attorney shall prepare those ordinances that the Council may desire and direct to be prepared and report to the Council upon all such ordinances before their final passage by the Council and publication.

(Code of Iowa, Sec. 372.13[4])

20.05 REVIEW AND COMMENT. The City Attorney shall, upon request, make a report to the Council giving an opinion on all contracts, documents, resolutions, or ordinances submitted to or coming under the City Attorney's notice.

(Code of Iowa, Sec. 372.13[4])

20.06 PROVIDE LEGAL OPINION. The City Attorney shall give advice or a written legal opinion on City contracts and all questions of law relating to City matters submitted by the Mayor or at the direction of the Mayor.

(Code of Iowa, Sec. 372.13[4])

20.07 ATTENDANCE AT COUNCIL MEETINGS. The City Attorney shall attend meetings of the Council at the request of the Mayor or Council.

(Code of Iowa, Sec. 372.13[4])

20.08 PREPARE DOCUMENTS. The City Attorney shall, upon request, formulate drafts for contracts, forms, and other writings that may be required for the use of the City.

(Code of Iowa, Sec. 372.13[4])

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CHAPTER 21

CITY ADMINISTRATOR

21.01 Appointment and Compensation
21.02 Administrative Responsibility

21.03 Powers and Duties Generally

21.01 APPOINTMENT AND COMPENSATION. The City Administrator shall be a person competent by education and/or experience, as determined by the Council, to perform the duties imposed upon such person by this chapter. The City Administrator shall be appointed by the Council, and such appointment shall be subject to the terms and conditions of an employment agreement approved by resolution of the Council. The City Administrator shall receive a salary and benefit package as set forth in the employment agreement.

21.02 ADMINISTRATIVE RESPONSIBILITY. The City Administrator is directly responsible to the Council for the administration of municipal affairs as directed by that body. All departments of the City, except the City Attorney, shall report and be responsible to the City Administrator. All departmental activity requiring the attention of the Council shall be brought before the Council by the City Administrator and all Council policy concerning administration shall be coordinated through the City Administrator.

21.03 POWERS AND DUTIES GENERALLY. The powers and duties of the City Administrator include the following:

1. Keep the Mayor and Council informed by collecting, analyzing, and summarizing information; remain accessible, answer questions and provide information for special requests to ensure smooth operation of the City.
2. Develop and recommend an annual budget; discuss the budget with the Council, Mayor, and other staff; finalize the budget for submission with the State after Mayor and Council action.
3. Develop and recommend administrative policies and procedures required to manage City programs and resolve operational problems by analyzing a variety of information, including City Code, State Code, and federal requirements or other jurisdictions' policies and procedures and make recommendation for solutions.
4. See that all laws, ordinances, resolutions, Council and Mayor directives, and approved operational policies are either appropriately enforced and executed or referred to the proper official for compliance therewith.
5. Document, coordinate, calculate, and supervise obtaining payments for City bills; install and maintain City billing system. Determine what billing system will be used and train others in its operation.
6. Collaborate with program managers in organizational or financial management matters affecting City management; evaluate and resolve operational problems; regularly attend City planning and policy making management meetings and make recommendations and provide advisory services.

7. Be responsible for the supervision and performance of all contracts for work and services to be done for the City, except as specified otherwise in the construction or service program involved.
8. Maintain an accounting of all obligations, agreements, commitments, and contractual franchises involving the City and report to the Mayor and Council any deviations from the exact terms specified.
9. Be authorized to direct the purchasing of all commodities, materials, supplies, capital outlay and services for all departments of the City which have been budgeted and appropriated by resolution of the Council, and enforce a program to determine that such purchases are received and are of the quality and character called for in the order.
10. Coordinate City projects and keep Council informed of actions required by Council. Prepare agenda or supervise its preparation and attend all Council meetings; provide meeting coordination and needed assistance to the Council, Board of Adjustment, and Planning and Zoning Commission to assure smooth meeting operation.
11. Schedule budget expenditures, analyze expenses and develop regular reports; suggest variances and transfers; initiate corrective actions as required; anticipate long-term financial issues in order to maintain adequate City finances.
12. Maintain a good working relationship with citizens, community groups, other cities, League of Municipalities, and other State, federal, or local groups; attend meetings when necessary; provide citizen communication through informational letters; and participate in special studies regarding City issues in order to implement and enhance effective City services.
13. Coordinate administration of programs and staff assignments; communicate City policy to employees, relay direction from Mayor and Council; relay information from City Attorney and Engineer to staff as required; serve as City contact person for purchasing, project coordination, and general management information.
14. Serve in a variety of roles, including Clerk and/or Clerk/Treasurer and Chief Financial Officer, Billing Supervisor, Cemetery Commissioner, Zoning Administrator, and Records Coordinator and handle City correspondence and mail.
15. Perform such other duties as directed by the Mayor or Council.

CHAPTER 22

PLANNING AND ZONING COMMISSION

22.01 Planning and Zoning Commission
22.02 Term of Office
22.03 Vacancies

22.04 Compensation
22.05 Powers and Duties

22.01 PLANNING AND ZONING COMMISSION. The City Planning and Zoning Commission, hereinafter referred to as the Commission, consists of five members appointed by the Council. The Commission members shall be residents of the City and shall not hold any elective office in the City government.

(Code of Iowa, Sec. 414.6 & 392.1)

22.02 TERM OF OFFICE. The term of office of the members of the Commission shall be five years. The terms of not more than one-third of the members will expire in any one year.

(Code of Iowa, Sec. 392.1)

22.03 VACANCIES. If any vacancy exists on the Commission, caused by resignation or otherwise, a successor for the residue of the term shall be appointed in the same manner as the original appointee.

(Code of Iowa, Sec. 392.1)

22.04 COMPENSATION. All members of the Commission shall serve without compensation, except their actual expenses, which shall be subject to the approval of the Council.

(Code of Iowa, Sec. 392.1)

22.05 POWERS AND DUTIES. The Commission shall have and exercise the following powers and duties:

1. Selection of Officers. The Commission shall choose annually at its first regular meeting one of its members to act as Chairperson and another as Vice Chairperson, who shall perform all the duties of the Chairperson during the Chairperson's absence or disability.

(Code of Iowa, Sec. 392.1)

2. Adopt Rules and Regulations. The Commission shall adopt such rules and regulations governing its organization and procedure as it may deem necessary.

(Code of Iowa, Sec. 392.1)

3. Zoning. The Commission shall have and exercise all the powers and duties and privileges in establishing the City zoning regulations and other related matters and may from time to time recommend to the Council amendments, supplements, changes or modifications, all as provided by Chapter 414 of the *Code of Iowa*.

(Code of Iowa, Sec. 414.6)

4. Recommendations on Improvements. The design and proposed location of public improvements shall be submitted to the Commission for its recommendations prior to any actions being taken by the City for the construction or placement of such improvements. Such requirements and recommendations shall not act as a stay upon

action for any such improvement if the Commission, after 30 days' written notice requesting such recommendations, has failed to file the same.

(Code of Iowa, Sec. 392.1)

5. Review and Comment on Plats. All plans, plats, or re-plats of subdivisions or re-subdivisions of land in the City or adjacent thereto, laid out in lots or plats with the streets, alleys, or other portions of the same intended to be dedicated to the public in the City, shall first be submitted to the Commission and its recommendations obtained before approval by the Council.

(Code of Iowa, Sec. 392.1)

6. Fiscal Responsibilities. The Commission shall have full, complete, and exclusive authority to expend, for and on behalf of the City, all sums of money appropriated to it and to use and expend all gifts, donations, or payments that are received by the City for City planning and zoning purposes.

(Code of Iowa, Sec. 392.1)

7. Limitation on Entering Contracts. The Commission shall have no power to contract debts beyond the amount of its original or amended appropriation as approved by the Council for the present year.

(Code of Iowa, Sec. 392.1)

8. Annual Report. The Commission shall each year make a report to the Mayor and Council of its proceedings, with a full statement of its receipts and disbursements and the progress of its work during the preceding fiscal year.

(Code of Iowa, Sec. 392.1)

CHAPTER 23

PARKS AND RECREATION BOARD

23.01 Established; Purpose
23.02 Composition; Terms of Office
23.03 Organization
23.04 Compensation
23.05 Program Planning Duty

23.06 Prescription of Rules and Regulations
23.07 Meetings; Frequency
23.08 Meetings; Absenteeism
23.09 Annual Report

23.01 ESTABLISHED; PURPOSE. There is established a Parks and Recreation Board of the City as an advisory body to advise and assist the Council in exercising its power to establish, purchase, maintain, and regulate the use of community sports facilities, open space, community facilities, parks and playgrounds, and to provide recreational and playground facilities.

23.02 COMPOSITION; TERMS OF OFFICE. The Parks and Recreation Board consists of five members whose term of office is three years, on a staggered basis, and who are appointed by the Mayor subject to the approval of the Council.

23.03 ORGANIZATION. The Board members shall organize as a board by the election of one of their number as Chairperson, one as Vice Chairperson, and one as Secretary.

23.04 COMPENSATION. All board members shall serve without compensation except for their actual expenses incurred in the performance of their duties, which are subject to the approval of the Council.

23.05 PROGRAM PLANNING DUTY. Subject to the approval of the Council, it shall be the duty of the Parks and Recreation Board to plan the City's parks and recreational programs and future land uses, and to care for, supervise, control and improve such parks and programs.

23.06 PRESCRIPTION OF RULES AND REGULATIONS. The Parks and Recreation Board may prescribe rules and regulations, in writing, for the government of the park grounds and persons resorting thereto. Such rules and regulations are subject to the approval of the Council and may be enacted into ordinance by the Council.

23.07 MEETINGS; FREQUENCY. The Parks and Recreation Board shall meet at least once a quarter on a regular basis and at such other time as may be necessary to properly carry out its duties.

23.08 MEETINGS; ABSENTEEISM. Any member of the Parks and Recreation Board who is absent from three regularly scheduled meetings of the Board during any one calendar year, without good cause, shall be deemed to have vacated such office on the occasion of such third absence. The Chairperson shall, thereupon, immediately report such vacancy to the Mayor, who, with the approval of the Council, shall fill such vacancy for the unexpired term.

23.09 ANNUAL REPORT. The Parks and Recreation Board shall make an annual report to the Council, which shall contain a statement of its activities during the preceding year and recommendations for proposed activities.

(Ch. 23 – Ord. 2017-09 – Dec. 17 Supp.)

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CHAPTER 30

CONTRACT LAW ENFORCEMENT

30.01 CONTRACT LAW ENFORCEMENT. The Council may contract with the County Sheriff or any other qualified lawful entity to provide law enforcement services within the City, and the Sheriff or such other entity shall have and exercise the powers and duties as provided in said contract and as required by law or ordinance.

(Code of Iowa, 28E.30)

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CHAPTER 35

FIRE DEPARTMENT

35.01 Establishment and Purpose
35.02 Organization
35.03 Approved by Council
35.04 Training
35.05 Compensation
35.06 Fire Chief Appointed
35.07 Duties of Fire Chief
35.08 Obedience to Fire Chief

35.09 Constitution
35.10 Accidental Injury Insurance
35.11 Liability Insurance
35.12 Calls Outside Fire District
35.13 Mutual Aid
35.14 Authority to Cite Violations
35.15 Emergency Ambulance Service

35.01 ESTABLISHMENT AND PURPOSE. A volunteer fire department is hereby established to prevent and extinguish fires and to protect lives and property against fires, to promote fire prevention and fire safety, and to answer all emergency calls for which there is no other established agency.

(Code of Iowa, Sec. 364.16)

35.02 ORGANIZATION. The department consists of the Fire Chief and such other officers and personnel as may be authorized by the Council.

(Code of Iowa, Sec. 372.13[4])

35.03 APPROVED BY COUNCIL. No person having otherwise qualified shall be appointed to the department until such appointment is submitted to and approved by a majority of the Council members.

35.04 TRAINING. All members of the department shall meet the minimum training standards established by the State Fire Marshal and attend and actively participate in regular or special training drills or programs as directed by the Fire Chief.

(Code of Iowa, Sec. 100B.2[4])

35.05 COMPENSATION. Members of the department shall be designated by rank and receive such compensation as shall be determined by resolution of the Council.

(Code of Iowa, Sec. 372.13[4])

35.06 FIRE CHIEF APPOINTED. The Council shall appoint the Fire Chief. The Council shall be furnished the department's attendance records for drills, meetings and fires, and shall give due consideration to such records in approving the appointment of a Fire Chief. The Council may remove the Fire Chief by written order setting out the reasons for removal; the order shall be filed with the City Clerk.

(Code of Iowa, Sec. 372.13[4])

35.07 DUTIES OF FIRE CHIEF. The Fire Chief shall perform all duties required of the Fire Chief by law or ordinance, including (but not limited to) the following:

(Code of Iowa, Sec. 372.13[4])

1. Enforce Laws. Enforce ordinances and laws regulating fire prevention and the investigation of the cause, origin, and circumstances of fires.

2. Technical Assistance. Upon request, give advice concerning private fire alarm systems, fire extinguishing equipment, fire escapes and exits, and development of fire emergency plans.

3. Authority at Fires. When in charge of a fire scene, direct an operation as necessary to extinguish or control a fire, perform a rescue operation, investigate the existence of a suspected or reported fire, gas leak, or other hazardous condition, or take any other action deemed necessary in the reasonable performance of the department's duties.

(Code of Iowa, Sec. 102.2)

4. Control of Scenes. Prohibit an individual, vehicle, or vessel from approaching a fire scene and remove from the scene any object, vehicle, vessel, or individual that may impede or interfere with the operation of the Fire Department.

(Code of Iowa, Sec. 102.2)

5. Authority to Barricade. When in charge of a fire scene, place or erect ropes, guards, barricades, or other obstructions across a street, alley, right-of-way, or private property near the location of the fire or emergency so as to prevent accidents or interference with the firefighting efforts of the Fire Department, to control the scene until any required investigation is complete, or to preserve evidence related to the fire or other emergency.

(Code of Iowa, Sec. 102.3)

6. Command. Be charged with the duty of maintaining the efficiency, discipline, and control of the Fire Department. The members of the Fire Department shall, at all times, be subject to the direction of the Fire Chief.

7. Property. Exercise and have full control over the disposition of all fire apparatus, tools, equipment, and other property used by or belonging to the Fire Department.

8. Notification. Whenever death, serious bodily injury, or property damage in excess of \$200,000.00 has occurred as a result of a fire, or if arson is suspected, notify the State Fire Marshal's Division immediately. For all other fires causing an estimated damage of \$50.00 or more or emergency responses by the Fire Department, file a report with the Fire Marshal's Division within 10 days following the end of the month. The report shall indicate all fire incidents occurring and state the name of the owners and occupants of the property at the time of the fire, the value of the property, the estimated total loss to the property, origin of the fire as determined by investigation, and other facts, statistics, and circumstances concerning the fire incidents.

(Code of Iowa, Sec. 100.2 & 100.3)

9. Right of Entry. Have the right, during reasonable hours, to enter any building or premises within the Fire Chief's jurisdiction for the purpose of making such investigation or inspection that under law or ordinance may be necessary to be made and that is reasonably necessary to protect the public health, safety, and welfare.

(Code of Iowa, Sec. 100.12)

10. Recommendation. Make such recommendations to owners, occupants, caretakers, or managers of buildings necessary to eliminate fire hazards.

(Code of Iowa, Sec. 100.13)

11. Assist State Fire Marshal. At the request of the State Fire Marshal, and as provided by law, aid said marshal in the performance of duties by investigating, preventing and reporting data pertaining to fires.

12. Records. Cause to be kept records of the Fire Department personnel, firefighting equipment, depreciation of all equipment and apparatus, the number of responses to alarms, their cause, and location, and an analysis of losses by value, type and location of buildings.

13. Reports. Compile and submit to the Mayor and Council an annual report of the status and activities of the department as well as such other reports as may be requested by the Mayor or Council.

35.08 OBEDIENCE TO FIRE CHIEF. No person shall willfully fail or refuse to comply with any lawful order or direction of the Fire Chief.

35.09 CONSTITUTION. The department shall adopt a constitution and bylaws as they deem calculated to accomplish the object contemplated, and such constitution and bylaws and any change or amendment to such constitution and bylaws before being effective, must be approved by the Council.

35.10 ACCIDENTAL INJURY INSURANCE. The Council shall contract to insure the City against liability for worker's compensation and against statutory liability for the costs of hospitalization, nursing, and medical attention for volunteer firefighters injured in the performance of their duties as firefighters whether within or outside the corporate limits of the City. All volunteer firefighters shall be covered by the contract.

(Code of Iowa, Sec. 85.2, 85.61 and Sec. 410.18)

35.11 LIABILITY INSURANCE. The Council shall contract to insure against liability of the City or members of the department for injuries, death or property damage arising out of and resulting from the performance of departmental duties within or outside the corporate limits of the City.

(Code of Iowa, Sec. 670.2 & 517A.1)

35.12 CALLS OUTSIDE FIRE DISTRICT. The department shall answer calls to fires and other emergencies outside the Fire District if the Fire Chief determines that such emergency exists and that such action will not endanger persons and property within the Fire District.

(Code of Iowa, Sec. 364.4[2 & 3])

35.13 MUTUAL AID. Subject to approval by resolution of the Council, the department may enter into mutual aid agreements with other legally constituted fire departments. Copies of any such agreements shall be filed with the Clerk.

(Code of Iowa, Sec. 364.4[2 & 3])

35.14 AUTHORITY TO CITE VIOLATIONS. Fire officials acting under the authority of Chapter 100 of the *Code of Iowa* may issue citations in accordance to Chapter 805 of the *Code of Iowa*, for violations of State and/or local fire safety regulations.

(Code of Iowa, Sec. 100.41)

35.15 EMERGENCY AMBULANCE SERVICE. The department is authorized to provide emergency ambulance or rescue services, and the accidental injury and liability insurance provided for herein shall include such operation.

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CHAPTER 36

HAZARDOUS SUBSTANCE SPILLS

36.01 Purpose
36.02 Definitions
36.03 Cleanup Required
36.04 Liability for Cleanup Costs

36.05 Notifications
36.06 Police Authority
36.07 Liability

36.01 PURPOSE. In order to reduce the danger to the public health, safety, and welfare from the leaks and spills of hazardous substances, these regulations are promulgated to establish responsibility for the treatment, removal and cleanup of hazardous substance spills within the City limits.

36.02 DEFINITIONS. For purposes of this chapter the following terms are defined:

1. “Cleanup” means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance.
(Code of Iowa, Sec. 455B.381[1])

2. “Hazardous condition” means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the State, or into the atmosphere which creates an immediate or potential danger to the public health or safety or to the environment.
(Code of Iowa, Sec. 455B.381[4])

3. “Hazardous substance” means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. “Hazardous substance” may include any hazardous waste identified or listed by the administrator of the United States Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under Section 307 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under Section 311 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the Secretary of Transportation under the Hazardous Materials Transportation Act.
(Code of Iowa, Sec. 455B.381[5])

4. “Responsible person” means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance, the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance.
(Code of Iowa, Sec. 455B.381[7])

36.03 CLEANUP REQUIRED. Whenever a hazardous condition is created by the deposit, injection, dumping, spilling, leaking or placing of a hazardous substance, so that the hazardous substance or a constituent of the hazardous substance may enter the environment or be emitted

into the air or discharged into any waters, including ground waters, the responsible person shall cause the condition to be remedied by a cleanup, as defined in the preceding section, as rapidly as feasible to an acceptable, safe condition. The costs of cleanup shall be borne by the responsible person. If the responsible person does not cause the cleanup to begin in a reasonable time in relation to the hazard and circumstances of the incident, the City may, by an authorized officer, give reasonable notice, based on the character of the hazardous condition, said notice setting a deadline for accomplishing the cleanup and stating that the City will proceed to procure cleanup services and bill the responsible person for all costs associated with the cleanup if the cleanup is not accomplished within the deadline. In the event that it is determined that immediate cleanup is necessary as a result of the present danger to the public health, safety and welfare, then no notice shall be required and the City may proceed to procure the cleanup and bill the responsible person for all costs associated with the cleanup. If the bill for those services is not paid within 30 days, the City Attorney shall proceed to obtain payment by all legal means. If the cost of the cleanup is beyond the capacity of the City to finance it, the authorized officer shall report to the Council and immediately seek any State or federal funds available for said cleanup.

36.04 LIABILITY FOR CLEANUP COSTS. The responsible person shall be strictly liable to the City for all of the following:

1. The reasonable cleanup costs incurred by the City or the agents of the City as a result of the failure of the responsible person to clean up a hazardous substance involved in a hazardous condition.
2. The reasonable costs incurred by the City or the agents of the City to evacuate people from the area threatened by a hazardous condition caused by the person.
3. The reasonable damages to the City for the injury to, destruction of, or loss of City property, including parks and roads, resulting from a hazardous condition caused by that person, including the costs of assessing the injury, destruction or loss.
4. The excessive and extraordinary cost incurred by the City or the agents of the City in responding at and to the scene of a hazardous condition caused by that person.

36.05 NOTIFICATIONS.

1. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the State Department of Natural Resources and the County Sheriff of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. The County Sheriff shall immediately notify the Department of Natural Resources.
2. Any other person who discovers a hazardous condition shall notify the County Sheriff, who shall then notify the Department of Natural Resources.

36.06 POLICE AUTHORITY. If the circumstances reasonably so require, the law enforcement officer or an authorized representative may:

1. Evacuate persons from their homes to areas away from the site of a hazardous condition, and
2. Establish perimeters or other boundaries at or near the site of a hazardous condition and limit access to cleanup personnel.

No person shall disobey an order of any law enforcement officer issued under this section.

36.07 LIABILITY. The City shall not be liable to any person for claims of damages, injuries, or losses resulting from any hazardous condition, unless the City is the responsible person as defined in Section 36.02(4).

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CHAPTER 37

RAPID ENTRY LOCK BOX SYSTEM

37.01 Purpose

37.02 Definition

37.03 Rapid Entry Lock Box Required

37.04 Key Box Installation Requirements

37.05 Keys Required

37.06 Access to Fire Department

37.07 Update of Keys and Information

37.08 Limitation of Liability

37.01 PURPOSE. It is recognized by the City the importance of providing the Fire Department rapid entry into locked buildings. The delay in gaining entry can result in substantially more property damage, as well as the potential for fire extension and a possible increase to the adverse safety of the firefighters.

37.02 DEFINITION. “Lock box” means a high security key vault which is listed under the UL 1610 and the UL 1037 standards, master keyed with a Medeco Biaxial Level 7 or equivalent lock. Locks will be keyed to the key configuration set forth by the Elkhart Fire Chief.

37.03 RAPID ENTRY LOCK BOX REQUIRED. The following structures shall be equipped with a key lock box in a location set forth by the Fire Chief as described in Section 37.04:

1. All newly constructed commercial and industrial structures receiving a certificate of occupancy on or after August 20, 2007.
2. Any newly constructed apartment building or rental building containing two or more residential living units in which access to the building or to common areas or mechanical or electrical rooms within the building is denied through locked or secured doors, receiving a certificate of occupancy on or after August 20, 2007.
3. Any commercial or industrial building or facility containing any quantity of hazardous chemicals or materials.

37.04 KEY BOX INSTALLATION REQUIREMENTS. Buildings provided with an alarm or fire system shall be provided a key box at the location as directed by the Fire Chief.

37.05 KEYS REQUIRED. The owner or person in control of the buildings or facilities described in Section 37.03 is required to have a rapid entry lock box and shall have in such unit keys to the following areas and have each key clearly marked:

1. The main entrance door/doors.
2. All alarm rooms.
3. All mechanical and sprinkler rooms.
4. Fire alarm control panel.
5. All electrical rooms.
6. Elevator keys, if required.
7. All other rooms as deemed needed by the Fire Chief during a walk through.

37.06 ACCESS TO FIRE DEPARTMENT. The owner or person in control of any building described in Section 37.03 required to have a rapid entry lock box shall be present (themselves or through their agent) during access to such rapid entry lock box by the Fire Department except when the Fire Department has responded to an emergency at the property.

37.07 UPDATE OF KEYS AND INFORMATION. The owner or person in control of any building or facility required to have a rapid entry lock box shall do the following:

1. Provide keys and updated sets of keys capable of access to the areas described in Section 37.05.
2. Notify the Fire Chief when a key change is made and coordinate to replace the keys in the lock box.
3. Maintain current information on all hazardous chemicals/materials stored in the building or facility with the Fire Department.

37.08 LIMITATION OF LIABILITY. The City assumes no liability for any of the following:

1. Any defects in the operation of the lock box or any of the keys contained within it or any information stored within it.
2. The failure or neglect to respond appropriately upon receipt of an alarm or fire alarm.
3. The failure or neglect of any owner or person in control of a building or facility to provide the correct or updated material, information or keys.

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CHAPTER 40

PUBLIC PEACE

40.01 Assault
40.02 Harassment
40.03 Disorderly Conduct

40.04 Unlawful Assembly
40.05 Failure to Disperse

40.01 ASSAULT. No person shall, without justification, commit any of the following:

1. Pain or Injury. Any act that is intended to cause pain or injury to another or that is intended to result in physical contact that will be insulting or offensive to another, coupled with the apparent ability to execute the act.

(Code of Iowa, Sec. 708.1[1])

2. Threat of Pain or Injury. Any act that is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

(Code of Iowa, Sec. 708.1[2])

An act described in subsections 1 and 2 shall not be an assault under the following circumstances: (i) if the person doing any of the enumerated acts, and such other person, are voluntary participants in a sport, social or other activity, not in itself criminal, and such act is a reasonably foreseeable incident of such sport or activity, and does not create an unreasonable risk of serious injury or breach of the peace; (ii) if the person doing any of the enumerated acts is employed by a school district or accredited nonpublic school, or is an area education agency staff member who provides services to a school or school district, and intervenes in a fight or physical struggle or other disruptive situation that takes place in the presence of the employee or staff member performing employment duties in a school building, on school grounds, or at an official school function, regardless of the location, whether the fight or physical struggle or other disruptive situation is between students or other individuals, if the degree and the force of the intervention is reasonably necessary to restore order and to protect the safety of those assembled.

(Code of Iowa, Sec. 708.1)

40.02 HARASSMENT. No person shall commit harassment.

1. A person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following:

A. Communicates with another by telephone, telegraph, writing, or via electronic communication without legitimate purpose and in a manner likely to cause the other person annoyance or harm.

(Code of Iowa, Sec. 708.7)

B. Places any simulated explosive or simulated incendiary device in or near any building, vehicle, airplane, railroad engine or railroad car, or boat occupied by the other person.

(Code of Iowa, Sec. 708.7)

C. Orders merchandise or services in the name of another, or to be delivered to another, without such other person's knowledge or consent.

(Code of Iowa, Sec. 708.7)

D. Reports or causes to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or reports the alleged occurrence of a criminal act, knowing the same did not occur.

(Code of Iowa, Sec. 708.7)

2. A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate or alarm that other person. As used in this section, unless the context otherwise requires, "personal contact" means an encounter in which two or more people are in visual or physical proximity to each other. "Personal contact" does not require a physical touching or oral communication, although it may include these types of contacts.

40.03 DISORDERLY CONDUCT. No person shall do any of the following:

1. Fighting. Engage in fighting or violent behavior in any public place or in or near any lawful assembly of persons, provided that participants in athletic contests may engage in such conduct that is reasonably related to that sport.

(Code of Iowa, Sec. 723.4[1])

2. Noise. Make loud and raucous noise in the vicinity of any residence or public building which causes unreasonable distress to the occupants thereof.

(Code of Iowa, Sec. 723.4[2])

3. Abusive Language. Direct abusive epithets or make any threatening gesture that the person knows or reasonably should know is likely to provoke a violent reaction by another.

(Code of Iowa, Sec. 723.4[3])

4. Disrupt Lawful Assembly. Without lawful authority or color of authority, disturb any lawful assembly or meeting of persons by conduct intended to disrupt the meeting or assembly.

(Code of Iowa, Sec. 723.4[4])

5. False Report of Catastrophe. By words or action, initiate or circulate a report or warning of fire, epidemic, or other catastrophe, knowing such report to be false or such warning to be baseless.

(Code of Iowa, Sec. 723.4[5])

6. Disrespect of Flag. Knowingly and publicly use the flag of the United States in such a manner as to show disrespect for the flag as a symbol of the United States, with the intent or reasonable expectation that such use will provoke or encourage another to commit trespass or assault. As used in this subsection:

(Code of Iowa, Sec. 723.4[6])

A. "Deface" means to intentionally mar the external appearance.

B. "Defile" means to intentionally make physically unclean.

C. "Flag" means a piece of woven cloth or other material designed to be flown from a pole or mast.

D. “Mutilate” means to intentionally cut up or alter so as to make imperfect.

E. “Show disrespect” means to deface, defile, mutilate, or trample.

F. “Trample” means to intentionally tread upon or intentionally cause a machine, vehicle, or animal to tread upon.

7. Obstruct Use of Street. Without authority or justification, obstruct any street, sidewalk, highway, or other public way, with the intent to prevent or hinder its lawful use by others.

(Code of Iowa, Sec. 723.4[7])

8. Funeral or Memorial Service. Within 1,000 feet of the building or other location where a funeral or memorial service is being conducted, or within 1,000 feet of a funeral procession or burial:

A. Make loud and raucous noise that causes unreasonable distress to the persons attending the funeral or memorial service or participating in the funeral procession.

B. Direct abusive epithets or make any threatening gesture that the person knows or reasonably should know is likely to provoke a violent reaction by another.

C. Disturb or disrupt the funeral, memorial service, funeral procession, or burial by conduct intended to disturb or disrupt the funeral, memorial service, funeral procession, or burial.

This subsection applies to conduct within 60 minutes preceding, during, and within 60 minutes after a funeral, memorial service, funeral procession, or burial.

(Code of Iowa, Sec. 723.5)

40.04 UNLAWFUL ASSEMBLY. It is unlawful for three or more persons to assemble together, with them or any of them acting in a violent manner, and with intent that they or any of them will commit a public offense. No person shall willingly join in or remain part of an unlawful assembly, knowing or having reasonable grounds to believe it is such.

(Code of Iowa, Sec. 723.2)

40.05 FAILURE TO DISPERSE. A peace officer may order the participants in a riot or unlawful assembly or persons in the immediate vicinity of a riot or unlawful assembly to disperse. No person within hearing distance of such command shall refuse to obey.

(Code of Iowa, Sec. 723.3)

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CHAPTER 41

PUBLIC HEALTH AND SAFETY

41.01 Distributing Dangerous Substances	41.08 Abandoned or Unattended Refrigerators
41.02 False Reports to or Communications with Public Safety Entities	41.09 Antenna and Radio Wires
41.03 Providing False Identification Information	41.10 Barbed Wire and Electric Fences
41.04 Refusing to Assist Officer	41.11 Discharging Weapons
41.05 Harassment of Public Officers and Employees	41.12 Throwing and Shooting
41.06 Interference with Official Acts	41.13 Urinating and Defecating
41.07 Removal of an Officer's Communication or Control Device	41.14 Fireworks
	41.15 Drug Paraphernalia

41.01 DISTRIBUTING DANGEROUS SUBSTANCES. No person shall distribute samples of any drugs or medicine, or any corrosive, caustic, poisonous or other injurious substance unless the person delivers such into the hands of a competent person, or otherwise takes reasonable precautions that the substance will not be taken by children or animals from the place where the substance is deposited.

(Code of Iowa, Sec. 727.1)

41.02 FALSE REPORTS TO OR COMMUNICATIONS WITH PUBLIC SAFETY ENTITIES. No person shall do any of the following:

(Code of Iowa, Sec. 718.6)

1. Report or cause to be reported false information to a fire department, a law enforcement authority or other public safety entity, knowing that the information is false, or report the alleged occurrence of a criminal act knowing the act did not occur.
2. Telephone an emergency 911 communications center, knowing that he or she is not reporting an emergency or otherwise needing emergency information or assistance.
3. Knowingly provide false information to a law enforcement officer who enters the information on a citation.

41.03 PROVIDING FALSE IDENTIFICATION INFORMATION. No person shall knowingly provide false identification information to anyone known by the person to be a peace officer, emergency medical care provider, or firefighter, whether paid or volunteer, in the performance of any act that is within the scope of the lawful duty or authority of that officer, emergency medical care provider, or firefighter.

(Code of Iowa, Sec. 719.1A)

41.04 REFUSING TO ASSIST OFFICER. Any person who is requested or ordered by any magistrate or peace officer to render the magistrate or officer assistance in making or attempting to make an arrest, or to prevent the commission of any criminal act, shall render assistance as required. No person shall unreasonably and without lawful cause, refuse or neglect to render assistance when so requested.

(Code of Iowa, Sec. 719.2)

41.05 HARASSMENT OF PUBLIC OFFICERS AND EMPLOYEES. No person shall willfully prevent or attempt to prevent any public officer or employee from performing the officer's or employee's duty.

(Code of Iowa, Sec. 718.4)

41.06 INTERFERENCE WITH OFFICIAL ACTS. No person shall knowingly resist or obstruct anyone known by the person to be a peace officer, jailer, emergency medical care provider under Chapter 147A of the *Code of Iowa*, or firefighter, whether paid or volunteer, or a person performing bailiff duties pursuant to Section 602.1303[4] of the *Code of Iowa*, in the performance of any act that is within the scope of the lawful duty or authority of that officer, jailer, emergency medical care provider, or firefighter, or person performing bailiff duties, or shall knowingly resist or obstruct the service or execution by any authorized person of any civil or criminal process or order of any court. The terms "resist" and "obstruct" as used in this section do not include verbal harassment unless the verbal harassment is accompanied by a present ability and apparent intention to execute a verbal threat physically.

(Code of Iowa, Sec. 719.1)

41.07 REMOVAL OF AN OFFICER'S COMMUNICATION OR CONTROL DEVICE. No person shall knowingly or intentionally remove or attempt to remove a communication device or any device used for control from the possession of a peace officer or correctional officer, when the officer is in the performance of any act which is within the scope of the lawful duty or authority of that officer and the person knew or should have known the individual to be an officer.

(Code of Iowa, Sec. 708.12)

41.08 ABANDONED OR UNATTENDED REFRIGERATORS. No person shall abandon or otherwise leave unattended any refrigerator, ice box, or similar container, with doors that may become locked, outside of buildings and accessible to children, nor shall any person allow any such refrigerator, ice box, or similar container, to remain outside of buildings on premises in the person's possession or control, abandoned or unattended and so accessible to children.

(Code of Iowa, Sec. 727.3)

41.09 ANTENNA AND RADIO WIRES. It is unlawful for a person to allow antenna wires, antenna supports, radio wires, or television wires to exist over any street, alley, highway, sidewalk, public way, public ground, or public building without written consent of the Council.

(Code of Iowa, Sec. 364.12[2])

41.10 BARBED WIRE AND ELECTRIC FENCES. It is unlawful for a person to use barbed wire or electric fences to enclose land within the City limits without the written consent of the Council unless such land consists of 10 acres or more and is used as agricultural land.

41.11 DISCHARGING WEAPONS.

1. It is unlawful for a person to discharge rifles, shotguns, revolvers, pistols, guns, or other firearms of any kind within the City limits except by written consent of the Council.
2. No person shall intentionally discharge a firearm in a reckless manner.

41.12 THROWING AND SHOOTING. It is unlawful for a person to throw stones, bricks, or missiles of any kind or to shoot arrows, paintballs, rubber guns, slingshots, air rifles, BB guns, or other dangerous instruments or toys on or into any street, alley, highway, sidewalk, public way, public ground, or public building, without written consent of the Council.

(Code of Iowa, Sec. 364.12[2])

41.13 URINATING AND DEFECATING. It is unlawful for any person to urinate or defecate onto any sidewalk, street, alley, or other public way, or onto any public or private building, including but not limited to the wall, floor, hallway, steps, stairway, doorway, or window thereof, or onto any public or private land.

41.14 FIREWORKS. The sale, use or exploding of fireworks within the City is subject to the following:

(Code of Iowa, Sec. 727.2)

1. Display Fireworks. It is unlawful for any person to offer for sale, expose for sale, sell at retail, or use or explode any display fireworks as defined by Iowa Code Section 727.2(1)(b); provided the City Council may, upon application in writing and payment of a \$25.00 application fee, grant a permit for the demonstration of display fireworks by the City, a City agency, fair associations, amusement parks and other organizations or groups of individuals approved by the City Council when such fireworks display will be handled by a competent operator. The City and City agencies shall not be required to pay an application fee for a permit issued under this section. No permit shall be granted hereunder unless the operator or sponsoring organization has filed with the City evidence of insurance in the following amounts.

- A. Personal Injury:\$250,000.00 per person
- B. Property Damage:\$50,000.00
- C. Total Exposure:\$1,000,000.00

2. Consumer Fireworks and Novelties Sales. Consumer fireworks and novelties as defined by Iowa Code Sections 727.2(a) and (c) are permitted to be sold if the licensed seller complies with the licensing, registration and storage requirements of Iowa Code Sections 100.19 and 100.19A. In addition, the licensed seller must comply with Elkhart Code of Ordinance Chapter 122, if applicable, as well as the provisions of National Fire Protection Standard (NFPA) 1124 Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles (2006 Edition), where applicable to the licensed seller's consumer firework business activities.

3. Consumer Fireworks and Novelties Use. Consumer fireworks and novelties may be discharged with compliance with the following restrictions.

- A. Consumer fireworks will only be used or exploded by an adult on that adult's real property or on the property of an adult who has consented to the use or explosion of consumer fireworks on that property.
- B. Consumer fireworks will not be used or exploded by a person who is less than eighteen years old, unless that person is under the direct supervision of a parent or a custodial adult.
- C. Consumer fireworks will not be used or discharged at any time other than the following permitted times:

(1) July 1 to July 4 from 6 p.m. to 11 p.m.

(2) December 31 from 6 p.m. to January 1 at 12:30 a.m.

D. Novelties are not subject to the provisions of subsections (a) through (c) above.

4. Burning and Fireworks Ban. Discharge of fireworks are prohibited if a burning and fireworks ban proclamation has been issued by the Mayor.

5. Violation. A violation of any provision of Elkhart Code of Ordinance Section 45.23 is a municipal infraction pursuant to the provisions of the Elkhart Code of Ordinances Chapter 3 punishable by the issuing of a citation requiring payment of a \$100 penalty.

41.15 DRUG PARAPHERNALIA.

(Code of Iowa, Sec. 124.414)

1. As used in this section “drug paraphernalia” means all equipment, products or materials of any kind used or attempted to be used in combination with a controlled substance, except those items used in combination with the lawful use of a controlled substance, to knowingly or intentionally and primarily do any of the following:

A. Manufacture a controlled substance.

B. Inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

C. Test the strength, effectiveness, or purity of a controlled substance.

D. Enhance the effect of a controlled substance.

Drug paraphernalia does not include hypodermic needles or syringes if manufactured, delivered, sold, or possessed for a lawful purpose.

2. It is unlawful for any person to knowingly or intentionally manufacture, deliver, sell, or possess drug paraphernalia.

3.

4.

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CHAPTER 42

PUBLIC AND PRIVATE PROPERTY

42.01 Trespassing
42.02 Criminal Mischief
42.03 Defacing Proclamations or Notices
42.04 Unauthorized Entry

42.05 Fraud
42.06 Theft
42.07 Other Public Property Offenses

42.01 TRESPASSING.

1. Prohibited. It is unlawful for a person to knowingly trespass upon the property of another.

(Code of Iowa, Sec. 716.8)

2. Definitions. For purposes of this section:

(Code of Iowa, Sec. 716.7[1])

A. “Property” includes any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure, whether publicly or privately owned.

B. “Public utility” is a public utility as defined in Section 476.1 of the *Code of Iowa* or an electric transmission line as provided in Chapter 478 of the *Code of Iowa*.

C. “Public utility property” means any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure owned, leased, or operated by a public utility and that is completely enclosed by a physical barrier of any kind.

D. “Railway corporation” means a corporation, company, or person owning, leasing, or operating any railroad in whole or in part within this State.

E. “Railway property” means all tangible real and personal property owned, leased, or operated by a railway corporation, with the exception of any administrative building or offices of the railway corporation.

- F. “Trespass” means one or more of the following acts:

(Code of Iowa, Sec. 716.7[2a])

(1) Entering upon or in property without the express permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense or to use, remove therefrom, alter, damage, harass, or place thereon or therein anything animate or inanimate.

(2) Entering or remaining upon or in property without justification after being notified or requested to abstain from entering or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or the agent or employee of the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of the property.

(3) Entering upon or in property for the purpose or with the effect of unduly interfering with the lawful use of the property by others.

(4) Being upon or in property and wrongfully using, removing therefrom, altering, damaging, harassing, or placing thereon or therein anything animate or inanimate, without the implied or actual permission of the owner, lessee, or person in lawful possession.

(5) Entering or remaining upon or in railway property without lawful authority or without the consent of the railway corporation which owns, leases, or operates the railway property. This paragraph does not apply to passage over a railroad right-of-way, other than a track, railroad roadbed, viaduct, bridge, trestle, or railroad yard, by an unarmed person if the person has not been notified or requested to abstain from entering onto the right-of-way or to vacate the right-of-way and the passage over the right-of-way does not interfere with the operation of the railroad.

(6) Entering or remaining upon or in public utility property without lawful authority or without the consent of the public utility that owns, leases, or operates the public utility property. This paragraph does not apply to passage over public utility right-of-way by a person if the person has not been notified or requested by posted signage or other means to abstain from entering onto the right-of-way or to vacate the right-of-way.

3. Specific Exceptions. "Trespass" does not mean either of the following:
(*Code of Iowa, Sec. 716.7[2b]*)

A. Entering upon the property of another for the sole purpose of retrieving personal property which has accidentally or inadvertently been thrown, fallen, strayed, or blown onto the property of another, provided that the person retrieving the property takes the most direct and accessible route to and from the property to be retrieved, quits the property as quickly as is possible, and does not unduly interfere with the lawful use of the property. This paragraph does not apply to public utility property where the person has been notified or requested by posted signage or other means to abstain from entering.

B. Entering upon the right-of-way of a public road or highway.

42.02 CRIMINAL MISCHIEF. It is unlawful, for any person who has no right to do so, to intentionally damage, deface, alter, or destroy property.

(*Code of Iowa, Sec. 716.1*)

42.03 DEFACING PROCLAMATIONS OR NOTICES. It is unlawful for a person intentionally to deface, obliterate, tear down, or destroy in whole or in part, any transcript or extract from or of any law of the United States or the State, or any proclamation, advertisement or notification, set up at any place within the City by authority of the law or by order of any court, during the time for which the same is to remain set up.

(*Code of Iowa, Sec. 716.1*)

42.04 UNAUTHORIZED ENTRY. No unauthorized person shall enter or remain in or upon any public building, premises, or grounds in violation of any notice posted thereon or

when said building, premises or grounds are closed and not open to the public. When open to the public, a failure to pay any required admission fee also constitutes an unauthorized entry.

42.05 FRAUD. It is unlawful for any person to commit a fraudulent practice as defined in Section 714.8 of the *Code of Iowa*.

(Code of Iowa, Sec. 714.8)

42.06 THEFT. It is unlawful for any person to commit theft as defined in Section 714.1 of the *Code of Iowa*.

(Code of Iowa, Sec. 714.1)

42.07 OTHER PUBLIC PROPERTY OFFENSES. The following chapters of this Code of Ordinances contain regulations prohibiting or restricting other activities or conditions that are also deemed to be public property offenses:

1. Chapter 105 – Solid Waste Control
 - A. Section 105.07 – Littering Prohibited
2. Chapter 135 – Street Use and Maintenance
 - A. Section 135.01 – Removal of Warning Devices
 - B. Section 135.02 – Obstructing or Defacing
 - C. Section 135.03 – Placing Debris On
 - D. Section 135.04 – Playing In
 - E. Section 135.05 – Traveling on Barricaded Street or Alley
 - F. Section 135.08 – Burning Prohibited
 - G. Section 135.12 – Dumping of Snow
3. Chapter 136 – Sidewalk Regulations
 - A. Section 136.11 – Interference with Sidewalk Improvements
 - B. Section 136.15 – Fires or Fuel on Sidewalks
 - C. Section 136.16 – Defacing
 - D. Section 136.17 – Debris on Sidewalks
 - E. Section 136.18 – Merchandise Display
 - F. Section 136.19 – Sales Stands

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CHAPTER 45

ALCOHOL CONSUMPTION AND INTOXICATION

45.01 Persons Under Legal Age

45.02 Public Consumption or Intoxication

45.03 Open Containers in Motor Vehicles

45.04 Social Host

45.01 PERSONS UNDER LEGAL AGE. As used in this section, “legal age” means 21 years of age or more.

1. A person or persons under legal age shall not purchase or attempt to purchase, consume, or individually or jointly have alcoholic liquor, wine or beer in their possession or control; except in the case of liquor, wine or beer given or dispensed to a person under legal age within a private home and with the knowledge, presence and consent of the parent or guardian, for beverage or medicinal purposes or as administered to the person by either a physician or dentist for medicinal purposes and except to the extent that a person under legal age may handle alcoholic beverages, wine, and beer during the regular course of the person’s employment by a liquor control licensee, or wine or beer permittee under State laws.

(Code of Iowa, Sec. 123.47[2])

2. A person under legal age shall not misrepresent the person’s age for the purpose of purchasing or attempting to purchase any alcoholic beverage, wine, or beer from any licensee or permittee.

(Code of Iowa, Sec. 123.49[3])

45.02 PUBLIC CONSUMPTION OR INTOXICATION.

1. As used in this section unless the context otherwise requires:

A. “Arrest” means the same as defined in Section 804.5 of the *Code of Iowa* and includes taking into custody pursuant to Section 232.19 of the *Code of Iowa*.

B. “Chemical test” means a test of a person’s blood, breath, or urine to determine the percentage of alcohol present by a qualified person using devices and methods approved by the Commissioner of Public Safety.

C. “Peace officer” means the same as defined in Section 801.4 of the *Code of Iowa*.

D. “School” means a public or private school or that portion of a public or private school that provides teaching for any grade from kindergarten through grade twelve.

2. A person shall not use or consume alcoholic liquor, wine or beer upon the public streets or highways. A person shall not use or consume alcoholic liquor in any public place, except premises covered by a liquor control license. A person shall not possess or consume alcoholic liquors, wine, or beer on public school property or while attending any public or private school-related function. A person shall not be intoxicated in a public place.

3. A person shall not simulate intoxication in a public place.

4. When a peace officer arrests a person on a charge of public intoxication under this section, the peace officer shall inform the person that the person may have a chemical test administered at the person's own expense. If a device approved by the Commissioner of Public Safety for testing a sample of a person's breath to determine the person's blood alcohol concentration is available, that is the only test that need be offered the person arrested. In a prosecution for public intoxication, evidence of the results of a chemical test performed under this subsection is admissible upon proof of a proper foundation. The percentage of alcohol present in a person's blood, breath, or urine established by the results of a chemical test performed within two hours after the person's arrest on a charge of public intoxication is presumed to be the percentage of alcohol present at the time of arrest.

(Code of Iowa, Sec. 123.46)

45.03 OPEN CONTAINERS IN MOTOR VEHICLES. *[See Section 62.01(49) and (50) of this Code of Ordinances.]*

45.04 SOCIAL HOST. A person who is the owner or lessee of, or who otherwise has control over, property that is not a licensed premises shall not knowingly permit any person, knowing or having reasonable cause to believe the person to be under the age of eighteen, to consume or possess on such property any alcoholic liquor, wine, or beer. The provisions of this subsection shall not apply to a landlord or manager of the property or to a person under legal age who consumes or possesses any alcoholic liquor, wine, or beer in connection with a religious observance, ceremony, or rite.

(Code of Iowa, Sec. 123.47)

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CHAPTER 46

MINORS

46.01 Curfew

46.02 Cigarettes and Tobacco

46.03 Contributing to Delinquency

46.01 CURFEW. The Council has determined that a curfew for minors is necessary to promote the public health, safety, morals and general welfare of the City and specifically to reinforce the primary authority and responsibility of adults responsible for minors; to protect the public from the illegal acts of minors committed after the curfew hour; and to protect minors from improper influences and criminal activity that prevail in public places after the curfew hour.

1. Definitions. For use in this section, the following terms are defined:
 - A. “Emergency errand” means, but is not limited to, an errand relating to a fire, a natural disaster, an automobile accident or any other situation requiring immediate action to prevent serious illness, bodily injury, or loss of life.
 - B. “Knowingly” means knowledge that a responsible adult should reasonably be expected to have concerning the whereabouts of a minor in that responsible adult’s custody. It is intended to continue to hold the neglectful or careless adult responsible for a minor to a reasonable standard of adult responsibility through an objective test. It is therefore no defense that an adult responsible for a minor was completely indifferent to the activities or conduct or whereabouts of the minor.
 - C. “Minor” means any unemancipated person under the age of 18 years.
 - D. “Nonsecured custody” means custody in an unlocked multipurpose area, such as a lobby, office or interrogation room that is not designed, set aside, or used as a secure detention area, and the person arrested is not physically secured during the period of custody in the area; the person is physically accompanied by a law enforcement officer or a person employed by the facility where the person arrested is being held; and the use of the area is limited to providing nonsecured custody only while awaiting transfer to an appropriate juvenile facility or to court, for contacting of and release to the person’s parents or other responsible adult or for other administrative purposes; but not for longer than six hours without the oral or written order of a judge or magistrate authorizing the detention. A judge shall not extend the period of time in excess of six hours beyond the initial six-hour period.
 - E. “Public place” includes stores, parking lots, parks, playgrounds, streets, alleys, and sidewalks dedicated to public use and also includes such parts of buildings and other premises, whether publicly or privately owned, that are used by the general public or to which the general public is invited commercially for a fee or otherwise; or in or on which the general public is permitted without specific invitation; or to which the general public has access. For purposes of this section, a vehicle or other conveyance is considered to be a public place when in the areas defined above.

- F. "Responsible adult" means a parent, guardian or other adult specifically authorized by law or authorized by a parent or guardian to have custody or control of a minor.
2. Curfew Established. It is unlawful for any minor to be or remain upon any of the alleys, streets or public places or to be in places of business and amusement in the City between the hours of 12:00 midnight and 5:00 a.m. of the following day.
3. Exceptions. The following are exceptions to the curfew:
- A. The minor is accompanied by a responsible adult.
 - B. The minor is on the sidewalk or property where the minor resides or on either side of the place where the minor resides and the adult responsible for the minor has given permission for the minor to be there.
 - C. The minor is present at or is traveling between home and one of the following:
 - (1) Minor's place of employment in a business, trade or occupation in which the minor is permitted by law to be engaged or, if traveling, within one hour after the end or before the beginning of work;
 - (2) Minor's place of religious activity or, if traveling, within one hour after the end or before the beginning of the religious activity;
 - (3) Governmental or political activity or, if traveling, within one hour after the end or before the beginning of the activity;
 - (4) School activity or, if traveling, within one hour after the end or before the beginning of the activity;
 - (5) Assembly such as a march, protest, demonstration, sit-in or meeting of an association for the advancement of economic, political, religious or cultural matters, or for any other activity protected by the First Amendment of the U.S. Constitution guarantees of free exercise of religion, freedom of speech, freedom of assembly or, if traveling, within one hour after the end or before the beginning of the activity.
 - D. The minor is on an emergency errand for a responsible adult;
 - E. The minor is engaged in interstate travel through the City beginning, ending or passing through the City when such travel is by direct route.
4. Responsibility of Adults. It is unlawful for any responsible adult knowingly to permit or to allow a minor to be in any public place in the City within the time periods prohibited by this section unless the minor's presence falls within one of the above exceptions.
5. Enforcement Procedures.
- A. Determination of Age. In determining the age of the juvenile and in the absence of convincing evidence such as a birth certificate or driver's license, a law enforcement officer on the street shall, in the first instance, use his or her best judgment in determining age.
 - B. Grounds for Arrest; Conditions of Custody. Grounds for arrest are that the person refuses to sign the citation without qualification; persists in

violating the ordinance; refuses to provide proper identification or to identify himself or herself; or constitutes an immediate threat to the person's own safety or to the safety of the public. A law enforcement officer who arrests a minor for a curfew violation may keep the minor in custody either in a shelter care facility or in any nonsecured setting. The officer shall not place bodily restraints, such as handcuffs, on the minor unless the minor physically resists or threatens physical violence when being taken into custody. A minor shall not be placed in detention following a curfew violation.

C. Notification of Responsible Adult. After a minor is taken into custody, the law enforcement officer shall notify the adult responsible for the minor as soon as possible. The minor shall be released to the adult responsible for the minor upon the promise of such person to produce the child in court at such time as the court may direct.

D. Minor Without Adult Supervision. If a law enforcement officer determines that a minor does not have adult supervision because the law enforcement officer cannot locate the minor's parent, guardian or other person legally responsible for the care of the minor, within a reasonable time, the law enforcement officer shall attempt to place the minor with an adult relative of the minor, an adult person who cares for the child or another adult person who is known to the child.

6. Penalties.

A. Responsible Adult's First Violation. In the case of a first violation by a minor, the law enforcement officer shall, by certified mail, send to the adult responsible for the minor, written notice of the violation with a warning that any subsequent violation will result in full enforcement of the curfew ordinance against both the responsible adult and minor, with applicable penalties.

B. Responsible Adult's Second Violation. Any responsible adult as defined in this section who, following receipt of a warning, knowingly allows the minor to violate any of the provisions of this section is guilty of a municipal infraction.

C. Minor's First Violation. In the case of a first violation by a minor, the law enforcement officer shall give the minor a written warning, which states that any subsequent violation will result in full enforcement of the curfew ordinance against the responsible adult and the minor, with applicable penalties, or, at the law enforcement officer's discretion, may issue the minor a citation for a first violation.

D. Minor's Second Violation. For the minor's second and subsequent violations of any of the provisions of this section, the minor is guilty of a municipal infraction.

46.02 CIGARETTES AND TOBACCO. It is unlawful for any person under 18 years of age to smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes. Possession of tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes by a person under 18 years of age shall not constitute a violation of this section if said person possesses the tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes as part of the

person's employment and said person is employed by a person who holds a valid permit under Chapter 453A of the *Code of Iowa* or who lawfully offers for sale or sells cigarettes or tobacco products.

(Code of Iowa, Sec. 453A.2)

46.03 CONTRIBUTING TO DELINQUENCY. It is unlawful for any person to encourage any child under 18 years of age to commit any act of delinquency.

(Code of Iowa, Sec. 709A.1)

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CHAPTER 50

NUISANCE ABATEMENT PROCEDURE

50.01 Definition of Nuisance
50.02 Nuisances Enumerated
50.03 Other Conditions
50.04 Nuisances Prohibited

50.05 Nuisance Abatement
50.06 Abatement of Nuisance by Written Notice
50.07 Municipal Infraction Abatement Procedure

50.01 DEFINITION OF NUISANCE. Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property so as essentially to interfere unreasonably with the comfortable enjoyment of life or property is a nuisance.

(Code of Iowa, Sec. 657.1)

50.02 NUISANCES ENUMERATED. The following subsections include, but do not limit, the conditions that are deemed to be nuisances in the City:

(Code of Iowa, Sec. 657.2)

1. **Offensive Smells.** Erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture that, by occasioning noxious exhalations, unreasonably offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public.
2. **Filth or Noisome Substance.** Causing or suffering any offal, filth, or noisome substance to be collected or to remain in any place to the prejudice of others.
3. **Impeding Passage of Navigable River.** Obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.
4. **Water Pollution.** Corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.
5. **Blocking Public and Private Ways.** Obstructing or encumbering, by fences, buildings or otherwise, the public roads, private ways, streets, alleys, commons, landing places, or burying grounds.
6. **Billboards.** Billboards, signboards, and advertising signs, whether erected and constructed on public or private property, that so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard or alley or of a railroad or street railway track as to render dangerous the use thereof. **(See also Section 62.06)**
7. **Storing of Flammable Junk.** Depositing or storing of flammable junk, such as old rags, rope, cordage, rubber, bones and paper, by dealers in such articles within the fire limits of the City, unless in a building of fireproof construction. **(See also Chapter 51)**
8. **Air Pollution.** Emission of dense smoke, noxious fumes, or fly ash.
9. **Weeds, Brush.** Dense growth of all weeds, vines, brush, or other vegetation in the City so as to constitute a health, safety, or fire hazard.

10. Dutch Elm Disease. Trees infected with Dutch elm disease. **(See also Chapter 150)**

11. Airport Air Space. Any object or structure hereafter erected within 1,000 feet of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation including take-off and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the same is located.

12. Houses of Ill Fame. Houses of ill fame, kept for the purpose of prostitution and lewdness; gambling houses; places resorted to by persons participating in criminal gang activity prohibited by Chapter 723A of the *Code of Iowa* or places resorted to by persons using controlled substances, as defined in Section 124.101 of the *Code of Iowa*, in violation of law, or houses where drunkenness, quarreling, fighting or breaches of the peace are carried on or permitted to the disturbance of others.

50.03 OTHER CONDITIONS. The following chapters of this Code of Ordinances contain regulations prohibiting or restricting other conditions that are deemed to be nuisances:

1. Junk and Junk Vehicles **(See Chapter 51)**
2. Dangerous Buildings **(See Chapter 145)**
3. Storage and Disposal of Solid Waste **(See Chapter 105)**
4. Trees **(See Chapter 150)**

50.04 NUISANCES PROHIBITED. The creation or maintenance of a nuisance is prohibited, and a nuisance, public or private, may be abated in the manner provided for in this chapter or State law.

(Code of Iowa, Sec. 657.3)

50.05 NUISANCE ABATEMENT. Whenever any authorized municipal officer finds that a nuisance exists, such officer has the authority to determine on a case-by-case basis whether to utilize the nuisance abatement procedure described in Section 50.06 of this chapter or the municipal infraction procedure referred to in Section 50.07.

(Code of Iowa, Sec. 364.12[3h])

50.06 ABATEMENT OF NUISANCE BY WRITTEN NOTICE. Any nuisance, public or private, may be abated in the manner provided for in this section:

(Code of Iowa, Sec. 364.12[3h])

1. Contents of Notice to Property Owner. The notice to abate shall contain: [†]
 - A. Description of Nuisance. A description of what constitutes the nuisance.
 - B. Location of Nuisance. The location of the nuisance.

[†] **EDITOR'S NOTE:** A suggested form of notice for the abatement of nuisances is included in the Appendix of this Code of Ordinances. Caution is urged in the use of this administrative abatement procedure, particularly where cost of abatement is more than minimal or where there is doubt as to whether or not a nuisance does in fact exist. If compliance is not secured following notice and hearings, we recommend you review the situation with your attorney before proceeding with abatement and assessment of costs. Your attorney may recommend proceedings in court under Chapter 657 of the *Code of Iowa* rather than this procedure.

- C. Acts Necessary to Abate. A statement of the act or acts necessary to abate the nuisance.
- D. Reasonable Time. A reasonable time within which to complete the abatement.
- E. Assessment of City Costs. A statement that if the nuisance or condition is not abated as directed and no request for hearing is made within the time prescribed, the City will abate it and assess the costs against the property owner.
2. Method of Service. The notice may be in the form of an ordinance or sent by certified mail to the property owner.
(Code of Iowa, Sec. 364.12[3h])
3. Request for Hearing. Any person ordered to abate a nuisance may have a hearing with the Council as to whether a nuisance exists. A request for a hearing must be made in writing and delivered to the Clerk within the time stated in the notice, or it will be conclusively presumed that a nuisance exists and it must be abated as ordered. The hearing will be before the Council at a time and place fixed by the Council. The findings of the Council shall be conclusive and, if a nuisance is found to exist, it shall be ordered abated within a reasonable time under the circumstances.
4. Abatement in Emergency. If it is determined that an emergency exists by reason of the continuing maintenance of the nuisance or condition, the City may perform any action that may be required under this chapter without prior notice. The City shall assess the costs as provided in subsection 6 of this section after notice to the property owner under the applicable provisions of subsection 1 and 2, and the hearing as provided in subsection 3.
(Code of Iowa, Sec. 364.12[3h])
5. Abatement by City. If the person notified to abate a nuisance or condition neglects or fails to abate as directed, the City may perform the required action to abate, keeping an accurate account of the expense incurred. The itemized expense account shall be filed with the Clerk, who shall pay such expenses on behalf of the City.
(Code of Iowa, Sec. 364.12[3h])
6. Collection of Costs. The Clerk shall send a statement of the total expense incurred by certified mail to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within one month, the Clerk shall certify the costs to the County Treasurer and such costs shall then be collected with, and in the same manner as, general property taxes.
(Code of Iowa, Sec. 364.12[3h])
7. Installment Payment of Cost of Abatement. If the amount expended to abate the nuisance or condition exceeds \$500.00, the City may permit the assessment to be paid in up to 10 annual installments, to be paid in the same manner and with the same interest rates provided for assessments against benefited property under State law.
(Code of Iowa, Sec. 364.13)
8. Failure to Abate. Any person causing or maintaining a nuisance who shall fail or refuse to abate or remove the same within the reasonable time required and specified in the notice to abate is in violation of this Code of Ordinances.

50.07 MUNICIPAL INFRACTION ABATEMENT PROCEDURE. In lieu of the abatement procedures set forth in Section 50.06, the requirements of this chapter may be enforced under the procedures applicable to municipal infractions as set forth in Chapter 3 of this Code of Ordinances.

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CHAPTER 51

JUNK AND JUNK VEHICLES

51.01 Definitions

51.02 Junk and Junk Vehicles Prohibited

51.03 Junk and Junk Vehicles a Nuisance

51.04 Exceptions

51.05 Notice to Abate

51.01 DEFINITIONS. For use in this chapter, the following terms are defined:

1. “Junk” means all old or scrap copper, brass, lead, or any other non-ferrous metal; old or discarded rope, rags, batteries, paper, trash, rubber, debris, waste or used lumber, or salvaged wood; dismantled vehicles, machinery and appliances or parts of such vehicles, machinery or appliances; iron, steel or other old or scrap ferrous materials; old or discarded glass, tinware, plastic or old or discarded household goods or hardware. Neatly stacked firewood located on a side yard or a rear yard is not considered junk.

2. “Junk vehicle” means any vehicle stored within the corporate limits of Elkhart, Iowa, not licensed for the current year if required by law, or which because of any one of the following characteristics, constitutes a threat to the public health and safety:

A. Unusable or Unsafe. Any vehicle which lacks any component part, engine or part that renders it incapable of use and/or unsafe for its intended use.

B. Habitat for Nuisance Animals or Insects. Any vehicle which has become the habitat for rats, mice, or snakes, or any other vermin or insects.

C. Flammable Fuel. Any vehicle which contains gasoline or any other flammable fuel which has been legally placed in storage with the County Treasurer or is unlicensed.

D. Inoperable. Any motor vehicle which lacks an engine or two or more wheels or other structural parts, rendering said motor vehicle totally inoperable, or which cannot be moved under its own power or has not been used as an operating vehicle for a period of 30 days or more.

E. Defective or Obsolete Condition. Any other vehicle which, because of its defective or obsolete condition or method of storage, in any other way constitutes a threat to the public health and safety.

Mere licensing of such vehicle shall not constitute a defense to the finding that the vehicle is a junk vehicle.

3. “Vehicle” means every device in, upon, or by which a person or property is or may be transported or drawn upon a highway or street, excepting devices moved by human power or used exclusively upon stationary rails or tracks, and includes without limitation a motor vehicle, automobile, truck, motorcycle, tractor, buggy, wagon, farm machinery, or any combination thereof.

51.02 JUNK AND JUNK VEHICLES PROHIBITED. It is unlawful for any person to store, accumulate, or allow to remain on any private property within the corporate limits of the City any junk or junk vehicle.

51.03 JUNK AND JUNK VEHICLES A NUISANCE. It is hereby declared that any junk or junk vehicle located upon private property, unless excepted by Section 51.04, constitutes a threat to the health and safety of the citizens and is a nuisance within the meaning of Section 657.1 of the *Code of Iowa*. If any junk or junk vehicle is kept upon private property in violation hereof, the owner of or person occupying the property upon which it is located shall be prima facie liable for said violation.

(Code of Iowa, Sec. 364.12[3a])

51.04 EXCEPTIONS. The provisions of this chapter do not apply to any junk or a junk vehicle stored within:

1. Structure. A garage or other enclosed structure; or
2. Salvage Yard. An auto salvage yard or junk yard lawfully operated within the City.

51.05 NOTICE TO ABATE. Upon discovery of any junk or junk vehicle located upon private property in violation of Section 51.03, the City shall within five days initiate abatement procedures as outlined in Chapter 50 of this Code of Ordinances.

(Code of Iowa, Sec. 364.12[3a])

CHAPTER 52

WEEDS AND BRUSH

52.01 Weeds and Brush
52.02 Mowing of Properties
52.03 City Mowing Charge

52.04 Method of Notice
52.05 Method of Billing
52.06 Non-Zoning Variance Procedure

52.01 WEEDS AND BRUSH. Dense growth of all weeds, vines, brush, or other vegetation in the City can constitute a health, safety, or fire hazard. Unless a variance is allowed by resolution of the Council pursuant to Section 52.06, weeds, brush, or other uncultivated plants, except trees, shall be cut, mowed, and maintained so as not to exceed the heights set forth specifically in this chapter.

52.02 MOWING OF PROPERTIES. Any property within the City, other than property used and taxed as agricultural, whether vacated or non-vacated is required to be mowed prior to the vegetation reaching a height of 10 inches. Once the vegetation has reached the height of 10 inches or more, the City will arrange to mow the property at the property owner's expense. Property used and taxed as agricultural is exempt from this chapter's height and mowing requirements.

52.03 CITY MOWING CHARGE. Any property that is not mowed may be mowed by the City or its agents, and a charge of \$75.00 per hour (with a minimum of one hour, and any additional time over the first hour will be billed in half-hour increments), for such mowing, plus an administrative surcharge of \$100.00, will be charged to the property owner. Any property owner who fails to mow his or her property, thus allowing the same to be mowed by the City or its agents, and who does not provide payment for the mowing as required, will be assessed by the City for such costs, which will be collected in the same manner as general property taxes.

52.04 METHOD OF NOTICE. Annual publication of the ordinance codified in this chapter will serve as notice to property owners.

52.05 METHOD OF BILLING. Any billings for mowing done by the City or its agents are to be sent by regular mail and are payable within 30 days of the billing date.

52.06 NON-ZONING VARIANCE PROCEDURE. A non-zoning variance is a case-by-case deviation from this chapter only, when it is demonstrated that compliance with this chapter would be a practical impossibility and/or upon showing of good cause, an alternative to this chapter is provided that conforms to the general intent and spirit of this chapter. The Grounds Official shall be the City Administrator, or appropriate designee. Any individual may apply to the Grounds Official for a non-zoning variance from this chapter. Procedures for granting variances from this chapter are as follows:

1. Application. Any individual seeking a non-zoning variance shall submit a written application to the Grounds Official. The application shall be submitted at the time the applicant becomes aware of the reason necessitating the non-zoning variance, but under no circumstances shall an application be considered after a violation under this chapter has occurred. The application shall state the provision from which a non-

zoning variance is being sought, the period of time it is to apply, the reason for which the non-zoning variance is sought and any other supporting information which the Grounds Official may reasonably require.

2. The Grounds Official shall decide, on the basis of the application, whether to grant or deny the non-zoning variance and what conditions or terms, if any, shall be attached. The decision of the Grounds Official shall be final, unless appealed within five days of the Grounds Official's decision to the City Council.

3. Review Considerations. The Grounds Official, for an initial decision, and the Council, on review, shall consider:

- A. The character and nature of the property under consideration.
- B. Whether the public health, safety or welfare is endangered by granting the non-zoning variance.
- C. Whether compliance with the provision would produce no benefit to the public.
- D. Whether a previous non-zoning variance has been previously issued and the applicant's record of compliance.

4. Time Duration of Non-Zoning Variance. A non-zoning variance may be granted for a specific time interval only.

5. Council's Action. At the next regularly scheduled meeting, the Council shall, by resolution, deny the non-zoning variance, approve it, or approve it subject to conditions. The Council's decision shall be final for purposes of any right to review under applicable law when that decision is reduced to writing and signed.

6. Revocation. The Council may at any time before or during the operation of a non-zoning variance granted by the Council or the Grounds Official revoke the variance for good cause.

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CHAPTER 55

ANIMAL PROTECTION AND CONTROL

55.01 Definitions
55.02 Animal Neglect
55.03 Livestock Neglect
55.04 Abandonment of Cats and Dogs
55.05 Livestock
55.06 At Large Prohibited
55.07 Damage or Interference
55.08 Annoyance or Disturbance
55.09 Vicious Dogs
55.10 Rabies Vaccination

55.11 Owner's Duty
55.12 Confinement
55.13 At Large: Impoundment
55.14 Disposition of Animals
55.15 Impounding Costs
55.16 Pet Awards Prohibited
55.17 Reimbursement of Costs
55.18 Care and Keeping of Animals
55.19 Scheduled Offenses and Fines
55.20 Number of Animals

55.01 DEFINITIONS. The following terms are defined for use in this chapter.

1. "Advertise" means to present a commercial message in any medium including but not limited to print, radio, television, sign, display, label, tag or articulation.
2. "Animal" means a nonhuman vertebrate.
(Code of Iowa, Sec. 717B.1)
3. "At large" means off the premises of the owner and not under the control of a competent person, restrained within a motor vehicle, or housed in a veterinary hospital or kennel.
4. "Business" means any enterprise relating to any of the following:
 - A. The sale or offer for sale of goods or services.
 - B. A recruitment for employment or membership in an organization.
 - C. A solicitation to make an investment.
 - D. An amusement or entertainment activity.
5. "Fair" means any of the following:
 - A. The annual fair and exposition held by the Iowa State Fair Board pursuant to Chapter 173 of the *Code of Iowa* or any fair event conducted by a fair under the provisions of Chapter 174 of the *Code of Iowa*.
 - B. An exhibition of agricultural or manufactured products.
 - C. An event for operation of amusement rides or devices or concession booths.
6. "Game" means a "game of chance" or "game of skill" as defined in Section 99B.1 of the *Code of Iowa*.
7. "Livestock" means an animal belonging to the bovine, caprine, equine, ovine or porcine species, ostriches, rheas and emus; farm deer as defined in Section 170.1 of the *Code of Iowa*; or poultry.
(Code of Iowa, Sec. 717.1)
8. "Owner" means any person owning, keeping, sheltering or harboring an animal.

9. “Pet” means a living dog, cat, or an animal normally maintained in a small tank or cage in or near a residence, including but not limited to a rabbit, gerbil, hamster, mouse, parrot, canary, mynah, finch, tropical fish, goldfish, snake, turtle, gecko, or iguana.

55.02 ANIMAL NEGLECT. It is unlawful for a person who impounds or confines, in any place, an animal, excluding livestock, to fail to supply the animal during confinement with a sufficient quantity of food or water, or to fail to provide a confined dog or cat with adequate shelter, or to torture, deprive of necessary sustenance, mutilate, beat, or kill such animal by any means that causes unjustified pain, distress or suffering.

(Code of Iowa, Sec. 717B.3)

55.03 LIVESTOCK NEGLECT. It is unlawful for a person who impounds or confines livestock in any place to fail to provide the livestock with care consistent with customary animal husbandry practices or to deprive the livestock of necessary sustenance or to injure or destroy livestock by any means that causes pain or suffering in a manner inconsistent with customary animal husbandry practices.

(Code of Iowa, Sec. 717.2)

55.04 ABANDONMENT OF CATS AND DOGS. A person who has ownership or custody of a cat or dog shall not abandon the cat or dog, except the person may deliver the cat or dog to another person who will accept ownership and custody or the person may deliver the cat or dog to an animal shelter or pound.

(Code of Iowa, Sec. 717B.8)

55.05 LIVESTOCK. It is unlawful for a person to keep livestock within the City except by written consent of the Council or except in compliance with the City’s zoning regulations.

55.06 AT LARGE PROHIBITED. It is unlawful for any owner to allow an animal to run at large within the corporate limits of the City. When not on the owner’s property and within the corporate limits of the City, dogs shall be restrained on a leash not to exceed six feet in length.

55.07 DAMAGE OR INTERFERENCE. It is unlawful for the owner of an animal to allow or permit such animal to pass upon the premises of another thereby causing damage to, or interference with, the premises.

55.08 ANNOYANCE OR DISTURBANCE. It is unlawful for the owner of a dog to allow or permit such dog to cause serious annoyance or disturbance to any person by frequent and habitual howling, yelping, barking, or otherwise, or by running after or chasing persons, bicycles, automobiles or other vehicles.

55.09 VICIOUS DOGS. It is unlawful for any person to harbor or keep a vicious dog within the City. (See Chapter 57 of this Code of Ordinances.)

55.10 RABIES VACCINATION. Every owner of a dog shall obtain a rabies vaccination for such animal. It is unlawful for any person to own or have a dog in said person’s possession, six months of age or over, which has not been vaccinated against rabies. Dogs kept in State or federally licensed kennels and not allowed to run at large are not subject to these vaccination requirements.

(Code of Iowa, Sec. 351.33)

55.11 OWNER'S DUTY. It is the duty of the owner of any dog, cat, or other animal that has bitten or attacked a person or any person having knowledge of such bite or attack to report this act to a local health or law enforcement official. It is the duty of physicians and veterinarians to report to the local board of health the existence of any animal known or suspected to be suffering from rabies.

(Code of Iowa, Sec. 351.38)

55.12 CONFINEMENT. If a local board of health receives information that an animal has bitten a person or that a dog or animal is suspected of having rabies, the board shall order the owner to confine such animal in the manner it directs. If the owner fails to confine such animal in the manner directed, the animal shall be apprehended and impounded by such board, and after 10 days the board may humanely destroy the animal. This section does not apply if a police service dog or a horse used by a law enforcement agency and acting in the performance of its duties has bitten a person.

(Code of Iowa, Sec. 351.39)

55.13 AT LARGE: IMPOUNDMENT. Animals found at large in violation of this chapter shall be seized and impounded, or at the discretion of the peace officer, the owner may be served a summons to appear before a proper court to answer charges made thereunder.

55.14 DISPOSITION OF ANIMALS. When an animal has been apprehended and impounded, written notice shall be provided to the owner within two days after impoundment, if the owner's name and current address can reasonably be determined by accessing a tag or other device that is on or part of the animal. Impounded animals may be recovered by the owner upon payment of impounding costs and any other costs incurred by the City, and if an unvaccinated dog, by having it immediately vaccinated. If the owner fails to redeem the animal within seven days from the date that the notice is mailed, or if the owner cannot be located within seven days, the animal shall be disposed of in accordance with law or destroyed by euthanasia.

(Code of Iowa, Sec. 351.37, 351.41)

55.15 IMPOUNDING COSTS. Impounding costs are the amounts charged by the impoundment facility.

(Code of Iowa, Sec. 351.37)

55.16 PET AWARDS PROHIBITED.

(Code of Iowa, Ch. 717E)

1. Prohibition. It is unlawful for any person to award a pet or advertise that a pet may be awarded as any of the following:
 - A. A prize for participating in a game.
 - B. A prize for participating in a fair.
 - C. An inducement or condition for visiting a place of business or attending an event sponsored by a business.
 - D. An inducement or condition for executing a contract that includes provisions unrelated to the ownership, care or disposition of the pet.
2. Exceptions. This section does not apply to any of the following:

A. A pet shop licensed pursuant to Section 162.5 of the *Code of Iowa* if the award of a pet is provided in connection with the sale of a pet on the premises of the pet shop.

B. Youth programs associated with 4-H Clubs; Future Farmers of America; the Izaak Walton League of America; or organizations associated with outdoor recreation, hunting or fishing, including but not limited to the Iowa Sportsmen's Federation.

55.17 REIMBURSEMENT OF COSTS. The owner of any dog, cat, or other animal shall reimburse the City for all costs incurred by the City in conjunction with the dog, cat, or other animal of the owner, including (but not limited to) impoundment, animal control calls related to the animal, or disposition and/or destruction of the animal. Failure to reimburse the City for such costs shall be a municipal infraction.

55.18 CARE AND KEEPING OF ANIMALS.

1. No person shall aid or cause any animal, whether owned by such person or not, to escape confinement or impoundment, whether such confinement or impoundment is upon such person's property or that of another, by opening any gate, door, or window, by making an opening in any fence, enclosure, or structure, or by unleashing such animal.

2. It is the duty of every person owning or having the custody or control of an animal to physically restrain the animal within an enclosure or upon a leash when such animal is left unattended outside. The animal must be restrained so as to prevent the animal from leaving the premises of its owner or from coming in contact with the public right-of-way or the property of another. Failure to restrain an animal pursuant to this subsection constitutes a misdemeanor.

3. It is prohibited for any person in any manner to interfere with any employee or designated representative of the City so as to hinder, delay, or prevent his or her executing duties in relation to the matters and things contained in this chapter.

4. It is unlawful for any person owning, controlling, or caring for any animal to fail to keep in a clean and sanitary condition the premises and any pen, kennel, shelter, house, or person's dwelling or other structure where the animal is at any time kept. At least once every 24 hours, or more often if odors or health problems arise, such person shall pick up any and all feces so as to prevent its accumulation and the same shall be properly disposed of. Feces shall be held in watertight and fly-tight containers pending disposal and shall be disposed of at least once weekly. The animal and place where the animal is maintained shall also be kept free of noxious odors and shall be maintained so as not to attract or permit the harborage or breeding of flies and other insects or rodents or other vermin. All animal food and water shall be stored and placed for the animal's consumption in such a manner so that it will not become food for rodents and other vermin.

55.19 SCHEDULED OFFENSES AND FINES. The following scheduled fines are fixed for violation of the designated sections of this chapter:

1. For violation of Section 55.06 (Running at Large):
 - A. First offense\$ 10.00
 - B. Second offense\$ 20.00

- C. Third offense\$ 50.00
- D. Over third offense to be determined by the court.
- 2. For violation of Section 55.18 (Care and Keeping) – \$ 50.00.

Violations by persons who elect not to pay the scheduled fines set forth in this section or otherwise fail to appear on or before the appearance date and all other offenses not identified in this section as a scheduled offense shall constitute misdemeanors. Each day a violation occurs shall constitute a separate offense.

55.20 NUMBER OF ANIMALS.

1. It is unlawful for any person to keep or maintain at any one location within the City more than four of the following types of animals, including (but not limited to) dogs, cats, ferrets, chickens, and pot-bellied pigs; and of those four no more than three shall be of the same species, unless expressly approved by Council. This limitation applies to animals that are more than six months old or animals that are from more than one litter that are more than three months old. This limitation shall not apply: (i) to any person who is licensed to operate a kennel, animal shelter, pet shop, boarding kennel, commercial kennel, commercial breeder operation, veterinary hospital, zoological garden, circus, carnival, educational or medical institution, or research facility as defined by State law, and said person is in compliance with the zoning ordinances of the City; or (ii) if such animals are kept or maintained upon property zoned as agricultural property within the City by State law, and said person is in compliance with the zoning ordinances within the City.
2. Indoor pets such as gerbils, hamsters, guinea pigs, mice, birds, fish, snakes, and reptiles, and similar animals normally maintained as pets in an enclosure inside of a dwelling are not proscribed by this section unless specifically regulated by other sections.
3. If a person is found to be keeping more than four animals without the annual licenses required by Chapter 56.01, the excessive number of animals may be immediately removed from the property and impounded. Any such impounded animals shall be held for seven days and if the owner has not either complied with the requirements of this section or petitioned the court for the return of the animals by the end of the seventh day, the animal shelter shall seek to permanently place the animals.
4. Persons who owned, possessed, or kept more than four mature animals per household or premises on July 9, 2014, are permitted to continue to own, possess, or keep those animals only, but are not permitted to replace an animal which dies, is sold, transferred, or otherwise disposed of until the total number of animals per household or premises is decreased to four.

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CHAPTER 56

DOG AND CAT LICENSES REQUIRED

56.01 Annual License Required

56.02 License Fees

56.03 Delinquency

56.04 License Tags

56.05 License Records

56.06 Immunization

56.07 Duplicate Tags

56.08 Transfers of Licensed Animals

56.09 Kennel Dogs

56.01 ANNUAL LICENSE REQUIRED.

1. Every owner of a dog or cat over the age of six months shall procure a dog or cat license from the Clerk on or before July 31 of each year.
2. Such license may be procured after July 31 and at any time for a dog or cat that has come into the possession or ownership of the applicant or which has reached the age of six months after said date.
3. The owner of a dog or cat for which a license is required shall apply to the Clerk on forms provided by the Clerk.
4. The form of the application shall state the breed, sex, age, color, markings, and name, if any, of the dog or cat, and the address of the owner and shall be signed by the owner. The application shall also state the date of the most recent rabies vaccination, the type of vaccine administered, and the date the dog or cat shall be revaccinated.
5. All licenses shall expire on July 31 of the year following the date of issuance.

56.02 LICENSE FEES. The annual license fee shall be as established by resolution of the Council.

56.03 DELINQUENCY. All license fees shall become delinquent on July 31 of the year in which they are due and a delinquent penalty of \$2.00 shall be added to each unpaid license on and after said date.

56.04 LICENSE TAGS. Upon receipt of the application and fee, the Clerk shall deliver or mail to the owner a license that shall be in the form of a metal tag stamped with the serial number of the license as shown on the record book of the Clerk, the year in which it is issued, and the name of the City. The license tag shall be securely fastened by the owner to a collar or harness that shall be worn at all times by the dog or cat for which issued. A license issued for one animal shall not be transferable to another animal. Upon the expiration of the license, the owner shall remove said tag from the dog or cat.

56.05 LICENSE RECORDS. The Clerk shall keep a book to be known as the record of licenses; such record shall show:

1. The serial number and date of each application for a license.
2. The description of the dog or cat as specified in the application, together with the name of the owner of the dog or cat.

3. The date when each license tag is issued and the serial number of each tag, the date of the most recent rabies vaccination, the type of vaccine administered, and the date the dog or cat shall be revaccinated.
4. The amount of all fees paid.
5. Such other data as may be required by law.

56.06 IMMUNIZATION. Before a license is issued, the owner shall furnish a veterinarian's certificate showing that the dog or cat for which the license is sought has been vaccinated against rabies, and that the vaccination does not expire within six months from the effective date of the license. A tag showing evidence of proper vaccination shall at all times be attached to the collar of the dog or cat.

56.07 DUPLICATE TAGS. Upon the filing of an affidavit that the license tag has been lost or destroyed, the owner may obtain another tag on the payment \$5.00 and the Clerk shall enter in the license record the new number assigned.

56.08 TRANSFERS OF LICENSED ANIMALS. Upon transfer of a licensed dog or cat into the City, the owner shall surrender the original license tag to the Clerk. The Clerk shall preserve the surrendered tag and, without a license fee, issue a new license tag.

56.09 KENNEL DOGS. Dogs kept in State or federally licensed kennels, which are kept or raised solely for the bona fide purpose of sale and which are kept under constant restraint, are not subject to the provisions of this chapter.

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CHAPTER 57

DANGEROUS AND VICIOUS ANIMALS

57.01 Definitions

57.02 Keeping of Dangerous Animals Prohibited

57.03 Seizure, Impoundment and Disposition of Dangerous Animals

57.04 Keeping of Vicious Animals Prohibited

57.05 Seizure, Impoundment and Disposition of Vicious Animals

57.06 Insurance

57.07 Scheduled Offenses and Fines

57.01 DEFINITIONS. For use in this chapter, the following terms are defined:

1. “Animal” means every wild, tame or domestic member of the animal kingdom other than the genus and species *Homo sapiens*.
2. “Animal control officer” means Polk County Animal Control.
3. “At large” means off the premises of the owner, unless:
 - A. The animal is on a leash, cord, chain, or similar restraint not more than six feet in length and under the control of the person; or
 - B. The animal is within a motor vehicle; or
 - C. The animal is housed within a veterinary hospital, licensed kennel, pet shop, or animal shelter
4. “Dangerous animal” means:[†]
 - A. Badgers, wolverines, weasels, mink and other Mustelids (except ferrets);
 - B. Black widow spiders and scorpions;
 - C. Raccoons, opossums and skunks.
5. “Dog” means and includes members of the canine species, male or female whether neutered or not.
6. “Owner” has the same meaning given in Chapter 55.
7. “Pet shop” means any person engaged in the business of breeding, buying, selling, or boarding of animals of any species, except the operation of a kennel, agriculture, or wildlife pursuits.
8. “Vicious animal” means any animal, except for a dangerous animal, as listed above, that has bitten or clawed a person or persons while running at large and the attack was unprovoked, or any animal that has exhibited vicious propensities in present or past conduct, including such that said animal: (i) has bitten or clawed a person or persons on two separate occasions within a 12-month period; or (ii) did bite or claw once causing injuries above the shoulders of a person; or (iii) could not be controlled or restrained by the owner at the time of attack to prevent the occurrence; or (iv) has attacked any domestic animal or fowl on two separate occasions within a

[†] **EDITOR’S NOTE:** Certain other dangerous animals, listed in Chapter 717F.1, paragraph 5a, of the *Code of Iowa*, are specifically prohibited and regulated by the Iowa Department of Agriculture and Land Stewardship.

12-month period, or which has been found to possess such propensities by the Council, after hearing.

57.02 KEEPING OF DANGEROUS ANIMALS PROHIBITED. No person shall keep, shelter, or harbor any dangerous animal as a pet, or act as a custodian for such animal, temporarily or otherwise, or keep such animal for any purpose or in any capacity within the City.

57.03 SEIZURE, IMPOUNDMENT AND DISPOSITION OF DANGEROUS ANIMALS.

1. In the event that a dangerous animal is found at large and unattended upon public property, park property, public right-of-way, or the property of someone other than its owner, thereby creating a hazard to persons or property, such animal may, in the discretion of the animal control officer, be destroyed if it cannot be confined or captured. The City shall be under no duty to attempt the confinement or capture of a dangerous animal found at large, nor shall it have a duty to notify the owner of such animal prior to its destruction.

2. Upon the written complaint of any individual that a person is keeping, sheltering, or harboring a dangerous animal on premises in the City, the animal control officer shall cause the matter to be investigated and if after investigation, the facts indicate that the person named in the complaint is keeping, sheltering, or harboring a dangerous animal in the City, the animal control officer shall order the person named in the complaint to safely remove such animal from the City or destroy the animal, within three days of the receipt of such order. Such order shall be contained in a notice to remove the dangerous animal, which notice shall be given in writing to the person keeping, sheltering, or harboring the dangerous animal, and shall be served personally or by certified mail. Such order and notice to remove the dangerous animal shall not be required where such dangerous animal has previously caused serious physical harm or death to any person, in which case the animal control officer shall cause the animal to be immediately seized and impounded or killed if seizure and impoundment are not possible without risk of serious physical harm or death to any person.

3. The order to remove a dangerous animal issued by the animal control officer may be appealed to the Council. In order to appeal such order, written notice of appeal must be filed with the Clerk within three days after receipt of the order contained in the notice to remove the dangerous animal. Failure to file such a written notice of appeal shall constitute a waiver of right to appeal the order of the animal control officer.

4. The notice of appeal shall state the grounds for such appeal and shall be delivered personally or by certified mail to the Clerk. The hearing of such appeal shall be scheduled within seven days of the receipt of notice of appeal. After such hearing, the Council may affirm or reverse the order of the animal control officer. Such determination shall be contained in a written decision and shall be filed with the Clerk within three days after the hearing or any continued session thereof.

5. If the Council affirms the action of the animal control officer, the Council shall order in its written decision that the person owning, sheltering, harboring, or keeping such dangerous animal remove such animal from the City or destroy it. The decision and order shall immediately be served upon the person against who rendered

in the same manner as the notice of removal. If the original order of the animal control officer is not appealed and is not complied with within three days of its issuance, the animal control officer is authorized to seize and impound such dangerous animal. An animal so seized shall be impounded for a period of seven days. If at the end of the impoundment period, the person against whom the decision and order of the Council was issued has not petitioned the Council for a review of said order, the City shall cause the animal to be disposed of by sale or destroy such animal in a humane manner. Failure to comply with an order of the City issued pursuant hereto constitutes a misdemeanor offense.

57.04 KEEPING OF VICIOUS ANIMALS PROHIBITED. No person shall keep, shelter, or harbor for any reason within the City a vicious animal except in the following circumstances:

1. Animals under the control of a law enforcement or military agency.
2. The keeping of guard dogs; however, guard dogs must be kept within a structure or fixed enclosure at all times, and any guard dog found at large may be processed as a vicious animal pursuant to the provisions of Section 57.05. Any premises guarded by a guard dog shall be prominently posted with a sign containing the wording "Guard Dog," "Vicious Dog," or words of similar import and the owner of such premises shall inform City Council that a guard dog is on duty at said premises.

57.05 SEIZURE, IMPOUNDMENT AND DISPOSITION OF VICIOUS ANIMALS.

1. The animal control officer, in his or her own discretion or upon receipt of a complaint alleging that a particular animal is a vicious animal, may initiate proceedings to declare such animal a vicious animal. A hearing on the matter shall be conducted by the Council. The person owning, keeping, sheltering, or harboring the animal in question shall be given not less than 72 hours' written notice of the time and place of said hearing. Said notice shall set for the description of the animal in question and the basis for the allegation of viciousness. The notice shall state that if the animal is determined to be vicious, the owner will be required to remove it from the City or allow it to be destroyed. The notice shall be served upon any adult residing at the premises where the animal is located, or may be posted on those premises if no adult is present to accept the service.
2. If, after the hearing, the Council determines that an animal is vicious, the Council shall order the person owning, sheltering, or harboring or keeping the animal to remove it from the City or to cause it to be destroyed in a humane manner. The order shall immediately be served upon the person against who issued in the same manner as the notice of hearing. If the order is not complied with within three days of its issuance, the animal control officer is authorized to seize and impound the animal. An animal so seized shall be impounded for a period of seven days. If at the end of the impoundment period, the person against whom the order of the Council was issued has not petitioned the Council for a review of such order, the animal control officer shall cause the animal to be destroyed.
3. Failure to comply with an order of the Council issued pursuant hereto shall constitute a misdemeanor offense.
4. Any animal found at large which displays vicious tendencies may be processed as a vicious animal pursuant to the foregoing, unless the animal is so

vicious that it cannot be safely apprehended, in which case the animal control officer may immediately destroy it or unless its ownership is not ascertainable, in which case the animal control officer may destroy it after three days of impoundment.

5. Any animal which is alleged to be vicious and which is under impoundment or quarantine at the animal shelter shall not be released to the owner, but shall continue to be held at the expense of the owner pending the outcome of the hearing. All costs of such impoundment or quarantine shall be paid by the owner if the animal is determined to be vicious. If the animal is not determined to be vicious, such impoundment or quarantine costs shall be paid by the City.

57.06 INSURANCE. Every person keeping or maintaining a guard dog, as provided in this chapter, shall accompany any application or display upon request by the animal control officer a certificate of insurance from an insurance company authorized to do business in the State with coverage of at least \$150,000.00 combined single limit liability for bodily injury. Such certificate of insurance shall provide that no cancellation of the insurance will be made unless 10 days' written notice is first given to the Clerk. Failure to provide or display such certificate of insurance shall immediately cause the applicant, licensee, or owner of such animal to lose the exemption status as provided in this chapter.

57.07 SCHEDULED OFFENSES AND FINES. The scheduled fine fixed for violation of this chapter is \$50.00. Violations by persons who elect not to pay the scheduled fine set forth in this section or otherwise fail to appear on or before the appearance date shall constitute misdemeanors. Each day a violation occurs shall constitute a separate offense.

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CHAPTER 60

ADMINISTRATION OF TRAFFIC CODE

60.01 Title
60.02 Definitions
60.03 Administration and Enforcement
60.04 Power to Direct Traffic

60.05 Reports of Traffic Accidents
60.06 Peace Officer's Authority
60.07 Obedience to Peace Officers
60.08 Parades Regulated

60.01 TITLE. Chapters 60 through 70 of this Code of Ordinances may be known and cited as the “Elkhart Traffic Code” (and are referred to herein as the “Traffic Code.”)

60.02 DEFINITIONS. Where words and phrases used in the Traffic Code are defined by State law, such definitions apply to their use in said Traffic Code and are adopted by reference. Those definitions so adopted that need further definition or are reiterated, and other words and phrases used herein, have the following meanings:

(Code of Iowa, Sec. 321.1)

1. “Business District” means the territory contiguous to and including the following designated streets:
 - A. Main Street
 - B. Railroad Street
2. “Park” or “parking” means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.
3. “Peace officer” means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.
4. “Residence district” means the territory contiguous to and including a highway not comprising a business, suburban or school district, where 40 percent or more of the frontage on such a highway for a distance of 300 feet or more is occupied by dwellings or by dwellings and buildings in use for business.
5. “School district” means the territory contiguous to and including a highway for a distance of 200 feet in either direction from a schoolhouse.
6. “Stand” or “standing” means the halting of a vehicle, whether occupied or not, otherwise than for the purpose of and while actually engaged in receiving or discharging passengers.
7. “Stop” means when required, the complete cessation of movement.
8. “Stop” or “stopping” means when prohibited, any halting of a vehicle, even momentarily, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or traffic control sign or signal.
9. “Suburban district” means all other parts of the City not included in the business, school, or residence districts.

10. “Traffic control device” means all signs, signals, markings, and devices not inconsistent with this chapter, lawfully placed or erected for the purpose of regulating, warning, or guiding traffic.

11. “Vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, street, or alley.

60.03 ADMINISTRATION AND ENFORCEMENT. Provisions of this chapter and State law relating to motor vehicles and law of the road are enforced by the peace officer.

(Code of Iowa, Sec. 372.13[4])

60.04 POWER TO DIRECT TRAFFIC. A peace officer, and, in the absence of a peace officer, any officer of the Fire Department when at the scene of a fire, is authorized to direct all traffic by voice, hand or signal in conformance with traffic laws. In the event of an emergency, traffic may be directed as conditions require, notwithstanding the provisions of the traffic laws.

(Code of Iowa, Sec. 102.4 & 321.236[2])

60.05 REPORTS OF TRAFFIC ACCIDENTS. The driver of a vehicle involved in an accident within the limits of the City shall file a report as and when required by the Iowa Department of Transportation. A copy of this report shall be filed with the City for the confidential use of peace officers and shall be subject to the provisions of Section 321.271 of the *Code of Iowa*.

(Code of Iowa, Sec. 321.273)

60.06 PEACE OFFICER’S AUTHORITY. A peace officer is authorized to stop a vehicle to require exhibition of the driver’s license of the driver, to serve a summons or memorandum of traffic violation, to inspect the condition of the vehicle, to inspect the vehicle with reference to size, weight, cargo, log book, bills of lading or other manifest of employment, tires and safety equipment, or to inspect the registration certificate, the compensation certificate, travel order, or permit of such vehicle. A peace officer having probable cause to stop a vehicle may require exhibition of the proof of financial liability coverage card issued for the vehicle.

(Code of Iowa, Sec. 321.492)

60.07 OBEDIENCE TO PEACE OFFICERS. No person shall willfully fail or refuse to comply with any lawful order or direction of any peace officer invested by law with authority to direct, control, or regulate traffic.

(Code of Iowa, Sec. 321.229)

60.08 PARADES REGULATED. No person shall conduct or cause any parade on any street except as provided herein:

1. Definition. “Parade” means any march or procession of persons or vehicles organized for marching or moving on the streets in an organized fashion or manner or any march or procession of persons or vehicles represented or advertised to the public as a parade.

2. Approval Required. No parade shall be conducted without first obtaining approval from the Council. The person organizing or sponsoring the parade shall provide information concerning the time and date for the parade and the streets or general route therefor, and any approval given to such person includes all participants in the parade, provided they have been invited to participate.

3. Parade Not a Street Obstruction. Any parade for which approval has been given and the persons lawfully participating therein shall not be deemed an obstruction of the streets, notwithstanding the provisions of any other ordinance to the contrary.
4. Control by Peace Officers and Firefighters. Persons participating in any parade shall at all times be subject to the lawful orders and directions in the performance of their duties of law enforcement personnel and members of the Fire Department.

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CHAPTER 61

TRAFFIC CONTROL DEVICES

61.01 Installation of Traffic Control Devices
61.02 Compliance
61.03 Crosswalks

61.04 Traffic Lanes
61.05 Standards

61.01 INSTALLATION OF TRAFFIC CONTROL DEVICES. The Council shall establish by resolution, and cause to be placed and maintained, appropriate traffic control devices to indicate parking spaces and zones, no parking zones, limited parking zones, reserved parking zones, loading zones, safety zones, school zones, hospital zones, quiet zones, traffic zones other than the above, truck routes, school stops, stop intersections, yield right-of-way intersections, one-way streets, streets to be laned for traffic, and play streets. The Council shall also have the power to designate and indicate by resolution intersections at which traffic shall be controlled by traffic signals; intersections at which left turns, right turns and U-turns shall be prohibited; and intersections at which markers, buttons or other indications shall be placed to indicate the course to be traveled by vehicles traversing or turning at such intersections. The City shall keep a record of all such traffic control devices.

(Code of Iowa, Sec. 321.254 & 321.255)

61.02 COMPLIANCE. No driver of a vehicle shall disobey the instructions of any official traffic control device placed in accordance with the provisions of this chapter, unless at the time otherwise directed by a peace officer, subject to the exceptions granted the driver of an authorized emergency vehicle under Section 321.231 of the *Code of Iowa*.

(Code of Iowa, Sec. 321.256)

61.03 CROSSWALKS. The Council is hereby authorized to designate and maintain crosswalks by appropriate traffic control devices at intersections where, due to traffic conditions, there is particular danger to pedestrians crossing the street or roadway, and at such other places as traffic conditions require.

(Code of Iowa, Sec. 372.13[4] & 321.255)

61.04 TRAFFIC LANES. Where traffic lanes have been marked on street pavements at such places as traffic conditions require, it is unlawful for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of any such lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement.

(Code of Iowa, Sec. 372.13[4] & 321.255)

61.05 STANDARDS. Traffic control devices shall comply with standards established by *The Manual of Uniform Traffic Control Devices for Streets and Highways*.

(Code of Iowa, Sec. 321.255)

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CHAPTER 62

GENERAL TRAFFIC REGULATIONS

62.01 Violation of Regulations
62.02 Play Streets Designated
62.03 Vehicles on Sidewalks

62.04 Clinging to Vehicle
62.05 Quiet Zones
62.06 Obstructing View at Intersections

62.01 VIOLATION OF REGULATIONS. Any person who willfully fails or refuses to comply with any lawful order of a peace officer or direction of a Fire Department officer during a fire, or who fails to abide by the applicable provisions of the following Iowa statutory laws relating to motor vehicles and the statutory law of the road is in violation of this section. These sections of the *Code of Iowa* are adopted by reference and are as follows:

1. Section 321.17 – Misdemeanor to violate registration provisions.
2. Section 321.32 – Registration card, carried and exhibited; exception.
3. Section 321.37 – Display of plates.
4. Section 321.38 – Plates, method of attaching, imitations prohibited.
5. Section 321.57 – Operation under special plates.
6. Section 321.67 – Certificate of title must be executed.
7. Section 321.78 – Injuring or tampering with vehicle.
8. Section 321.79 – Intent to injure.
9. Section 321.91 – Penalty for abandonment.
10. Section 321.98 – Operation without registration.
11. Section 321.99 – Fraudulent use of registration.
12. Section 321.104 – Penal offenses against title law.
13. Section 321.115 – Antique vehicles; model year plates permitted.
14. Section 321.174 – Operators licensed.
15. Section 321.174A – Operation of motor vehicles with expired license.
16. Section 321.180 – Instruction permits.
17. Section 321.180B – Graduated driver’s licenses for persons aged fourteen through seventeen.
18. Section 321.193 – Restricted licenses.
19. Section 321.194 – Special minor’s licenses.
20. Section 321.208A – Operation in violation of out-of-service order.
21. Section 321.216 – Unlawful use of license and nonoperator’s identification card.
22. Section 321.216B – Use of driver’s license or nonoperator’s identification card by underage person to obtain alcohol.

23. Section 321.216C – Use of driver’s license or nonoperator’s identification card by underage person to obtain cigarettes or tobacco products.
24. Section 321.218 – Operating without valid driver’s license or when disqualified.
25. Section 321.219 – Permitting unauthorized minor to drive.
26. Section 321.220 – Permitting unauthorized person to drive.
27. Section 321.221 – Employing unlicensed chauffeur.
28. Section 321.222 – Renting motor vehicle to another.
29. Section 321.223 – License inspected.
30. Section 321.224 – Record kept.
31. Section 321.232 – Speed detection jamming devices; penalty.
32. Section 321.234A – All-terrain vehicles.
33. Section 321.235A – Electric personal assistive mobility devices.
34. Section 321.247 – Golf cart operation on City streets.
35. Section 321.257 – Official traffic control signal.
36. Section 321.259 – Unauthorized signs, signals or markings.
37. Section 321.260 – Interference with devices, signs or signals; unlawful possession.
38. Section 321.262 – Leaving scene of traffic accident prohibited; vehicle damage only; removal of vehicles.
39. Section 321.263 – Information and aid.
40. Section 321.264 – Striking unattended vehicle.
41. Section 321.265 – Striking fixtures upon a highway.
42. Section 321.266 – Reporting accidents.
43. Section 321.275 – Operation of motorcycles and motorized bicycles.
44. Section 321.276 – Use of electronic communication device while driving; text-messaging.
45. Section 321.277 – Reckless driving.
46. Section 321.277A – Careless driving.
47. Section 321.278 – Drag racing prohibited.
48. Section 321.281 – Actions against bicyclists.
49. Section 321.284 – Open container; drivers.
50. Section 321.284A – Open container; passengers.
51. Section 321.288 – Control of vehicle; reduced speed.
52. Section 321.295 – Limitation on bridge or elevated structures.
53. Section 321.297 – Driving on right-hand side of roadways; exceptions.

54. Section 321.298 – Meeting and turning to right.
55. Section 321.299 – Overtaking a vehicle.
56. Section 321.302 – Overtaking and passing.
57. Section 321.303 – Limitations on overtaking on the left.
58. Section 321.304 – Prohibited passing.
59. Section 321.306 – Roadways laned for traffic.
60. Section 321.307 – Following too closely.
61. Section 321.308 – Motor trucks and towed vehicles; distance requirements.
62. Section 321.309 – Towing; convoys; drawbars.
63. Section 321.310 – Towing four-wheel trailers.
64. Section 321.312 – Turning on curve or crest of grade.
65. Section 321.313 – Starting parked vehicle.
66. Section 321.314 – When signal required.
67. Section 321.315 – Signal continuous.
68. Section 321.316 – Stopping.
69. Section 321.317 – Signals by hand and arm or signal device.
70. Section 321.318 – Method of giving hand and arm signals.
71. Section 321.319 – Entering intersections from different highways.
72. Section 321.320 – Left turns; yielding.
73. Section 321.321 – Entering through highways.
74. Section 321.322 – Vehicles entering stop or yield intersection.
75. Section 321.323 – Moving vehicle backward on highway.
76. Section 321.323A – Approaching certain stationary vehicles.
77. Section 321.324 – Operation on approach of emergency vehicles.
78. Section 321.324A – Funeral processions.
79. Section 321.329 – Duty of driver; pedestrians crossing or working on highways.
80. Section 321.330 – Use of crosswalks.
81. Section 321.332 – White canes restricted to blind persons.
82. Section 321.333 – Duty of drivers approaching blind persons.
83. Section 321.340 – Driving through safety zone.
84. Section 321.341 – Obedience to signal indicating approach of railroad train or railroad track equipment.
85. Section 321.342 – Stop at certain railroad crossings; posting warning.
86. Section 321.343 – Certain vehicles must stop.

- 87. Section 321.344 – Heavy equipment at crossing.
- 88. Section 321.344B – Immediate safety threat; penalty.
- 89. Section 321.354 – Stopping on traveled way.
- 90. Section 321.359 – Moving other vehicle.
- 91. Section 321.362 – Unattended motor vehicle.
- 92. Section 321.363 – Obstruction to driver's view.
- 93. Section 321.364 – Vehicles shipping food; preventing contamination by hazardous material.
- 94. Section 321.365 – Coasting prohibited.
- 95. Section 321.367 – Following fire apparatus.
- 96. Section 321.368 – Crossing fire hose.
- 97. Section 321.369 – Putting debris on highway.
- 98. Section 321.370 – Removing injurious material.
- 99. Section 321.371 – Clearing up wrecks.
- 100. Section 321.372 – School buses.
- 101. Section 321.381 – Movement of unsafe or improperly equipped vehicles.
- 102. Section 321.381A – Operation of low-speed vehicles.
- 103. Section 321.382 – Upgrade pulls; minimum speed.
- 104. Section 321.383 – Exceptions; slow vehicles identified.
- 105. Section 321.384 – When lighted lamps required.
- 106. Section 321.385 – Head lamps on motor vehicles.
- 107. Section 321.386 – Head lamps on motorcycles and motorized bicycles.
- 108. Section 321.387 – Rear lamps.
- 109. Section 321.388 – Illuminating plates.
- 110. Section 321.389 – Reflector requirement.
- 111. Section 321.390 – Reflector requirements.
- 112. Section 321.392 – Clearance and identification lights.
- 113. Section 321.393 – Color and mounting.
- 114. Section 321.394 – Lamp or flag on projecting load.
- 115. Section 321.395 – Lamps on parked vehicles.
- 116. Section 321.398 – Lamps on other vehicles and equipment.
- 117. Section 321.402 – Spot lamps.
- 118. Section 321.403 – Auxiliary driving lamps.
- 119. Section 321.404 – Signal lamps and signal devices.
- 120. Section 321.404A – Light-restricting devices prohibited.

121. Section 321.405 – Self-illumination.
122. Section 321.408 – Back-up lamps.
123. Section 321.409 – Mandatory lighting equipment.
124. Section 321.415 – Required usage of lighting devices.
125. Section 321.417 – Single-beam road-lighting equipment.
126. Section 321.418 – Alternate road-lighting equipment.
127. Section 321.419 – Number of driving lamps required or permitted.
128. Section 321.420 – Number of lamps lighted.
129. Section 321.421 – Special restrictions on lamps.
130. Section 321.422 – Red light in front.
131. Section 321.423 – Flashing lights.
132. Section 321.430 – Brake, hitch, and control requirements.
133. Section 321.431 – Performance ability.
134. Section 321.432 – Horns and warning devices.
135. Section 321.433 – Sirens, whistles, and bells prohibited.
136. Section 321.434 – Bicycle sirens or whistles.
137. Section 321.436 – Mufflers, prevention of noise.
138. Section 321.437 – Mirrors.
139. Section 321.438 – Windshields and windows.
140. Section 321.439 – Windshield wipers.
141. Section 321.440 – Restrictions as to tire equipment.
142. Section 321.441 – Metal tires prohibited.
143. Section 321.442 – Projections on wheels.
144. Section 321.444 – Safety glass.
145. Section 321.445 – Safety belts and safety harnesses; use required.
146. Section 321.446 – Child restraint devices.
147. Section 321.449 – Motor carrier safety regulations.
148. Section 321.449A – Rail crew transport drivers.
149. Section 321.450 – Hazardous materials transportation.
150. Section 321.454 – Width of vehicles.
151. Section 321.455 – Projecting loads on passenger vehicles.
152. Section 321.456 – Height of vehicles; permits.
153. Section 321.457 – Maximum length.
154. Section 321.458 – Loading beyond front.
155. Section 321.460 – Spilling loads on highways.

- 156. Section 321.461 – Trailers and towed vehicles.
- 157. Section 321.462 – Drawbars and safety chains.
- 158. Section 321.463 – Maximum gross weight.
- 159. Section 321.465 – Weighing vehicles and removal of excess.
- 160. Section 321.466 – Increased loading capacity; reregistration.

62.02 PLAY STREETS DESIGNATED. Whenever authorized signs are erected indicating any street or part thereof as a play street, no person shall drive a vehicle upon any such street or portion thereof except drivers of vehicles having business or whose residences are within such closed area, and then any said driver shall exercise the greatest care in driving upon any such street or portion thereof.

(Code of Iowa, Sec. 321.255)

62.03 VEHICLES ON SIDEWALKS. The driver of a vehicle shall not drive upon or within any sidewalk area except at a driveway.

62.04 CLINGING TO VEHICLE. No person shall drive a motor vehicle on the streets of the City unless all passengers of said vehicle are inside the vehicle in the place intended for their accommodation. No person riding upon any bicycle, coaster, roller skates, in-line skates, sled, or toy vehicle shall attach the same or himself or herself to any vehicle upon a roadway.

62.05 QUIET ZONES. Whenever authorized signs are erected indicating a quiet zone, no person operating a motor vehicle within any such zone shall sound the horn or other warning device of such vehicle except in an emergency.

62.06 OBSTRUCTING VIEW AT INTERSECTIONS. It is unlawful to allow any tree, hedge, billboard, or other object to obstruct the view of an intersection by preventing persons from having a clear view of traffic approaching the intersection from cross streets. Any such obstruction is deemed a nuisance and in addition to the standard penalty may be abated in the manner provided by Chapter 50 of this Code of Ordinances.

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CHAPTER 63

SPEED REGULATIONS

63.01 General
63.02 State Code Speed Limits
63.03 Parks, Cemeteries and Parking Lots

63.04 Special Speed Zones
63.05 Minimum Speed

63.01 GENERAL. Every driver of a motor vehicle on a street shall drive the same at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface and width of the street and of any other conditions then existing, and no person shall drive a vehicle on any street at a speed greater than will permit said driver to bring it to a stop within the assured clear distance ahead, such driver having the right to assume, however, that all persons using said street will observe the law.

(Code of Iowa, Sec. 321.285)

63.02 STATE CODE SPEED LIMITS. The following speed limits are established in Section 321.285 of the *Code of Iowa* and any speed in excess thereof is unlawful unless specifically designated otherwise in this chapter as a special speed zone.

1. Business District – 20 miles per hour.
2. Residence or School District – 25 miles per hour.
3. Suburban District – 45 miles per hour.

63.03 PARKS, CEMETERIES AND PARKING LOTS. A speed in excess of 15 miles per hour in any public park, cemetery or parking lot, unless specifically designated otherwise in this chapter, is unlawful.

(Code of Iowa, Sec. 321.236[5])

63.04 SPECIAL SPEED ZONES. In accordance with requirements of the Iowa Department of Transportation, or whenever the Council shall determine upon the basis of an engineering and traffic investigation that any speed limit listed in Section 63.02 is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the City street system, the Council shall determine and adopt by ordinance such higher or lower speed limit as it deems reasonable and safe at such location. The following special speed zones have been established:

(Code of Iowa, Sec. 321.290)

1. Special 20 MPH Speed Zones. A speed in excess of 20 miles per hour is unlawful on any of the following designated streets or parts thereof.

A. On NW Main Street between Washington Avenue and Grant Avenue.

63.05 MINIMUM SPEED. A person shall not drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation, or in compliance with law.

(Code of Iowa, Sec. 321.294)

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CHAPTER 64

TURNING REGULATIONS

64.01 Turning at Intersections

64.02 U-Turns

64.01 TURNING AT INTERSECTIONS. The driver of a vehicle intending to turn at an intersection shall do so as follows:

1. Both the approach for a right turn and a left turn shall be made as close as practical to the right-hand curb or edge of the roadway.
2. Approach for a left turn shall be made in that portion of the right half of the roadway nearest the centerline thereof and after entering the intersection the left turn shall be made so as to depart from the intersection to the right of the centerline of the roadway being entered.
3. Approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right half of the roadway nearest the centerline thereof and by passing to the right of such centerline where it enters the intersection. A left turn from a one-way street into a two-way street shall be made by passing to the right of the centerline of the street being entered upon leaving the intersection.

The Council may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct, as traffic conditions require, that a different course from that specified above be traveled by vehicles turning at intersections, and when markers, buttons or signs are so placed, no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons or signs.

(Code of Iowa, Sec. 321.311)

64.02 U-TURNS. It is unlawful for a driver to make a U-turn except at an intersection; however, U-turns are prohibited within the Business District and at any intersection where a sign prohibiting U-turns is posted in accordance with Chapter 61 of this Traffic Code.

(Code of Iowa, Sec. 321.236[9])

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CHAPTER 65

STOP OR YIELD REQUIRED

65.01 Stop or Yield

65.02 School Stops

65.03 Stop Before Crossing Sidewalk

65.04 Stop When Traffic Is Obstructed

65.05 Yield to Pedestrians in Crosswalks

65.01 STOP OR YIELD. Every driver of a vehicle shall stop or yield as directed by traffic control devices posted in accordance with Chapter 61 of this Traffic Code.

65.02 SCHOOL STOPS. At any school crossing zone, every driver of a vehicle approaching said zone shall bring the vehicle to a full stop at a point 10 feet from the approach side of the crosswalk marked by an authorized school stop sign and thereafter proceed in a careful and prudent manner until the vehicle shall have passed through such school crossing zone.

(Code of Iowa, Sec. 321.249)

65.03 STOP BEFORE CROSSING SIDEWALK. The driver of a vehicle emerging from a private roadway, alley, driveway, or building shall stop such vehicle immediately prior to driving onto the sidewalk area and thereafter shall proceed into the sidewalk area only when able to do so without danger to pedestrian traffic and shall yield the right-of-way to any vehicular traffic on the street into which the vehicle is entering.

(Code of Iowa, Sec. 321.353)

65.04 STOP WHEN TRAFFIC IS OBSTRUCTED. Notwithstanding any traffic control signal indication to proceed, no driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle.

65.05 YIELD TO PEDESTRIANS IN CROSSWALKS. Where traffic control signals are not in place or in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping, if need be, to yield to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection.

(Code of Iowa, Sec. 321.327)

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CHAPTER 66

LOAD AND WEIGHT RESTRICTIONS

66.01 Temporary Embargo

66.02 Permits for Excess Size and Weight

66.03 Load Limits Upon Certain Streets

66.04 Truck Route

66.01 TEMPORARY EMBARGO. If the Council declares an embargo when it appears by reason of deterioration, rain, snow or other climatic conditions that certain streets will be seriously damaged or destroyed by vehicles weighing in excess of an amount specified by the signs, no such vehicles shall be operated on streets so designated by such signs erected in accordance with Chapter 61 of this Traffic Code.

(Code of Iowa, Sec. 321.471 & 472)

66.02 PERMITS FOR EXCESS SIZE AND WEIGHT. The Council may, upon application and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified by State law or the City over those streets or bridges named in the permit which are under the jurisdiction of the City and for which the City is responsible for maintenance.

(Code of Iowa, Sec. 321.473 & 321E.1)

66.03 LOAD LIMITS UPON CERTAIN STREETS. When signs are erected giving notice thereof, no person shall operate any vehicle with a gross weight in excess of the amounts specified on such signs at any time upon any of the streets or parts of streets for which said signs are erected in accordance with Chapter 61 of this Traffic Code.

(Code of Iowa, Sec. 321.473 & 475)

66.04 TRUCK ROUTE. When truck routes have been designated in accordance with Chapter 61, any motor vehicle exceeding established weight limits shall comply with the following:

1. Use of Established Routes. Every such motor vehicle having no fixed terminal within the City or making no scheduled or definite stops within the City for the purpose of loading or unloading shall travel over or upon those streets within the City designated as truck routes and none other.

(Code of Iowa, Sec. 321.473)

2. Deliveries Off Truck Route. Any such motor vehicle, when loaded or empty, having a fixed terminal, making a scheduled or definite stop within the City for the purpose of loading or unloading shall proceed over or upon the designated routes to the nearest point of its scheduled or definite stop and shall proceed thereto, load or unload and return, by the most direct route to its point of departure from said designated route.

(Code of Iowa, Sec. 321.473)

3. Employer's Responsibility. The owner, or any other person, employing or otherwise directing the driver of any vehicle shall not require or knowingly permit the operation of such vehicle upon a street in any manner contrary to this section.

(Code of Iowa, Sec. 321.473)

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CHAPTER 67

PEDESTRIANS

67.01 Walking in Street
67.02 Hitchhiking

67.03 Pedestrian Crossing

67.01 WALKING IN STREET. Pedestrians shall at all times, when walking on or along a street, walk on the left side of the street.

(Code of Iowa, Sec. 321.326)

67.02 HITCHHIKING. No person shall stand in the traveled portion of a street for the purpose of soliciting a ride from the driver of any private vehicle.

(Code of Iowa, Sec. 321.331)

67.03 PEDESTRIAN CROSSING. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(Code of Iowa, Sec. 321.328)

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CHAPTER 68

ONE-WAY TRAFFIC

68.01 ONE-WAY TRAFFIC REQUIRED. When appropriate signs are in place, as provided for in Chapter 61 of this Traffic Code, vehicular traffic, other than permitted cross traffic, shall move only in the direction indicated on such signs.

(Code of Iowa, Sec. 321.236[4])

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CHAPTER 69

PARKING REGULATIONS

69.01 Parking Limited or Controlled

69.02 Park Adjacent to Curb

69.03 Parking on One-Way Streets

69.04 Angle Parking

69.05 Manner of Angle Parking

69.06 Parking for Certain Purposes Illegal

69.07 Parking Prohibited

69.08 Persons With Disabilities Parking

69.09 Truck Parking Limited

69.10 Snow Removal

69.11 Recreational Vehicles and Utility Trailers

69.01 PARKING LIMITED OR CONTROLLED. Parking of vehicles shall be controlled or limited where so indicated by designated traffic control devices in accordance with Chapter 61 of this Traffic Code. No person shall stop, park or stand a vehicle in violation of any such posted parking regulations unless in compliance with the directions of a peace officer.

69.02 PARK ADJACENT TO CURB. No person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the right-hand wheels of the vehicle within 18 inches of the curb or edge of the roadway except as hereinafter provided in the case of angle parking and vehicles parked on the left-hand side of one-way streets.

(Code of Iowa, Sec. 321.361)

69.03 PARKING ON ONE-WAY STREETS. No person shall stand or park a vehicle on the left-hand side of a one-way street other than parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the left-hand wheels of the vehicle within 18 inches of the curb or edge of the roadway except as hereinafter provided in the case of angle parking.

(Code of Iowa, Sec. 321.361)

69.04 ANGLE PARKING. Angle or diagonal parking is permitted only in the following locations:

(Code of Iowa, Sec. 321.361)

- NONE -

69.05 MANNER OF ANGLE PARKING. Upon those streets or portions of streets which have been signed or marked for angle parking, no person shall park or stand a vehicle other than at an angle to the curb or edge of the roadway or in the center of the roadway as indicated by such signs and markings. No part of any vehicle or the load thereon, when said vehicle is parked within a diagonal parking district, shall extend into the roadway more than a distance of 16 feet when measured at right angles to the adjacent curb or edge of roadway.

(Code of Iowa, Sec. 321.361)

69.06 PARKING FOR CERTAIN PURPOSES ILLEGAL. No person shall park a vehicle upon public property for more than 48 hours, unless otherwise limited under the provisions of Section 69.01 of this chapter, or for any of the following principal purposes:

(Code of Iowa, Sec. 321.236[1])

1. Sale. Displaying such vehicle for sale.
2. Repairing. For lubricating, repairing or for commercial washing of such vehicle except such repairs as are necessitated by an emergency.
3. Advertising. Displaying advertising.
4. Merchandise Sales. Selling merchandise from such vehicle except in a duly established market place or when so authorized or licensed under the Code of Ordinances.

69.07 PARKING PROHIBITED. No one shall stop, stand or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or traffic control device, in any of the following places:

1. Crosswalk. On a crosswalk.
(Code of Iowa, Sec. 321.358[5])
2. Center Parkway. On the center parkway or dividing area of any divided street.
(Code of Iowa, Sec. 321.236[1])
3. Mailboxes. Within 20 feet on either side of a mailbox which is so placed and so equipped as to permit the depositing of mail from vehicles on the roadway.
(Code of Iowa, Sec. 321.236[1])
4. Sidewalks. On or across a sidewalk.
(Code of Iowa, Sec. 321.358[1])
5. Driveway. In front of a public or private driveway.
(Code of Iowa, Sec. 321.358[2])
6. Intersection. Within an intersection or within 25 feet of an intersection of any street or alley except for the intersections of NW Railroad Avenue and NW Main Street, NW Shaw Avenue and NW Main Street, NW Lincoln Avenue and NW Main Street, NW Washington Avenue and NW Main Street, NW Washington Avenue and NW Maple Street, NW Garfield Avenue and NW Main Street, and NW Garfield Avenue and NW Maple Street, which would remain with parking prohibited within 10 feet of these intersections.
(Code of Iowa, Sec. 321.358[3])
7. Fire Hydrant. Within five feet of a fire hydrant.
(Code of Iowa, Sec. 321.358[4])
8. Stop Sign or Signal. Within 10 feet upon the approach to any flashing beacon, stop or yield sign, or traffic control signal located at the side of a roadway.
(Code of Iowa, Sec. 321.358[6])
9. Railroad Crossing. Within 50 feet of the nearest rail of a railroad crossing, except when parked parallel with such rail and not exhibiting a red light.
(Code of Iowa, Sec. 321.358[8])
10. Fire Station. Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance when properly sign posted.
(Code of Iowa, Sec. 321.358[9])

11. Excavations. Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic.

(Code of Iowa, Sec. 321.358[10])

12. Double Parking. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.

(Code of Iowa, Sec. 321.358[11])

13. Hazardous Locations. When, because of restricted visibility or when standing or parked vehicles would constitute a hazard to moving traffic, or when other traffic conditions require, the Council may cause curbs to be painted with a yellow color and erect no parking or standing signs.

(Code of Iowa, Sec. 321.358[13])

14. Churches, Nursing Homes and Other Buildings. A space of 50 feet is hereby reserved at the side of the street in front of any theatre, auditorium, hotel having more than 25 sleeping rooms, hospital, nursing home, taxicab stand, bus depot, church, or other building where large assemblages of people are being held, within which space, when clearly marked as such, no motor vehicle shall be left standing, parked or stopped except in taking on or discharging passengers or freight, and then only for such length of time as is necessary for such purpose.

(Code of Iowa, Sec. 321.360)

15. Alleys. No person shall park a vehicle within an alley in such a manner or under such conditions as to leave available less than 10 feet of the width of the roadway for the free movement of vehicular traffic, and no person shall stop, stand or park a vehicle within an alley in such a position as to block the driveway entrance to any abutting property. The provisions of this subsection shall not apply to a vehicle parked in any alley which is 18 feet wide or less; provided said vehicle is parked to deliver goods or services.

(Code of Iowa, Sec. 321.236[1])

16. Ramps. In front of a curb cut or ramp which is located on public or private property in a manner which blocks access to the curb cut or ramp.

(Code of Iowa, Sec. 321.358[15])

17. Area Between Lot Line and Curb Line. That area of the public way not covered by sidewalk and lying between the lot line and the curb line, where curbing has been installed.

18. In More Than One Space. In any designated parking space so that any part of the vehicle occupies more than one such space or protrudes beyond the markings designating such space.

69.08 PERSONS WITH DISABILITIES PARKING. The following regulations shall apply to the establishment and use of persons with disabilities parking spaces:

1. Establishment. Persons with disabilities parking spaces shall be established and designated in accordance with Chapter 321L of the *Code of Iowa* and Iowa Administrative Code, 661-18. No unauthorized person shall establish any on-street persons with disabilities parking space without first obtaining Council approval.

2. Improper Use. The following uses of a persons with disabilities parking space, located on either public or private property, constitute improper use of a persons with disabilities parking permit, which is a violation of this Code of Ordinances:

(Code of Iowa, Sec. 321L.4[2])

- A. Use by an operator of a vehicle not displaying a persons with disabilities parking permit;
 - B. Use by an operator of a vehicle displaying a persons with disabilities parking permit but not being used by a person issued a permit or being transported in accordance with Section 321L.2[1b] of the *Code of Iowa*;
 - C. Use by a vehicle in violation of the rules adopted under Section 321L.8 of the *Code of Iowa*.
3. Wheelchair Parking Cones. No person shall use or interfere with a wheelchair parking cone in violation of the following:
- A. A person issued a persons with disabilities parking permit must comply with the requirements of Section 321L.2A[1] of the *Code of Iowa* when utilizing a wheelchair parking cone.
 - B. A person shall not interfere with a wheelchair parking cone which is properly placed under the provisions of Section 321L.2A[1] of the *Code of Iowa*.

69.09 TRUCK PARKING LIMITED. No person shall park a motor truck, semi-trailer, or other motor vehicle with trailer attached in violation of the following regulations. The provisions of this section shall not apply to pickup, light delivery or panel delivery trucks.

(Code of Iowa, Sec. 321.236[1])

- 1. Business District. Excepting only when such vehicles are actually engaged in the delivery or receiving of merchandise or cargo, no person shall park or leave unattended such vehicle on any streets within the Business District. When actually receiving or delivering merchandise or cargo such vehicle shall be stopped or parked in a manner which will not interfere with other traffic.
- 2. Noise. No such vehicle shall be left standing or parked upon any street, alley, public or private parking lot, or drive of any service station between the hours of 9:00 p.m. and 6:00 a.m. with the engine, auxiliary engine, air compressor, refrigerating equipment or other device in operation giving off audible sounds excepting only the drive of a service station when actually being serviced, and then in no event for more than 30 minutes.
- 3. Livestock. No such vehicle containing livestock shall be parked on any street, alley, or highway for a period of time of more than 30 minutes.

69.10 SNOW REMOVAL. No person shall park, abandon or leave unattended any vehicle on any public street, alley, or City-owned off-street parking area during snow removal operations unless the snow has been removed or plowed from said street, alley or parking area and the snow has ceased to fall.

(Code of Iowa, 321.236[1])

69.11 RECREATIONAL VEHICLES AND UTILITY TRAILERS.

1. Definitions. For the purpose of this section, “recreational vehicles” are defined as motor homes, travel trailers, fifth-wheel travel trailers, as each of the preceding is defined in Chapter 321 of the *Code of Iowa*, campers and camper trailers. “Utility trailers” are defined as trailers used for the purpose of hauling boats, pontoons, wave runners, snowmobiles, motorcycles, or other sport type vehicles.
2. Restrictions. No person shall park any recreational vehicle or utility trailer upon any roadway within the City.

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CHAPTER 70

TRAFFIC CODE ENFORCEMENT PROCEDURES

70.01 Arrest or Citation
70.02 Scheduled Violations
70.03 Parking Violations: Alternate

70.04 Parking Violations: Vehicle Unattended
70.05 Presumption in Reference to Illegal Parking
70.06 Impounding Vehicles

70.01 ARREST OR CITATION. Whenever a peace officer has reasonable cause to believe that a person has violated any provision of the Traffic Code, such officer may:

1. Immediate Arrest. Immediately arrest such person and take such person before a local magistrate; or
2. Issue Citation. Without arresting the person, prepare in quintuplicate a combined traffic citation and complaint as adopted by the Iowa Commissioner of Public Safety, or issue a uniform citation and complaint utilizing a State-approved computerized device.

(Code of Iowa, Sec. 805.6 & 321.485)

70.02 SCHEDULED VIOLATIONS. For violations of the Traffic Code which are designated by Section 805.8A of the *Code of Iowa* to be scheduled violations, the scheduled fine for each of those violations shall be as specified in Section 805.8A of the *Code of Iowa*.

(Code of Iowa, Sec. 805.8 & 805.8A)

70.03 PARKING VIOLATIONS: ALTERNATE. Uncontested violations of parking restrictions imposed by this Code of Ordinances shall be charged upon a simple notice of a fine payable at the office of the City Clerk. The fine for each violation charged under a simple notice of a fine shall be in the amount of \$10.00 for all violations except improper use of a persons with disabilities parking permit. If such fine is not paid within 30 days, it shall be increased by \$5.00. The fine for improper use of a persons with disabilities parking permit is \$100.00.

(Code of Iowa, Sec. 321.236[1b] & 321L.4[2])

70.04 PARKING VIOLATIONS: VEHICLE UNATTENDED. When a vehicle is parked in violation of any provision of the Traffic Code, and the driver is not present, the notice of fine or citation as herein provided shall be attached to the vehicle in a conspicuous place.

70.05 PRESUMPTION IN REFERENCE TO ILLEGAL PARKING. In any proceeding charging a standing or parking violation, a prima facie presumption that the registered owner was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred, shall be raised by proof that:

1. Described Vehicle. The particular vehicle described in the information was parked in violation of the Traffic Code; and
2. Registered Owner. The defendant named in the information was the registered owner at the time in question.

70.06 IMPOUNDING VEHICLES. A peace officer is hereby authorized to remove, or cause to be removed, a vehicle from a street, public alley, public parking lot or highway to the

nearest garage or other place of safety, or to a garage designated or maintained by the City, under the circumstances hereinafter enumerated:

1. Disabled Vehicle. When a vehicle is so disabled as to constitute an obstruction to traffic and the person or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal.

(Code of Iowa, Sec. 321.236[1])

2. Illegally Parked Vehicle. When any vehicle is left unattended and is so illegally parked as to constitute a definite hazard or obstruction to the normal movement of traffic.

(Code of Iowa, Sec. 321.236[1])

3. Snow Removal. When any vehicle is left parked in violation of a ban on parking during snow removal operations.

4. Parked Over Limited Time Period. When any vehicle is left parked for a continuous period in violation of any limited parking time. If the owner can be located, the owner shall be given an opportunity to remove the vehicle.

(Code of Iowa, Sec. 321.236[1])

5. Costs. In addition to the standard penalties provided, the owner or driver of any vehicle impounded for the violation of any of the provisions of this chapter shall be required to pay the reasonable cost of towing and storage.

(Code of Iowa, Sec. 321.236[1])

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CHAPTER 75

ALL-TERRAIN VEHICLES AND SNOWMOBILES

75.01 Purpose

75.02 Definitions

75.03 General Regulations

75.04 Operation of Snowmobiles

75.05 Operation of All-Terrain Vehicles

75.06 Negligence

75.07 Accident Reports

75.01 PURPOSE. The purpose of this chapter is to regulate the operation of all-terrain vehicles and snowmobiles within the City.

75.02 DEFINITIONS. For use in this chapter the following terms are defined:

1. “All-terrain vehicle” or “ATV” means a motorized vehicle, with not less than three and not more than six non-highway tires, that is limited in engine displacement to less than 1,000 cubic centimeters and in total dry weight to less than 1,200 pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

(Code of Iowa, Sec. 321I.1)

2. “Off-road motorcycle” means a two-wheeled motor vehicle that has a seat or saddle designed to be straddled by the operator and handlebars for steering control and that is intended by the manufacturer for use on natural terrain. “Off-road motorcycle” includes a motorcycle that was originally issued a certificate of title and registered for highway use under Chapter 321 of the *Code of Iowa*, but which contains design features that enable operation over natural terrain. An operator of an off-road motorcycle is also subject to the provisions of this chapter governing the operation of all-terrain vehicles.

(Code of Iowa, Sec. 321I.1)

3. “Off-road utility vehicle” means a motorized vehicle, with not less than four and not more than eight non-highway tires or rubberized tracks, that has a seat that is of bucket or bench design, not intended to be straddled by the operator, and a steering wheel or control levers for control. “Off-road utility vehicle” includes the following vehicles:

(Code of Iowa, Sec. 321I.1)

A. “Off-road utility vehicle – type 1” includes vehicles with a total dry weight of 1,200 pounds or less and a width of 50 inches or less.

B. “Off-road utility vehicle – type 2” includes vehicles, other than type 1 vehicles, with a total dry weight of 2,000 pounds or less and a width of 65 inches or less.

C. “Off-road utility vehicle – type 3” includes vehicles with a total dry weight of more than 2,000 pounds or a width of more than 65 inches, or both.

An operator of an off-road utility vehicle is also subject to the provisions of this chapter governing the operation of all-terrain vehicles.

4. “Snowmobile” means a motorized vehicle that weighs less than 1,000 pounds, that uses sled-type runners or skis, endless belt-type tread with a width of 48 inches or

less, or any combination of runners, skis, or tread, and is designed for travel on snow or ice. "Snowmobile" does not include an all-terrain vehicle that has been altered or equipped with runners, skis, belt-type tracks, or treads.

(Code of Iowa, Sec. 321G.1)

75.03 GENERAL REGULATIONS. No person shall operate an ATV, off-road motorcycle or off-road utility vehicle within the City in violation of Chapter 321I of the *Code of Iowa* or a snowmobile within the City in violation of the provisions of Chapter 321G of the *Code of Iowa* or in violation of rules established by the Natural Resource Commission of the Department of Natural Resources governing their registration, equipment and manner of operation.

(Code of Iowa, Ch. 321G & Ch. 321I)

75.04 OPERATION OF SNOWMOBILES. The operators of snowmobiles shall comply with the following restrictions as to where snowmobiles may be operated within the City:

1. Streets. Snowmobiles shall be operated only upon streets that have not been plowed during the snow season and on such other streets as may be designated by resolution of the Council.

(Code of Iowa, Sec. 321G.9[4a])

2. Exceptions. Snowmobiles may be operated on prohibited streets only under the following circumstances:

- A. Emergencies. Snowmobiles may be operated on any street in an emergency during the period of time when and at locations where snow upon the roadway renders travel by conventional motor vehicles impractical.

(Code of Iowa, Sec. 321G.9[4c])

- B. Direct Crossing. Snowmobiles may make a direct crossing of a prohibited street provided all of the following occur:

- (1) The crossing is made at an angle of approximately 90 degrees to the direction of the street and at a place where no obstruction prevents a quick and safe crossing;
- (2) The snowmobile is brought to a complete stop before crossing the street;
- (3) The driver yields the right-of-way to all on-coming traffic that constitutes an immediate hazard; and
- (4) In crossing a divided street, the crossing is made only at an intersection of such street with another street.

(Code of Iowa, Sec. 321G.9[2])

3. Railroad Right-of-Way. Snowmobiles shall not be operated on an operating railroad right-of-way. A snowmobile may be driven directly across a railroad right-of-way only at an established crossing and notwithstanding any other provisions of law may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic.

(Code of Iowa, Sec. 321G.13[1h])

4. Trails. Snowmobiles shall not be operated on all-terrain vehicle trails except where so designated.

(Code of Iowa, Sec. 321G.9[4f])

5. Parks and Other City Land. Snowmobiles shall not be operated in any park, playground or upon any other City-owned property without the express permission of the City. A snowmobile shall not be operated on any City land without a snow cover of at least one-tenth of one inch.

6. Sidewalk or Parking. Snowmobiles shall not be operated upon the public sidewalk or that portion of the street located between the curb line and the sidewalk or property line commonly referred to as the “parking” except for purposes of crossing the same to a public street upon which operation is authorized by this chapter.

75.05 OPERATION OF ALL-TERRAIN VEHICLES. The operators of ATVs shall comply with the following restrictions as to where ATVs may be operated within the City:

1. Streets. ATVs and off-road utility vehicles may be operated on streets only in accordance with Section 321.234A of the *Code of Iowa* or on such streets as may be designated by resolution of the Council for the operation of registered ATVs or registered off-road utility vehicles. In designating such streets, the Council may authorize ATVs and off-road utility vehicles to stop at service stations or convenience stores along a designated street.

(Code of Iowa, Sec. 321I.10[1 & 3])

2. Trails. ATVs shall not be operated on snowmobile trails except where designated.

(Code of Iowa, Sec. 321I.10[4])

3. Railroad Right-of-Way. ATVs shall not be operated on an operating railroad right-of-way. An ATV may be driven directly across a railroad right-of-way only at an established crossing and notwithstanding any other provisions of law may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic.

(Code of Iowa, Sec. 321I.14[1h])

4. Parks and Other City Land. ATVs shall not be operated in any park, playground or upon any other City-owned property without the express permission of the City.

5. Sidewalk or Parking. ATVs shall not be operated upon the public sidewalk or that portion of the street located between the curb line and the sidewalk or property line commonly referred to as the “parking.”

6. An all-terrain vehicle or off-road utility vehicle may make a direct crossing of a highway provided all of the following occur:

(Code of Iowa, Sec. 321I.10[5])

A. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing.

B. The all-terrain vehicle or off-road utility vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway.

C. The driver yields the right-of-way to all oncoming traffic which constitutes an immediate hazard.

D. In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway.

E. The crossing is made from a street, roadway, or highway designated as an all-terrain vehicle trail by a state agency, county, or city to a street, roadway, or highway designated as an all-terrain vehicle trail by a state agency, county, or city.

75.06 NEGLIGENCE. The owner and operator of an ATV or snowmobile are liable for any injury or damage occasioned by the negligent operation of the ATV or snowmobile. The owner of an ATV or snowmobile shall be liable for any such injury or damage only if the owner was the operator of the ATV or snowmobile at the time the injury or damage occurred or if the operator had the owner's consent to operate the ATV or snowmobile at the time the injury or damage occurred.

(Code of Iowa, Sec. 321G.18 & 321I.19)

75.07 ACCIDENT REPORTS. Whenever an ATV or snowmobile is involved in an accident resulting in injury or death to anyone or property damage amounting to \$1,500.00 or more, either the operator or someone acting for the operator shall immediately notify a law enforcement officer and shall file an accident report, in accordance with State law.

(Code of Iowa, Sec. 321G.10 & 321I.11)

CHAPTER 76

BICYCLE REGULATIONS

76.01 Scope of Regulations

76.02 Traffic Code Applies

76.03 Double Riding Restricted

76.04 Two Abreast Limit

76.05 Speed

76.06 Emerging from Alley or Driveway

76.07 Carrying Articles

76.08 Riding on Sidewalks

76.09 Towing

76.10 Improper Riding

76.11 Parking

76.12 Equipment Requirements

76.13 Special Penalty

76.01 SCOPE OF REGULATIONS. These regulations shall apply whenever a bicycle is operated upon any street or upon any public path set aside for the exclusive use of bicycles, subject to those exceptions stated herein.

(Code of Iowa, Sec. 321.236[10])

76.02 TRAFFIC CODE APPLIES. Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of the State declaring rules of the road applicable to vehicles or by the Traffic Code of the City applicable to the driver of a vehicle, except as to those provisions that by their nature can have no application. Whenever such person dismounts from a bicycle, the person shall be subject to all regulations applicable to pedestrians.

(Code of Iowa, Sec. 321.234)

76.03 DOUBLE RIDING RESTRICTED. A person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

(Code of Iowa, Sec. 321.234[3 and 4])

76.04 TWO ABREAST LIMIT. Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. All bicycles ridden on the roadway shall be kept to the right and shall be operated as near as practicable to the right-hand edge of the roadway.

(Code of Iowa, Sec. 321.236[10])

76.05 SPEED. No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing.

(Code of Iowa, Sec. 321.236[10])

76.06 EMERGING FROM ALLEY OR DRIVEWAY. The operator of a bicycle emerging from an alley, driveway or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on said sidewalk or sidewalk area, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

(Code of Iowa, Sec. 321.236[10])

76.07 CARRYING ARTICLES. No person operating a bicycle shall carry any package, bundle or article that prevents the rider from keeping at least one hand upon the handlebars.

(Code of Iowa, Sec. 321.236[10])

76.08 RIDING ON SIDEWALKS. The following provisions apply to riding bicycles on sidewalks:

1. Business District. No person shall ride a bicycle upon a sidewalk within the Business District, as defined in Section 60.02(1) of this Code of Ordinances.

(Code of Iowa, Sec. 321.236[10])

2. Other Locations. When signs are erected on any sidewalk or roadway prohibiting the riding of bicycles thereon by any person, no person shall disobey the signs.

(Code of Iowa, Sec. 321.236[10])

3. Yield Right-of-Way. Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing.

(Code of Iowa, Sec. 321.236[10])

76.09 TOWING. It is unlawful for any person riding a bicycle to be towed or to tow any other vehicle upon the streets of the City unless the vehicle is manufactured for such use.

76.10 IMPROPER RIDING. No person shall ride a bicycle in an irregular or reckless manner such as zigzagging, stunting, speeding, or otherwise so as to disregard the safety of the operator or others.

76.11 PARKING. No person shall park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb, in such a manner as to afford the least obstruction to pedestrian traffic.

(Code of Iowa, Sec. 321.236[10])

76.12 EQUIPMENT REQUIREMENTS. Every person riding a bicycle shall be responsible for providing and using equipment as provided herein:

1. Lamps Required. Every bicycle when in use at nighttime shall be equipped with a lamp on the front emitting a white light visible from a distance of at least 300 feet to the front and with a lamp on the rear exhibiting a red light visible from a distance of 300 feet to the rear, except that a red reflector on the rear, of a type that is visible from all distances from 50 feet to 300 feet to the rear when directly in front of lawful upper beams of headlamps on a motor vehicle, may be used in lieu of a rear light.

(Code of Iowa, Sec. 321.397)

2. Brakes Required. Every bicycle shall be equipped with a brake that will enable the operator to make the braked wheel skid on dry, level, clean pavement.

(Code of Iowa, Sec. 321.236[10])

76.13 SPECIAL PENALTY. Any person violating the provisions of this chapter may, in lieu of the scheduled fine for bicyclists or standard penalty provided for violations of this Code of Ordinances, allow the person's bicycle to be impounded by the City for not less than five days for the first offense, 10 days for a second offense and 30 days for a third offense.

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CHAPTER 80

ABANDONED VEHICLES

80.01 Definitions

80.02 Authority to Take Possession of Abandoned Vehicles

80.03 Notice by Mail

80.04 Notification in Newspaper

80.05 Fees for Impoundment

80.06 Disposal of Abandoned Vehicles

80.07 Disposal of Totally Inoperable Vehicles

80.08 Proceeds from Sales

80.09 Duties of Demolisher

80.01 DEFINITIONS. For use in this chapter, the following terms are defined:

(Code of Iowa, Sec. 321.89[1] & Sec. 321.90)

1. “Abandoned vehicle” means any of the following:
 - A. A vehicle that has been left unattended on public property , including, but not limited to, public right-of-way for more than 24 hours and lacks current registration plates or two or more wheels or other parts which renders the vehicle totally inoperable.
 - B. A vehicle that has remained illegally on public property , including, but not limited to, public right-of-way, for more than 24 hours.
 - C. A vehicle that has been unlawfully parked or placed on private property without the consent of the owner or person in control of the property for more than 24 hours.
 - D. A vehicle that has been legally impounded by order of a police authority and has not been reclaimed for a period of 10 days. However, a police authority may declare the vehicle abandoned within the ten-day period by commencing the notification process.
 - E. Any vehicle parked on the public right-of-way determined by a police authority to create a hazard to other vehicle traffic.
 - F. A vehicle that has been impounded pursuant to Section 321J.4B of the *Code of Iowa* by order of the court and whose owner has not paid the impoundment fees after notification by the person or agency responsible for carrying out the impoundment order.
2. “Demolisher” means a person licensed under Chapter 321H of the *Code of Iowa* whose business it is to convert a vehicle to junk, processed scrap or scrap metal, or otherwise to wreck, or dismantle vehicles.
3. “Garage keeper” means any operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of motor vehicles.
4. “Police authority” means the Iowa state patrol or any law enforcement agency of a county or city.
5. “Public right-of-way” includes the area of land, the right to possession of which is secured by the City for roadway purposes and includes the traveled portion of the public streets and alleys as well as the border area, which is all property outside

the lot and property line and inside the curb lines or traveled portion of the public streets or alleys.

6. “Vehicle” means every device in, upon, or by which a person or property is or may be transported or drawn upon a highway or street, excepting devices moved by human power or used exclusively upon stationary rails or tracks, and includes without limitation a motor vehicle, automobile, truck, motorcycle, tractor, buggy, wagon, farm machinery, or any combination thereof.

80.02 AUTHORITY TO TAKE POSSESSION OF ABANDONED VEHICLES. A police authority, upon the authority’s own initiative or upon the request of any other authority having the duties of control of highways or traffic, shall take into custody an abandoned vehicle on public property and may take into custody any abandoned vehicle on private property. The police authority may employ its own personnel, equipment, and facilities or hire a private entity, equipment, and facilities for the purpose of removing, preserving, storing, or disposing of abandoned vehicles. A property owner or other person in control of private property may employ a private entity that is a garage keeper to dispose of an abandoned vehicle, and the private entity may take into custody the abandoned vehicle without a police authority’s initiative. If a police authority employs a private entity to dispose of abandoned vehicles, the police authority shall provide the private entity with the names and addresses of the registered owners, all lienholders of record, and any other known claimant to the vehicle or the personal property found in the vehicle.

(Code of Iowa, Sec. 321.89[2])

80.03 NOTICE BY MAIL. The police authority or private entity that takes into custody an abandoned vehicle shall notify, within 20 days, by certified mail, the last known registered owner of the vehicle, all lienholders of record, and any other known claimant to the vehicle or to personal property found in the vehicle, addressed to the parties’ last known addresses of record, that the abandoned vehicle has been taken into custody. Notice shall be deemed given when mailed. The notice shall describe the year, make, model and vehicle identification number of the vehicle, describe the personal property found in the vehicle, set forth the location of the facility where the vehicle is being held, and inform the persons receiving the notice of their right to reclaim the vehicle and personal property within 10 days after the effective date of the notice upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody and upon payment of the costs of the notice. The notice shall also state that the failure of the owner, lienholders or claimants to exercise their right to reclaim the vehicle or personal property within the time provided shall be deemed a waiver by the owner, lienholders and claimants of all right, title, claim and interest in the vehicle or personal property and that failure to reclaim the vehicle or personal property is deemed consent to the sale of the vehicle at a public auction or disposal of the vehicle to a demolisher and to disposal of the personal property by sale or destruction. If the abandoned vehicle was taken into custody by a private entity without a police authority’s initiative, the notice shall state that the private entity may claim a garage keeper’s lien as described in Section 321.90 of the *Code of Iowa*, and may proceed to sell or dispose of the vehicle. If the abandoned vehicle was taken into custody by a police authority or by a private entity hired by a police authority, the notice shall state that any person claiming rightful possession of the vehicle or personal property who disputes the planned disposition of the vehicle or property by the police authority or private entity or of the assessment of fees and charges provided by this section may ask for an evidentiary hearing before the police authority to contest those matters. If the persons receiving notice do not ask for a hearing or exercise their right to reclaim the vehicle or personal property within the 10-day reclaiming period, the owner, lienholders or

claimants shall no longer have any right, title, claim, or interest in or to the vehicle or the personal property. A court in any case in law or equity shall not recognize any right, title, claim, or interest of the owner, lienholders or claimants after the expiration of the 10-day reclaiming period.

(Code of Iowa, Sec. 321.89[3a])

80.04 NOTIFICATION IN NEWSPAPER. If it is impossible to determine with reasonable certainty the identity and addresses of the last registered owner and all lienholders, notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned shall be sufficient to meet all requirements of notice under Section 80.03. The published notice may contain multiple listings of abandoned vehicles and personal property but shall be published within the same time requirements and contain the same information as prescribed for mailed notice in Section 80.03.

(Code of Iowa, Sec. 321.89[3b])

80.05 FEES FOR IMPOUNDMENT. The owner, lienholder, or claimant shall pay \$3.00 if claimed within five days of impounding, plus \$1.00 for each additional day within the reclaiming period plus towing charges, if stored by the City, or towing and storage fees, if stored in a public garage, whereupon said vehicle shall be released. The amount of towing charges, and the rate of storage charges by privately owned garages, shall be established by such facility.

(Code of Iowa, Sec. 321.89[3a])

80.06 DISPOSAL OF ABANDONED VEHICLES. If an abandoned vehicle has not been reclaimed as provided herein, the police authority or private entity shall make a determination as to whether or not the motor vehicle should be sold for use upon the highways, and shall dispose of the motor vehicle in accordance with State law.

(Code of Iowa, Sec. 321.89[4])

80.07 DISPOSAL OF TOTALLY INOPERABLE VEHICLES. The City or any person upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost or destroyed, may dispose of such motor vehicle to a demolisher for junk, without a title and without notification procedures, if such motor vehicle lacks an engine or two or more wheels or other structural part which renders the vehicle totally inoperable. The police authority shall give the applicant a certificate of authority. The applicant shall then apply to the County Treasurer for a junking certificate and shall surrender the certificate of authority in lieu of the certificate of title.

(Code of Iowa, Sec. 321.90[2e])

80.08 PROCEEDS FROM SALES. Proceeds from the sale of any abandoned vehicle shall be applied to the expense of auction, cost of towing, preserving, storing, and notification required, in accordance with State law. Any balance shall be held for the owner of the motor vehicle or entitled lienholder for 90 days, and then shall be deposited in the State Road Use Tax Fund. Where the sale of any vehicle fails to realize the amount necessary to meet costs the police authority shall apply for reimbursement from the Department of Transportation.

(Code of Iowa, Sec. 321.89[4])

80.09 DUTIES OF DEMOLISHER. Any demolisher who purchases or otherwise acquires an abandoned motor vehicle for junk shall junk, scrap, wreck, dismantle, or otherwise demolish such motor vehicle. A demolisher shall not junk, scrap, wreck, dismantle, or

demolish a vehicle until the demolisher has obtained the junking certificate issued for the vehicle.

(Code of Iowa, Sec. 321.90[3a])

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CHAPTER 81

RAILROAD REGULATIONS

81.01 Definitions
81.02 Obstructing Streets

81.03 Crossing Maintenance
81.04 Speed

81.01 DEFINITIONS. For use in this chapter, the following terms are defined:

1. “Operator” means any individual, partnership, corporation or other association that owns, operates, drives, or controls a railroad train.
2. “Railroad train” means an engine or locomotive, with or without cars coupled thereto, operated upon rails.

(Code of Iowa, Sec. 321.1)

81.02 OBSTRUCTING STREETS. Operators shall not operate any train in such a manner as to prevent vehicular use of any highway, street or alley for a period of time in excess of 10 minutes except:

(Code of Iowa, Sec. 327G.32)

1. Comply with Signals. When necessary to comply with signals affecting the safety of the movement of trains.
2. Avoid Striking. When necessary to avoid striking any object or person on the track.
3. Disabled. When the train is disabled.
4. Safety Regulations. When necessary to comply with governmental safety regulations including, but not limited to, speed ordinances and speed regulations.
5. In Motion. When the train is in motion except while engaged in switching operations.
6. No Traffic. When there is no vehicular traffic waiting to use the crossing.

An employee is not guilty of a violation of this section if the employee’s action was necessary to comply with the direct order or instructions of a railroad corporation or its supervisors. Guilt is then with the railroad corporation.

81.03 CROSSING MAINTENANCE. Operators shall construct and maintain good, sufficient, and safe crossings over any street traversed by their rails.

(Bourett vs. Chicago & N.W. Ry. 152 Iowa 579, 132 N.W. 973 [1943])

(Code of Iowa, Sec. 364.11)

81.04 SPEED. It is unlawful to operate any railroad train through any street crossing within the platted areas of the City at a speed greater than 35 miles per hour.

(Girl vs. United States R. Admin., 194 Iowa 1382, 189 N.W. 834, [1923])

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CHAPTER 90

WATER SERVICE SYSTEM

90.01 Definitions	90.11 Installation of Water Service Pipe
90.02 Superintendent's Duties	90.12 Responsibility for Water Service Pipe
90.03 Mandatory Connections	90.13 Failure to Maintain
90.04 Abandoned Connections	90.14 Curb Valve
90.05 Permit	90.15 Interior Valve
90.06 Connection Charge	90.16 Inspection and Approval
90.07 Compliance with Plumbing Code	90.17 Completion by the City
90.08 Plumber Required	90.18 Shutting Off Water Supply
90.09 Excavations	90.19 Operation of Curb Valve and Hydrants
90.10 Tapping Mains	

90.01 DEFINITIONS. The following terms are defined for use in the chapters in this Code of Ordinances pertaining to the Water Service System:

1. "Combined service account" means a customer service account for the provision of two or more utility services.
2. "Customer" means, in addition to any person receiving water service from the City, the owner of the property served, and as between such parties the duties, responsibilities, liabilities and obligations hereinafter imposed shall be joint and several.
3. "Superintendent" means the Superintendent of the City water system or any duly authorized assistant, agent or representative.
4. "Water main" means a water supply pipe provided for public or community use.
5. "Water service pipe" means the pipe from the water main to the building served.
6. "Water system" or "water works" means all public facilities for securing, collecting, storing, pumping, treating, and distributing water.

90.02 SUPERINTENDENT'S DUTIES. The Superintendent shall supervise the installation of water service pipes and their connection to the water main and enforce all regulations pertaining to water services in the City in accordance with this chapter. This chapter shall apply to all replacements of existing water service pipes as well as to new ones. The Superintendent shall make such rules, not in conflict with the provisions of this chapter, as may be needed for the detailed operation of the water system, subject to the approval of the Council. In the event of an emergency the Superintendent may make temporary rules for the protection of the system until due consideration by the Council may be had.

(Code of Iowa, Sec. 372.13[4])

90.03 MANDATORY CONNECTIONS. The owners of any houses, buildings or structures used for human occupancy, employment or use, situated within the City and abutting on any street, alley or right-of-way in which there is located a public water main are hereby required to connect such facilities to the City's public water system in accordance with the provisions of these Water Service chapters within 60 days after the date of official notice

to do so, provided that said public water main is located within 100 feet of the property line of such owner.

90.04 ABANDONED CONNECTIONS. When an existing water service is abandoned or a service is renewed with a new tap in the main, all abandoned connections with the mains shall be turned off at the corporation stop and made absolutely watertight.

90.05 PERMIT. Before any person makes a connection with the public water system, a written permit must be obtained from the City. The application for the permit shall include a legal description of the property, the name of the property owner, the name and address of the person who will do the work, and the general uses of the water. If the proposed work meets all the requirements of this chapter and if all fees required under this chapter have been paid, the permit shall be issued. Work under any permit must be completed within 60 days after the permit is issued, except that when such time period is inequitable or unfair due to conditions beyond the control of the person making the application, an extension of time within which to complete the work may be granted. The permit may be revoked at any time for any violation of these chapters.

90.06 CONNECTION CHARGE. There shall be a connection charge in the amount of \$150.00 paid before issuance of a permit to reimburse the City for costs borne by the City in making water service available to the property served.

(Code of Iowa, Sec. 384.84)

90.07 COMPLIANCE WITH PLUMBING CODE. The installation of any water service pipe and any connection with the water system shall comply with all pertinent and applicable provisions, whether regulatory, procedural or enforcement provisions, of the *International Plumbing Code*.

90.08 PLUMBER REQUIRED. All installations of water service pipes and connections to the water system shall be made by a State-licensed plumber.

90.09 EXCAVATIONS. All trench work, excavation, and backfilling required in making a connection shall be performed in accordance with the provisions of the *International Plumbing Code*, the *Iowa Statewide Urban Designs and Specifications (SUDAS)*, and the provisions of Chapter 135 of this Code of Ordinances.

90.10 TAPPING MAINS. All taps into water mains shall be made by or under the direct supervision of the Superintendent and in accordance with the following:

(Code of Iowa, Sec. 372.13[4])

1. Independent Services. No more than one house, building, or premises shall be supplied from one tap unless special written permission is obtained from the Superintendent and unless provision is made so that each house, building, or premises may be shut off independently of the other.
2. Sizes and Location of Taps. All mains six inches or less in diameter shall receive no larger than a three-fourths inch tap. All mains of over six inches in diameter shall receive no larger than a one-inch tap. Where a larger connection than a one-inch tap is desired, two or more small taps or saddles shall be used, as the Superintendent shall order. All taps in the mains shall be made in the top half of the pipe, at least 18 inches apart. No main shall be tapped nearer than two feet of the joint in the main.

3. Corporation Stop. A brass corporation stop, of the pattern and weight approved by the Superintendent, shall be inserted in every tap in the main. The corporation stop in the main shall be of the same size as the service pipe.
4. Location Record. An accurate and dimensional sketch showing the exact location of the tap shall be filed with the Superintendent in such form as the Superintendent shall require.

90.11 INSTALLATION OF WATER SERVICE PIPE. Water service pipes from the main to the meter setting shall be Type K copper. The use of any other pipe material for the service line shall first be approved by the Superintendent. Pipe must be laid sufficiently waving, and to such depth, as to prevent rupture from settlement or freezing.

90.12 RESPONSIBILITY FOR WATER SERVICE PIPE. All costs and expenses incident to the installation, connection, and maintenance of the water service pipe from the main to the building served shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation or maintenance of said water service pipe.

90.13 FAILURE TO MAINTAIN. When any portion of the water service pipe which is the responsibility of the property owner becomes defective or creates a nuisance and the owner fails to correct such nuisance, the City may do so and assess the costs thereof to the property.

(Code of Iowa, Sec. 364.12[3a & h])

90.14 CURB VALVE. There shall be installed within the public right-of-way a main shut-off valve on the water service pipe of a pattern approved by the Superintendent. The shut-off valve shall be constructed to be visible and even with the pavement or ground.

90.15 INTERIOR VALVE. There shall be installed a shut-off valve on every service pipe inside the building as close to the entrance of the pipe within the building as possible and so located that the water can be shut off conveniently. Where one service pipe supplies more than one customer within the building, there shall be separate valves for each such customer so that service may be shut off for one without interfering with service to the others.

90.16 INSPECTION AND APPROVAL. All water service pipes and their connections to the water system must be inspected and approved in writing by the Superintendent before they are covered, and the Superintendent shall keep a record of such approvals. If the Superintendent refuses to approve the work, the plumber or property owner must proceed immediately to correct the work. Every person who uses or intends to use the municipal water system shall permit the Superintendent to enter the premises to inspect or make necessary alterations or repairs at all reasonable hours and on proof of authority.

90.17 COMPLETION BY THE CITY. Should any excavation be left open or only partly refilled for 24 hours after the water service pipe is installed and connected with the water system, or should the work be improperly done, the City shall have the right to finish or correct the work, and the Council shall assess the costs to the property owner or the plumber. If the plumber is assessed, the plumber must pay the costs before receiving another permit. If the property owner is assessed, such assessment may be collected with and in the same manner as general property taxes.

(Code of Iowa, Sec. 364.12[3a & h])

90.18 SHUTTING OFF WATER SUPPLY. The Superintendent may shut off the supply of water to any customer because of any violation of the regulations contained in these Water Service System chapters that is not being contested in good faith. The supply shall not be turned on again until all violations have been corrected and the Superintendent has ordered the water to be turned on.

90.19 OPERATION OF CURB VALVE AND HYDRANTS. It is unlawful for any person except the Superintendent to turn water on at the curb valve, and no person, unless specifically authorized by the City, shall open or attempt to draw water from any fire hydrant for any purpose whatsoever.

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CHAPTER 91

WATER METERS

91.01 Purpose	91.06 Meter Costs
91.02 Water Use Metered	91.07 Meter Repairs
91.03 Fire Sprinkler Systems; Exception	91.08 Right of Entry
91.04 Location of Meters	91.09 Irrigation Meters
91.05 Meter Setting	91.10 Temporary Water Service During Construction

91.01 PURPOSE. The purpose of this chapter is to encourage the conservation of water and facilitate the equitable distribution of charges for water service among customers.

91.02 WATER USE METERED. All water furnished customers shall be measured through meters furnished by the City and installed by the City.

91.03 FIRE SPRINKLER SYSTEMS; EXCEPTION. Fire sprinkler systems may be connected to water mains by direct connection without meters under the direct supervision of the Superintendent. No other open, unmetered connection shall be incorporated in the system, and there shall be no valves except a main control valve at the entrance to the building which must be sealed open.

91.04 LOCATION OF METERS. All meters shall be so located that they are easily accessible to meter readers and repairmen and protected from freezing.

91.05 METER SETTING. The property owner shall provide all necessary piping and fittings for proper setting of the meter including a valve on the discharge side of the meter. Meter pits may be used only upon approval of the Superintendent and shall be of a design and construction approved by the Superintendent.

91.06 METER COSTS. The full cost of any meter larger than that required for a single-family residence shall be paid to the City by the property owner or customer prior to the installation of any such meter by the City, or, at the sole option of the City, the property owner or customer may be required to purchase and install such meter in accordance with requirements established by the City.

91.07 METER REPAIRS. Whenever a water meter owned by the City is found to be out of order, the City shall have it repaired or replaced. If it is found that damage to the meter has occurred due to the carelessness or negligence of the customer or property owner, the meter shall be suspended immediately, and shall not again be restored until the owner of the premises shall have paid to the City, in addition to any charges for water used and measured and all other charges previously made, the sum of \$250.00 as liquidated damages for water used and not measured, together with any costs of the repair or replacement and the costs of reinstallation of the meter.

91.08 RIGHT OF ENTRY. The Superintendent shall be permitted to enter the premises of any customer at any reasonable time to read, remove, or change a meter.

91.09 IRRIGATION METERS. An irrigation meter may also be installed to measure water that is not disposed of through the public sanitary sewer system. The water measured by

an irrigation meter may include water for swimming pools, watering yards, watering gardens, or other similar uses. The following regulations apply to irrigation meters and irrigation systems:

1. Irrigation meters shall be installed not more than four feet from the main meter and shall be installed parallel to the main meter. The irrigation meter must be installed in a position horizontal to the floor, with the arrow of the meter being in the direction of the flow of water to the outside.
2. A City-approved backflow preventer must be installed after the irrigation meter to protect against contamination of the water system. A suitable backflow preventer shall be installed on any irrigation system connected to the water supply whether connected to an irrigation meter or not.
3. No underground irrigation systems are allowed in the public right-of-way.
4. The City shall have the right to inspect connections to the irrigation meter at any reasonable time. Backflow preventers on irrigation meters and irrigation systems shall be tested annually by an inspector certified to inspect such backflow preventers. Such inspections shall be at the customer's or property owner's expense. A copy of the test shall be given to the City by June 1 each year.

The City shall furnish the irrigation meter and the full cost of the meter shall be paid by the customer or property owner prior to the installation of any such meter. It is the responsibility of the customer or property owner to hire a licensed plumber for the installation of such meter. Sewer service charges shall not apply to the water measured by the irrigation meter.

91.10 TEMPORARY WATER SERVICE DURING CONSTRUCTION.

1. Notwithstanding the provisions of Chapter 90 or other provisions of this chapter, temporary water service may be provided by the City to any real estate site upon which a building is being constructed, without a meter being installed on said premises, provided that a temporary water service permit has been issued in accordance with the provisions of subsection 2 of this section. However, in no event shall water that is provided through the issuance of a temporary water service permit be used to water any sod, seed, or other landscaping upon the site to be served by such permit unless a water meter is provided. Unmetered water shall not be used to cause compaction around structures or other excavations.
2. Application; Fee. Any person who desires temporary water service to any site as provided for in subsection 1 must make application with the City at such time as the construction building permit application is submitted for approval. Every applicant for a temporary water service connection permit shall pay to the City a sum of \$100.00 for such permit, as advance payment for the water to be used during the period of such permit. The temporary permit shall automatically expire upon installation of a meter or at the expiration of one year from the date of issuance, whichever occurs first.

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CHAPTER 92

WATER RATES

92.01 Service Charges
 92.02 Rates For Service
 92.03 Billing for Water Service
 92.04 Service Discontinued
 92.05 Lien for Nonpayment

92.06 Lien Exemption
 92.07 Lien Notice
 92.08 Utility Deposit
 92.09 Annual Review of Rates

92.01 SERVICE CHARGES. Each customer shall pay for water service provided by the City based upon use of water as determined by meters provided for in Chapter 91. Each location, building, premises or connection shall be considered a separate and distinct customer whether owned or controlled by the same person or not.

(Code of Iowa, Sec. 384.84)

92.02 RATES FOR SERVICE. Water service shall be furnished at the following monthly rates within the City:

(Code of Iowa, Sec. 384.84)

1.

Water Rates	7/1/2017 to 7/1/2018	7/1/2018 To 7/1/2019	7/1/2019 To 7/1/2020
Monthly Service Access Charge			
5/8 x 3/4-inch water meter	\$10.00	\$10.30	\$10.61
1-inch water meter	\$12.00	\$12.36	\$12.73
1 1/2-inch water meter	\$14.00	\$14.42	\$14.85
2-inch water meter	\$18.00	\$18.54	\$19.10
3-inch water meter	\$24.00	\$24.72	\$25.46
4-inch water meter	\$30.00	\$30.90	\$31.83
All Usage Per 1,000 Gallons	\$3.25	\$3.35	\$3.45
Minimum Monthly Bill			
1. (includes the first 3,000 gallons)	\$19.75	\$20.35	\$20.96

2. The annual rate shall increase by 3.0% per year and will take effect on July 1st of each year. As a result of the annual review of rates, as detailed in Section 92.09 of this Ordinance, the Council may choose to adjust the monthly unit rate as necessary. Such rate adjustments shall be approved by ordinance of the City Council.

92.03 BILLING FOR WATER SERVICE. Water service shall be billed as part of a combined service account, payable in accordance with the following:

(Code of Iowa, Sec. 384.84)

1. Meters Read. Monthly, the City shall read each water meter on or near the last business day and utilize the gallons used in preparing the water bills.
2. Bills Issued. The City shall prepare and issue bills for combined service accounts at the beginning of each month, utilizing the end of the prior month's meter readings.
3. Bills Payable. Bills for combined service accounts shall be due and payable at the office of the Clerk by the nineteenth day of the month.
4. Late Payment Penalty. Bills not paid when due shall be considered delinquent, except if the amount is a final bill due to be 100 percent deducted from a water deposit when utility billing refund check payments are issued. Any amount not covered by a water deposit upon account move out shall be subject to penalty. A late payment penalty of 15 percent shall be added to each delinquent bill.
5. Insufficient Funds Fee. A fee of \$30.00 shall be added to the account whenever notification is received from the bank that the customer's payment has been rejected for reasons including (but not limited to) insufficient funds or account closed.
6. Miscellaneous Fee. A miscellaneous fee may be added to an account for any time-consuming service such as hand delivery of bill or delinquency notice when a customer refuses to get his or her mail or claims never to have received the mail. This \$10.00 fee may also be charged for time-consuming search for curb stop or leaks and other maintenance work.

92.04 SERVICE DISCONTINUED. Water service to delinquent customers shall be discontinued or disconnected in accordance with the following:

(Code of Iowa, Sec. 384.84)

1. Notice. The City shall notify each delinquent customer that service will be discontinued or disconnected if payment of the combined service account, including late payment penalty charges, is not received by the date specified in the notice of delinquency. Such notice shall be sent by ordinary mail to the customer in whose name the delinquent charges were incurred. Hand delivery of notice to the person or to their door is also acceptable. The notice shall inform the customer of the nature of the delinquency and afford the customer the opportunity for a hearing prior to the discontinuance or disconnection.
2. Notice to Landlords. If the customer is a tenant, and if the owner or landlord of the property or premises has made a written request for notice, the notice of delinquency shall also be given to the owner or landlord. If the customer is a tenant and requests a change of name for service under the account, such request shall be sent to the owner or landlord of the property if the owner or landlord has made a written request for notice of any change of name for service under the account to the rental property.
3. Hearing. If a hearing is requested by noon of the day preceding the shut off, the Mayor and/or available Council shall conduct an informal hearing and shall make a determination as to whether the discontinuance or disconnection is justified. The customer has the right to appeal the decision to the entire Council, and if the Council finds that discontinuance or disconnection is justified, then such discontinuance or disconnection shall be made, unless payment has been received.
4. Fees. A disconnect fee of \$40.00 shall be charged before service is restored to a delinquent customer. The full combined service account amount due, plus

disconnect fee , is required to be paid before service will be restored. No fee shall be charged for the usual or customary trips in the regular changes in occupancies of property.

92.05 LIEN FOR NONPAYMENT. The owner of the premises served and any lessee or tenant thereof shall be jointly and severally liable for water service charges to the premises. Water service charges remaining unpaid and delinquent shall constitute a lien upon the property or premises served and shall be certified by the Clerk to the County Treasurer for collection in the same manner as property taxes.

(Code of Iowa, Sec. 384.84)

92.06 LIEN EXEMPTION.

(Code of Iowa, Sec. 384.84)

1. Water Service Exemption. The lien for nonpayment shall not apply to charges for water service to a residential or commercial rental property where water service is separately metered and the rates or charges for the water service are paid directly to the City by the tenant, if the landlord gives written notice to the City that the property is residential or commercial rental property and that the tenant is liable for the rates or charges. The City may require a deposit not exceeding the usual cost of 90 days of such services to be paid to the City. When the tenant moves from the rental property, the City shall refund the deposit if all service charges are paid in full. The lien exemption does not apply to delinquent charges for repairs related to any of the services.

2. Other Service Exemption. The lien for nonpayment shall also not apply to the charges for any of the services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, and solid waste disposal for a residential rental property where the charge is paid directly to the City by the tenant, if the landlord gives written notice to the City that the property is residential rental property and that the tenant is liable for the rates or charges for such service. The City may require a deposit not exceeding the usual cost of 90 days of such services to be paid to the City. When the tenant moves from the rental property, the City shall refund the deposit if all service charges are paid in full. The lien exemption does not apply to delinquent charges for repairs related to any of the services.

3. Written Notice. The landlord's written notice shall contain the name of the tenant responsible for charges, the address of the residential or commercial rental property that the tenant is to occupy, and the date that the occupancy begins. Upon receipt, the City shall acknowledge the notice and deposit. A change in tenant for a residential rental property shall require a new written notice to be given to the City within 30 business days of the change in tenant. A change in tenant for a commercial rental property shall require a new written notice to be given to the City within 10 business days of the change in tenant. A change in the ownership of the residential rental property shall require written notice of such change to be given to the City within 30 business days of the completion of the change of ownership. A change in the ownership of the commercial rental property shall require written notice of such change to be given to the City within 10 business days of the completion of the change of ownership.

4. Mobile Homes, Modular Homes, and Manufactured Homes. A lien for nonpayment of utility services described in subsections 1 and 2 of this section shall not be placed upon a premises that is a mobile home, modular home, or manufactured

home if the mobile home, modular home, or manufactured home is owned by a tenant of and located in a mobile home park or manufactured home community and the mobile home park or manufactured home community owner or manager is the account holder, unless the lease agreement specifies that the tenant is responsible for payment of a portion of the rates or charges billed to the account holder.

92.07 LIEN NOTICE. A lien for delinquent water service charges shall not be certified to the County Treasurer unless prior written notice of intent to certify a lien is given to the customer in whose name the delinquent charges were incurred. If the customer is a tenant and if the owner or landlord of the property or premises has made a written request for notice, the notice shall also be given to the owner or landlord. The notice shall be sent to the appropriate persons by ordinary mail not less than 30 days prior to certification of the lien to the County Treasurer.

(Code of Iowa, Sec. 384.84)

92.08 UTILITY DEPOSIT.

(Code of Iowa, Sec. 384.84)

1. Amount of Deposit. There shall be required from every customer a \$125.00 deposit intended to guarantee the payment of bills for service.
2. Use of Deposit. Each deposit shall be recorded on the customer's account and used to pay the final bill upon notice from customer of intent to move from address assigned to such customer's utility billing account.
3. Refund of Deposit. Any excess deposit amount after the utility billing combined service account balance owed has been paid in full shall be refunded and mailed to the last known address.
4. Unpaid Account. When service has been discontinued for whatever reason, the deposit shall be applied to any unpaid balance due the City utilities department.

92.09 ANNUAL REVIEW OF RATES. The City has the option to review the water service charges at least yearly and revise the water service charges as necessary to ensure that such charges as herein established and specified generate adequate revenues to pay the costs of maintenance and operation (including replacement and debt service) of a water management system and facilities and that the water service charges continue to provide for the proportional distribution of maintenance and operation costs (including replacement costs and debt service) for a water management system and facilities among the users and user classes. The liability of a water service user to pay for charges as provided in this chapter shall not be contingent, however, upon any such review or revision.

CHAPTER 93

WATER BACKFLOW PREVENTION

93.01 Definitions

93.02 Water Utility Administrative Authority

93.03 Backflow Prevention Assemblies for Containment

93.04 Backflow Prevention Assemblies for Fire Protection Systems

93.05 Customer Requirements

93.06 Backflow Prevention Assembly Testing

93.07 Termination for Noncompliance

93.01 DEFINITIONS. The following terms are defined for use in this chapter.

1. “Approved backflow prevention assembly for containment” means a backflow prevention assembly which is approved by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research. The approval listing shall include the limitations of use based on the degree of hazard. The backflow prevention assembly shall also be listed by the International Association of Plumbing and Mechanical Officials (IAPMO) or by the American Society of Sanitary Engineering (ASSE) as having met the requirements of ANSI/AWWA C510-07 Double Check Valve Backflow Prevention Assembly, or ANSI/AWWA C511-07, Reduced-Pressure Principle (RPZ) Backflow Assembly.
2. “Approved backflow prevention assembly for containment in a fire protection system” means a backflow prevention assembly to be used in a fire protection system which meets the requirements of Factory Mutual Research Corporation (FM) and Underwriters Laboratory (UL), in addition to the requirements of subsection 1 of this section.
3. “Auxiliary water supply” means any water supply on or available to the premises other than the City’s public water supply, such as (but not limited to) a private well, pond, or river.
4. “Containment” means a method of backflow prevention which requires a backflow prevention assembly on certain water services. Containment requires that the backflow prevention assembly be installed on the water service as close to the public water supply main as is practical. Directly after the discharge end of the water meter is the best location.
5. “Cross connection” means any connection or arrangement, physical or otherwise, between a potable water supply system and any plumbing fixtures or tank, receptacle, equipment, or device, through which it may be possible for non-potable, used, unclean, polluted, or contaminated water, or other substance, to enter into any part of such potable water system under any condition, including (but not limited to) lawn or other landscaping irrigation systems, water powered or water assisted sump pumps, yard hydrants, other potentially hazardous water connections.
6. “Customer” means the owner, operator, or occupant of a building or property which has a water service from the public water system, or the owner or operator of a private water system which has water service from the public water system.
7. “Degree of hazard” means the rating of a cross connection or a water service which indicates if it has the potential to cause contamination (high hazard) or adverse effects (low hazard).

8. “Double check valve backflow prevention assembly” means a backflow prevention assembly consisting of two independently acting internally loaded check valves, four properly located test cocks, and two isolation valves. The degree of hazardous substance will dictate allowable materials to be used for the device and fittings, e.g., brass, stainless steel, etc.
9. “High hazard cross connection” means a cross connection which may cause an impairment of the quality of the potable water by creating an actual hazard to the public health, through poisoning or through the spread of disease by sewage, industrial fluids or wastes.
10. “Isolation” means preferred method of backflow prevention, which requires the installation of backflow prevention assembly at a suitable location within a plumbing system to isolate a known or possible hazardous cross connection (e.g., boilers, commercial or industrial mixing processes, irrigation systems, etc.) rather than at the water service entrance.
11. “Licensed backflow prevention assembly technician” means a person meeting all requirements for the testing and repair of backflow prevention assemblies and who is licensed and registered with the Iowa Department of Public Health.
12. “Low hazard cross connection” means a cross connection which may cause an impairment of the quality of potable water to a degree which does not cause a hazard to the public health but which does adversely and unreasonably affect the aesthetic qualities of such potable waters for domestic use.
13. “Reduced pressure principle backflow prevention assembly,” also referred to as a “reduced pressure zone (RPZ)” device means a backflow prevention assembly consisting of two independently acting internally loaded check valves, a different pressure relief valve, four properly located test cocks, and two isolation valves. This assembly is required on all lawn or other landscaping irrigation systems, chemically treated boiler systems, or any system where any potential hazardous chemicals are present or can be introduced into the public water system during a failure of that system.
14. “Water service,” depending on the context, means the physical connection between a public water system and a customer’s building, property, or private water system, or the act of providing potable water from a public water system to a customer.

93.02 WATER UTILITY ADMINISTRATIVE AUTHORITY.

1. The administrative authority for this chapter is the City Council acting through the water utility or such persons or departments the City Council shall designate.
2. The City shall require the submission of plans, specifications, and other information deemed necessary for a building, property, or private water system to which a water service is proposed. The information submitted shall be reviewed to determine if cross connections will exist and the degree hazard. Each customer shall survey the activities and processes which receive water from the water service and shall report to the City if cross connections exist and the degree of hazard.
3. The owner of a building, property or private water system shall install, or cause to be installed, an approved backflow prevention assembly for containment as directed by the City before water service is initiated.

4. The City shall have the right to access any property to inspect the plumbing of any building, property and private water system which has a water service to determine if cross connections exist and the degree of hazard. Failure to grant access for inspection shall be cause for termination of water service.
5. If the City determines that non-potable water may potentially enter the public water supply, the customer shall be required to install the appropriate backflow prevention assembly for containment. If a customer refuses to install a backflow prevention assembly for containment when it is required, water service to the customer may be discontinued until an appropriate backflow prevention assembly is installed.
6. Dual connections with a direct connection to the public water supply and other auxiliary supplies such as wells, ponds, rivers, industrial waters are strictly prohibited.
7. The City shall maintain all pertinent records of cross connection surveys, installations, testing records, or other required records.

93.03 BACKFLOW PREVENTION ASSEMBLIES FOR CONTAINMENT.

1. Backflow prevention assemblies for containment shall be installed immediately following the water meter or as close to that location as deemed practical by the City.
2. A water service determined to present a high hazard shall be protected by an air gap or an approved reduced-pressure principle backflow prevention assembly.
3. A water service determined to present a low hazard shall be protected by an approved double check valve assembly, or an assembly approved in subsection 2.

93.04 BACKFLOW PREVENTION ASSEMBLIES FOR FIRE PROTECTION SYSTEMS.

1. A fire protection system using antifreezes or other additives shall be protected by an approved reduced pressure principle backflow prevention assembly.
2. A dry type fire protection system shall be protected by an approved double check valve backflow prevention assembly.
3. Backflow prevention assemblies must be tested annually on a routine scheduled basis by the required licensed technician. The City Fire Department and water utility are both to be copied with test results.

93.05 CUSTOMER REQUIREMENTS.

1. The customer shall be responsible for ensuring that no cross connections exist without an approved backflow prevention assembly.
2. The customer shall immediately notify the City water utility when the customer becomes aware that backflow has occurred in the building, property or private water system receiving water service, and take measures to confine the contamination or pollution by turning off valves to isolate the area of the incident. The City may order that a water service be temporarily shut off when backflow occurs in a customer's building, property or private water system.

3. The customer shall cause installation, operation, maintenance, and testing of the backflow prevention assemblies required by this chapter. Backflow prevention assemblies shall be installed by licensed plumbing contractor per established plumbing codes. A licensed backflow prevention testing technician, registered with the Iowa Department of Public Health, shall test the backflow prevention assembly at initial installation and annually each year thereafter. Backflow prevention assemblies installed on irrigation systems shall be tested annually by May 31 of each year. Backflow prevention assemblies must be retested when repairs have been completed to ensure the repaired device is operational.

4. The customer shall ensure the City water utility receives the backflow prevention assembly test report upon completion of testing. Failure to provide report within 15 days of the test may result in termination of water service.

93.06 BACKFLOW PREVENTION ASSEMBLY TESTING.

1. Backflow prevention assemblies which are in place, but have not been used for more than three months, shall be tested prior to being placed back into service.

2. Any backflow prevention assembly that fails a test and is repaired or replaced, must successfully pass the test prior to being placed into operation.

3. The City may require more frequent testing of backflow prevention assemblies.

4. The City may conduct, at its own cost, additional testing of backflow prevention assembly to verify test procedures and results.

5. To suspend the testing requirements for an irrigation system or other system taken out of service, the customer shall have a licensed plumbing contractor disconnect all piping and remove backflow prevention assembly. When the system is to be placed back into service, the backflow prevention assembly must be re-installed by a licensed plumbing contractor and tested by the required licensed testing technician. The customer must contact the City water utility for an appointment to have the disconnection and reconnection inspected.

93.07 TERMINATION FOR NONCOMPLIANCE. Water service may be terminated in the case of noncompliance with, but not limited to, the following.

1. Refusal to allow City access to the property to inspect for cross connection at reasonably scheduled times.

2. Unauthorized removal or bypassing of a backflow prevention device required by the City.

3. Providing inadequate backflow prevention when a cross connection exists.

4. Failure to install an approved backflow prevention assembly when required by the City.

5. Failure to test a backflow prevention assembly as required by the City and/or submit the required test report within 15 days of the test.

6. Failure to comply with any other provisions of this chapter or reasonable requests.

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CHAPTER 95

SANITARY SEWER SYSTEM

95.01 Purpose
95.02 Definitions
95.03 Superintendent
95.04 Prohibited Acts
95.05 Sewer Connection Required

95.06 Service Outside the City
95.07 Right of Entry
95.08 Use of Easements
95.09 Special Penalties

95.01 PURPOSE. The purpose of the chapters of this Code of Ordinances pertaining to Sanitary Sewers is to establish rules and regulations governing the treatment and disposal of sanitary sewage within the City in order to protect the public health, safety, and welfare.

95.02 DEFINITIONS. For use in these chapters, unless the context specifically indicates otherwise, the following terms are defined:

1. "B.O.D." (denoting Biochemical Oxygen Demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees C, expressed in milligrams per liter or parts per million.
2. "Building drain" means that part of the lowest horizontal piping of a building drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (one and one-half meters) outside the inner face of the building wall.
3. "Building sewer" means that part of the horizontal piping from the building wall to its connection with the main sewer or the primary treatment portion of an on-site wastewater treatment and disposal system conveying the drainage of one building site.
4. "Combined sewer" means a sewer receiving both surface run-off and sewage.
5. "Customer" means any person responsible for the production of domestic, commercial, or industrial waste that is directly or indirectly discharged into the public sewer system.
6. "Garbage" means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage, and sale of produce.
7. "Industrial wastes" means the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.
8. "Inspector" means the person duly authorized by the Council to inspect and approve the installation of building sewers and their connections to the public sewer system; and to inspect such sewage as may be discharged therefrom.
9. "Natural outlet" means any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.
10. "On-site wastewater treatment and disposal system" means all equipment and devices necessary for proper conduction, collection, storage, treatment, and disposal

of wastewater from four or fewer dwelling units or other facilities serving the equivalent of 15 persons (1,500 gpd) or less.

11. “pH” means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

12. “Public sewer” means a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

13. “Sanitary sewage” means sewage discharging from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, or institutions, and free from storm, surface water, and industrial waste.

14. “Sanitary sewer” means a sewer that carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

15. “Sewage” means a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and storm waters as may be present.

16. “Sewage treatment plant” means any arrangement of devices and structures used for treating sewage.

17. “Sewage works” or “sewage system” means all facilities for collecting, pumping, treating, and disposing of sewage.

18. “Sewer” means a pipe or conduit for carrying sewage.

19. “Sewer service charges” means any and all charges, rates or fees levied against and payable by customers, as consideration for the servicing of said customers by said sewer system.

20. “Slug” means any discharge of water, sewage, or industrial waste that in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation.

21. “Storm drain” or “storm sewer” means a sewer that carries storm and surface waters and drainage but excludes sewage and industrial wastes, other than unpolluted cooling water.

22. “Superintendent” means the Superintendent of sewage works and/or of water pollution control of the City or any authorized deputy, agent, or representative.

23. “Suspended solids” means solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and that are removable by laboratory filtering.

24. “Watercourse” means a channel in which a flow of water occurs, either continuously or intermittently.

95.03 SUPERINTENDENT. The Superintendent shall exercise the following powers and duties:

(Code of Iowa, Sec. 372.13[4])

1. Operation and Maintenance. Operate and maintain the City sewage system.
2. Inspection and Tests. Conduct necessary inspections and tests to assure compliance with the provisions of these Sanitary Sewer chapters.

3. Records. Maintain a complete and accurate record of all sewers, sewage connections and manholes constructed showing the location and grades thereof.

95.04 PROHIBITED ACTS. No person shall do, or allow, any of the following:

1. Damage Sewer System. Maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment that is a part of the sewer system.

(Code of Iowa, Sec. 716.1)

2. Surface Run-Off or Groundwater. Connect a roof downspout, sump pump, exterior foundation drain, areaway drain, or other source of surface run-off or groundwater to a building sewer or building drain that is connected directly or indirectly to a public sanitary sewer.

3. Manholes. Open or enter any manhole of the sewer system, except by authority of the Superintendent.

4. Objectionable Wastes. Place or deposit in any unsanitary manner on public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, garbage, or other objectionable waste.

5. Septic Tanks. Construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage except as provided in these chapters.

(Code of Iowa, Sec. 364.12[3ff])

6. Untreated Discharge. Discharge to any natural outlet within the City, or in any area under its jurisdiction, any sanitary sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of these chapters.

(Code of Iowa, Sec. 364.12[3ff])

95.05 SEWER CONNECTION REQUIRED. The owners of any houses, buildings, or properties used for human occupancy, employment, recreation or other purposes, situated within the City and abutting on any street, alley or right-of-way in which there is now located, or may in the future be located, a public sanitary or combined sewer, are hereby required to install, at such owner's expense, suitable toilet facilities therein and a building sewer connecting such facilities directly with the proper public sewer, and to maintain the same all in accordance with the provisions of these Sanitary Sewer chapters, such compliance to be completed within 60 days after date of official notice from the City to do so provided that said public sewer is located within 100 feet of the property line of such owner and is of such design as to receive and convey by gravity such sewage as may be conveyed to it. Billing for sanitary sewer service will begin the date of official notice to connect to the public sewer.

(Code of Iowa, Sec. 364.12[3ff])

(IAC, 567-69.1[3])

95.06 SERVICE OUTSIDE THE CITY. The owners of property outside the corporate limits of the City so situated that it may be served by the City sewer system may apply to the Council for permission to connect to the public sewer upon the terms and conditions stipulated by resolution of the Council.

(Code of Iowa, Sec. 364.4[2 & 3])

95.07 RIGHT OF ENTRY. The Superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of these Sanitary Sewer chapters. The Superintendent or representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

95.08 USE OF EASEMENTS. The Superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

95.09 SPECIAL PENALTIES. The following special penalty provisions shall apply to violations of these Sanitary Sewer chapters:

1. Notice of Violation. Any person found to be violating any provision of these chapters except subsections 1, 3, and 4 of Section 95.04, shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
2. Continuing Violations. Any person who shall continue any violation beyond the time limit provided for in subsection 1 hereof shall be in violation of this Code of Ordinances. Each day in which any such violation shall continue shall be deemed a separate offense.
3. Liability Imposed. Any person violating any of the provisions of these chapters shall become liable to the City for any expense, loss, or damage occasioned the City by reason of such violation.

CHAPTER 96

BUILDING SEWERS AND CONNECTIONS

96.01 Permit
96.02 Connection Charge
96.03 Plumber Required
96.04 Connection Requirements
96.05 Sewer Tap

96.06 Excavations
96.07 Inspection Required
96.08 Property Owner's Responsibility
96.09 Abatement of Violations

96.01 PERMIT. No unauthorized person shall uncover, make any connection with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the City. The application for the permit shall set forth the location and description of the property to be connected with the sewer system and the purpose for which the sewer is to be used, and shall be supplemented by any plans, specifications, or other information considered pertinent. The permit shall require the owner to complete construction and connection of the building sewer to the public sewer within 60 days after the issuance of the permit, except that when a property owner makes sufficient showing that due to conditions beyond the owner's control or peculiar hardship, such time period is inequitable or unfair, an extension of time within which to comply with the provisions herein may be granted. Any sewer connection permit may be revoked at any time for a violation of these chapters.

96.02 CONNECTION CHARGE. There shall be a connection charge in the amount of \$150.00 paid to reimburse the City for costs borne by the City in making sewer service available to the property served.

96.03 PLUMBER REQUIRED. All installations of building sewers and connections to the public sewer shall be made by a State-licensed plumber.

96.04 CONNECTION REQUIREMENTS. The installation of the building sewer and its connection to the public sewer shall conform to the requirements of the *International Plumbing Code*, *SUDAS*, the laws of the State, and other applicable rules and regulations of the City. Any person making connection to the public sewer shall at the same time make connection to the water system if the building connected to the sewer is not currently connected to the water system.

96.05 SEWER TAP. Connection of the building sewer into the public sewer shall be made at the "Y" branch, if such branch is available at a suitable location. If no properly located "Y" branch is available, a saddle "Y" shall be installed at the location specified by the Superintendent. The public sewer shall be tapped with a tapping machine and a saddle appropriate to the type of public sewer shall be glued or attached with a gasket and stainless steel clamps to the sewer. At no time shall a building sewer be constructed so as to enter a manhole unless special written permission is received from the Superintendent and in accordance with the Superintendent's direction if such connection is approved.

96.06 EXCAVATIONS. All trench work, excavation and backfilling required in making a connection shall be performed in accordance with the provisions of the *International Plumbing Code*, *SUDAS*, and the provisions of Chapter 135 of this Code of Ordinances.

96.07 INSPECTION REQUIRED. No building sewer shall be covered, concealed or put into use until it has been tested, inspected and accepted as prescribed in the *International Plumbing Code* and *SUDAS*.

96.08 PROPERTY OWNER'S RESPONSIBILITY. All costs and expenses incident to the installation, connection, and maintenance of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

96.09 ABATEMENT OF VIOLATIONS. Construction or maintenance of building sewer lines, whether located upon the private property of any owner or in the public right-of-way, which construction or maintenance is in violation of any of the requirements of this chapter, shall be corrected, at the owner's expense, within 30 days after date of official notice from the Council of such violation. If not made within such time, the Council shall, in addition to the other penalties herein provided, have the right to finish and correct the work and assess the cost thereof to the property owner. Such assessment shall be collected with and in the same manner as general property taxes.

(Code of Iowa, Sec. 364.12[3])

CHAPTER 97

USE OF PUBLIC SEWERS

97.01 Storm Water

97.02 Surface Waters Exception

97.03 Prohibited Discharges

97.04 Restricted Discharges

97.05 Restricted Discharges; Powers of Superintendent

97.06 Special Facilities

97.07 Control Manholes

97.08 Testing of Wastes

97.09 Sump Pump Drainage

97.01 STORM WATER. No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof run-off, sub-surface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer. Storm water and all other unpolluted drainage shall be discharged to such sewers that are specifically designated as combined sewers or storm sewers or to a natural outlet approved by the Superintendent. Industrial cooling water or unpolluted process waters may be discharged on approval of the Superintendent, to a storm sewer, combined sewer, or natural outlet.

97.02 SURFACE WATERS EXCEPTION. Special permits for discharging surface waters to a public sanitary sewer may be issued by the Council upon recommendation of the Superintendent where such discharge is deemed necessary or advisable for purposes of flushing, but any permit so issued shall be subject to revocation at any time when deemed to the best interests of the sewer system.

97.03 PROHIBITED DISCHARGES. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

1. Flammable or Explosive Material. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
2. Toxic or Poisonous Materials. Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two milligrams per liter as CN in the wastes as discharged to the public sewer.
3. Corrosive Wastes. Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.
4. Solid or Viscous Substances. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
5. Excessive B.O.D., Solids or Flow.

A. Any waters or wastes: (i) having a five-day biochemical oxygen demand greater than 300 parts per million by weight; or (ii) containing more than 350 parts per million by weight of suspended solids; or (iii) having an average daily flow greater than two percent of the average sewage flow of the City, shall be subject to the review of the Superintendent.

B. Where necessary in the opinion of the Superintendent, the owner shall provide, at the owner's expense, such preliminary treatment as may be necessary to: (i) reduce the biochemical oxygen demand to 300 parts per million by weight; or (ii) reduce the suspended solids to 350 parts per million by weight; or (iii) control the quantities and rates of discharge of such waters or wastes. Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Superintendent and no construction of such facilities shall be commenced until said approvals are obtained in writing.

97.04 RESTRICTED DISCHARGES. No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Superintendent that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming an opinion as to the acceptability of these wastes, the Superintendent will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances restricted are:

1. High Temperature. Any liquid or vapor having a temperature higher than 150 degrees F (65 degrees C).
2. Fat, Oil, Grease. Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 milligrams per liter or 600 milligrams per liter of dispersed or other soluble matter.
3. Viscous Substances. Water or wastes containing substances that may solidify or become viscous at temperatures between 32 degrees F and 150 degrees F (0 degrees to 65 degrees C).
4. Garbage. Any garbage that has not been properly shredded, that is, to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.
5. Acids. Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solution whether neutralized or not.
6. Toxic or Objectionable Wastes. Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the Superintendent for such materials.
7. Odor or Taste. Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits that may be established by the Superintendent as necessary, after treatment of the composite sewage, to meet

the requirements of State, federal, or other public agencies of jurisdiction for such discharge to the receiving waters.

8. Radioactive Wastes. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable State or federal regulations.

9. Excess Alkalinity. Any waters or wastes having a pH in excess of 9.5.

10. Unusual Wastes. Materials that exert or cause:

A. Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).

B. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

C. Unusual B.O.D., chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.

D. Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

11. Noxious or Malodorous Gases. Any noxious or malodorous gas or other substance that, either singly or by interaction with other wastes, is capable of creating a public nuisance or hazard to life or of preventing entry into sewers for their maintenance and repair.

12. Damaging Substances. Any waters, wastes, materials, or substances that react with water or wastes in the sewer system to release noxious gases, develop color of undesirable intensity, form suspended solids in objectionable concentration or create any other condition deleterious to structures and treatment processes.

13. Untreatable Wastes. Waters or wastes containing substances that are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

97.05 RESTRICTED DISCHARGES; POWERS OF SUPERINTENDENT. If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 97.04 and which in the judgment of the Superintendent may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Superintendent may:

1. Rejection. Reject the wastes by requiring disconnection from the public sewage system;

2. Pretreatment. Require pretreatment to an acceptable condition for discharge to the public sewers;

3. Controls Imposed. Require control over the quantities and rates of discharge; and/or

4. Special Charges. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Chapter 99.

97.06 SPECIAL FACILITIES. If the Superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Superintendent and subject to the requirements of all applicable codes, ordinances, and laws. Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at the owner's expense.

97.07 CONTROL MANHOLES. When required by the Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Superintendent. The manhole shall be installed by the owner at the owner's expense, and shall be maintained by the owner so as to be safe and accessible at all times.

97.08 TESTING OF WASTES. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of *Standard Methods for the Examination of Water and Wastewater*, published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a 24-hour composite of all outfalls of a premises is appropriate or whether a grab sample or samples should be taken. Normally, but not always, B.O.D. and suspended solids analyses are obtained from 24-hour composites of all outfalls whereas pH's are determined from periodic grab samples).

97.09 SUMP PUMP DRAINAGE. It is unlawful for the owner of any property to discharge sump pump drainage into the sanitary sewer system. It is further unlawful for the owner of any property abutting a public way to allow a sump pump discharge line to drain onto the street or alley except as provided for by the following subsections:

1. Except as hereinafter provided, existing sump pump discharge lines that drain onto a public street or alley may be allowed to continue draining to the street or alley, contingent upon the Street Superintendent's issuing a permit to discharge onto a public street if, in the opinion of the Street Superintendent: (i) the public storm sewer or collection line is not within a reasonable proximity to the property; (ii) the discharge does not create a traffic or pedestrian hazard; and (iii) there is adequate surface drainage capacity available.
2. The Street Superintendent may revoke the permit for a violation of this section, for providing false or misleading information on the application form, or for any other reason that, in the Street Superintendent's sole discretion, adversely affects the health or safety of the citizens or that becomes a public nuisance. The revocation

shall be effective within 10 days after the date notice is served on the owner, personally or by certified mail, return receipt requested.

3. The City may at its sole discretion require that a property owner connect a sump pump drain to the storm sewer or to a collector line when provided by the City or a developer when it is adjacent to the property owner's property.

4. Violation of any part of this section shall constitute a municipal infraction and, notwithstanding any other provisions of this Code of Ordinances, shall be punishable upon the finding of a violation by the Court. Each day the violation continues shall constitute a separate, distinct offense.

5. This section applies equally to occupants and tenants as well as owners of real property, residential and commercial. Liability for compliance and for penalties shall be joint and several as between the owner and occupant or tenant.

6. Prior to every transfer of real property within the City, whether by deed or real estate contract and with or without consideration, the Grantor shall obtain from the Street Superintendent a Certificate of Sump Pump Inspection, which shall be delivered to the Grantee at the time the Grantor is required to deliver the Grantor-Seller's Disclosure Statement pursuant to Section 558A.2(1) of the *Code of Iowa*. The certificate shall state that the Street Superintendent has inspected the below ground level, if any, and has determined one of the following conditions exists: (i) the sump pump drainage system complies with this section; (ii) the system does not comply with this section, stating the reasons therefor; (iii) no sump pump drainage system has been installed in the lowest level of the premises; (iv) there is no basement or below-ground level within the structure. As between the Grantor, Grantee, and the City, once the property has been conveyed, both Grantor and Grantee shall be jointly and severally liable for a violation of this section and for bringing the sump pump drainage system in compliance with this section.

7. Sump Pump Inspection.

A. Any building connected to the Municipal Sanitary Sewer System is subject to inspection.

B. Initial inspection is done by a contractor chosen by the City and paid for by the City. City employees will do any follow up inspections after the initial inspection.

C. The first follow-up inspection will be at no charge if completed within 60 days of original inspection. Any other inspections will be charged to the homeowner at \$25.00 per inspection.

D. Any no show for an inspection scheduled will be charged to the property owner.

E. Any property owner not scheduling an inspection will be charged \$100.00 per month.

F. Any property owner not in compliance after second inspection will be charged \$100.00 a month until brought in compliance.

G. Any outstanding fee may be assessed to the property owner on said owner's property taxes.

H. Any sump pump found out of compliance after passing the initial inspection will be charged \$100.00 per month for every month following the

initial inspection up to a maximum of \$2,000.00 for being in violation of the City ordinance.

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CHAPTER 98

ON-SITE WASTEWATER SYSTEMS

98.01 When Prohibited
98.02 When Required
98.03 Compliance with Regulations
98.04 Permit Required

98.05 Discharge Restrictions
98.06 Maintenance of System
98.07 Systems Abandoned
98.08 Disposal of Septage

98.01 WHEN PROHIBITED. Except as otherwise provided in this chapter, it is unlawful to construct or maintain any on-site wastewater treatment and disposal system or other facility intended or used for the disposal of sewage.

(Code of Iowa, Sec. 364.12[3f])

98.02 WHEN REQUIRED. When a public sanitary sewer is not available under the provisions of Section 95.05, every building wherein persons reside, congregate or are employed shall be provided with an approved on-site wastewater treatment and disposal system complying with the provisions of this chapter.

(IAC, 567-69.1[3])

98.03 COMPLIANCE WITH REGULATIONS. The type, capacity, location, and layout of a private on-site wastewater treatment and disposal system shall comply with the specifications and requirements set forth by the Iowa Administrative Code 567, Chapter 69, and with such additional requirements as are prescribed by the regulations of the County Board of Health.

(IAC, 567-69.1[3 & 4])

98.04 PERMIT REQUIRED. No person shall install or alter an on-site wastewater treatment and disposal system without first obtaining a permit from the County Board of Health.

98.05 DISCHARGE RESTRICTIONS. It is unlawful to discharge any wastewater from an on-site wastewater treatment and disposal system (except under an NPDES permit) to any ditch, stream, pond, lake, natural or artificial waterway, drain tile or to the surface of the ground.

(IAC, 567-69.1[3])

98.06 MAINTENANCE OF SYSTEM. The owner of an on-site wastewater treatment and disposal system shall operate and maintain the system in a sanitary manner at all times and at no expense to the City.

98.07 SYSTEMS ABANDONED. At such time as a public sewer becomes available to a property served by an on-site wastewater treatment and disposal system, as provided in Section 95.05, a direct connection shall be made to the public sewer in compliance with these Sanitary Sewer chapters and the on-site wastewater treatment and disposal system shall be abandoned and filled with suitable material.

(Code of Iowa, Sec. 364.12[3f])

98.08 DISPOSAL OF SEPTAGE. No person shall dispose of septage from an on-site treatment system at any location except an approved disposal site.

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CHAPTER 99

SEWER USE CHARGE

99.01 Purpose	99.08 Surcharges
99.02 Definitions	99.09 Additional Charges
99.03 Requirements	99.10 Application
99.04 Establishment of Funds	99.11 Billings
99.05 Maintenance of Funds	99.12 Lien for Nonpayment
99.06 Basis of Use Determination	99.13 Charge Review
99.07 Sewer User Charge	99.14 User Notification

99.01 PURPOSE. The purpose of this chapter is to establish the procedures and regulations to be followed in the calculation, establishment, and collection of charges from customers so that the City can pay for the operation and maintenance, as herein defined, of the wastewater treatment system and for the sewer bond debt retirement for financing the sewage system improvements constructed under EPA Project No. C190807.

99.02 DEFINITIONS. Unless the context indicates otherwise, the meaning of terms used in this chapter are as follows:

1. "EPA" means the United States Environmental Protection Agency.
2. "Normal domestic wastewater" means wastewater that has a BOD concentration of not more than 300 mg/l and a suspended solids concentration of not more than 300 mg/l.
3. "Operation and maintenance" means all expenditures during the useful life of the wastewater treatment works for materials, labor, utilities, and other items that are necessary for the management and maintenance of said treatment facilities to achieve the capacity and performance for which such works were designed and constructed.
4. "Replacement" means expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the useful life of the wastewater treatment works to maintain the capacity and performance for which such facilities were designed and constructed. The term "operation and maintenance" includes replacement.
5. "Residential customer" means any customer whose lot, parcel of real estate or building is used for domestic dwelling purposes only.
6. "Useful life" means the estimated period during which the wastewater treatment works will be operated.
7. "User charge" means that portion of the total wastewater service charge which is levied in a proportional and adequate manner for the cost of operation, maintenance, and replacement of the wastewater treatment works.
8. "Wastewater" means the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and storm water that may be present. Wastewater is also commonly known as "sanitary sewage."

9. “Wastewater treatment works” means the devices and systems used for the storage, treatment, recycling, and reclamation of municipal wastewater, domestic wastewater or liquid industrial wastes. These include the collecting lateral, trunk, interceptor, and outfall sewer systems, individual systems, pumping, power and other equipment and appurtenances, extensions, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land, that will be an integral part of the treatment process or used for ultimate disposal of residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treatment, separating or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

10. “Water meter” means a water volume measuring and recording device, furnished and/or installed by the City or furnished and/or installed by a user and approved by the City.

99.03 REQUIREMENTS. The user charge system shall generate adequate annual revenues to pay costs of: (i) annual operation and maintenance including replacement; and (ii) costs associated with the sewer bond debt retirement for financing the wastewater treatment works which the City may, by resolution, designate to be paid by the user charge system. That portion of the total user charge which is designated for operation and maintenance, including replacement of the treatment works, shall be established by this chapter.

99.04 ESTABLISHMENT OF FUNDS. That portion of the total user charge collected which is designated for operation and maintenance including replacement purposes as established in Section 99.07 shall be deposited in two separate non-lapsing funds, as follows:

1. A fund designated as the “Wastewater Treatment Works Operation and Maintenance Fund” for the specific purpose of defraying operation and maintenance costs, excluding replacement, of the wastewater treatment works.
2. A fund designated as the “Wastewater Treatment Works Replacement Fund” for the specific purpose of ensuring replacement needs over the useful life of the wastewater treatment works.

Deposits in these two funds shall be made at least annually from that portion of the total user charge collected and designated for operation, maintenance, and replacement purposes in the total amount of \$11,000.00 annually. While sewer revenue bonds of the City are outstanding, the provision of the resolution authorizing the issuance of the bonds shall, in the event of conflict, prevail on the provisions of this section and Section 99.05.

99.05 MAINTENANCE OF FUNDS. Fiscal year-end balances in the wastewater treatment works operation and maintenance fund and the wastewater treatment works replacement fund shall be carried over to the same fund in the subsequent fiscal year, and shall be used for no other purposes than those designated for these funds. If moneys are transferred from other funds of the City to meet temporary shortages in the wastewater treatment works operation and maintenance fund and/or wastewater treatment works replacement fund, such transferred moneys shall be returned to their respective accounts upon appropriate adjustment of the user charge rates for operation, maintenance, and replacement. The user charge rates shall be adjusted such that the transferred moneys will be returned to their respective accounts within the fiscal year following the fiscal year in which the moneys were borrowed.

99.06 BASIS OF USE DETERMINATION. The use of the wastewater treatment works shall be determined on the following basis:

1. Each user shall pay for the services provided by the City based on use of the wastewater treatment works as determined by water meters acceptable to the City.
2. If a commercial or industrial customer has a consumptive use of water or in some other manner uses water which is not returned to the wastewater collection system, the user charge for that customer may be based on a wastewater meter or separate water meter installed and maintained at the expense of the customer and in a manner acceptable to the City.
3. In case of privately owned or unmetered water supplies, all or any part of which is discharged into the public sanitary sewer system of the City, the quantity of water discharged into said sewer system shall be determined, to the satisfaction of the Council, at the expense of the owner of such private or unmetered water supplies, and the sewer user charge shall be applied to an equal quantity and characteristic of waste as though originating through use of City water, the same as if metered and billed accordingly. If the quantity of water used is estimated to be in excess of 1,000 gallons per day for any one billing period, the Council may require that such water supply be metered at the expense of the owner of the same.

99.07 SEWER USER CHARGE. Sewer service shall be furnished at the following monthly rates within the City:

(Code of Iowa, Sec. 384.84)

1.

	7/1/2017 to 7/1/2018	7/1/2018 to 7/1/2019	7/1/2019 to 7/1/2020
Monthly Service Access Charge	\$10.00	\$10.30	\$10.61
All Usage per 1000 Gallons Water	\$3.50	\$3.61	\$3.71
Minimum Monthly Bill	\$10.00	\$10.30	\$10.61
Infrastructure Improvement Additional Monthly Fee Schedule:	\$7.00	\$7.00 (\$14 total)	\$6.00 (\$20 total)

2. Infrastructure Improvement charges will be billed as a separate line on monthly billing statements and will be evaluated each year as part of the City's budget process to ensure lagoon facility debt obligations are met.
3. Usage Rates shall be subject to a rate increase of 3.0% per year, effective July 1st. Rates increases will be passed by ordinance.

99.08 SURCHARGES. For those customers who contribute wastewater of strength greater than normal domestic sewage, a surcharge will be collected in addition to the sewer user charge. The surcharge for operation and maintenance including replacement is:

\$0.26 per pound BOD
\$0.13 per pound SS

99.09 ADDITIONAL CHARGES. Any user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge from the wastewater treatment works, or any user which discharges any substance which singly or by interaction with other substances causes identifiable increases in the cost of operation, maintenance or replacement of the wastewater treatment works, shall pay for such increased costs. The charge to each such user shall be as determined by the Council.

99.10 APPLICATION. The user charge rates established in this chapter apply to all users, regardless of their location, of the wastewater treatment works.

99.11 BILLINGS. All sewer service charges are due and payable under the same terms and conditions provided for payment of a combined service account as contained in Section 92.03 of this Code of Ordinances. Sewer service may be discontinued or disconnected in accordance with the provisions contained in Section 92.04 if the combined service account becomes delinquent, and the provisions contained in Section 92.07 relating to lien notices shall also apply in the event of a delinquent account.

99.12 LIEN FOR NONPAYMENT. Except as provided for in Section 92.06 of this Code of Ordinances, the owner of the premises served and any lessee or tenant thereof shall be jointly and severally liable for sewer service charges to the premises. Sewer service charges remaining unpaid and delinquent shall constitute a lien upon the property or premises served and shall be certified by the Clerk to the County Treasurer for collection in the same manner as property taxes.

(Code of Iowa, Sec. 384.84)

99.13 CHARGE REVIEW. The City shall review the user charge system at least every year and revise user charge rates as necessary to ensure that the system generates adequate revenues to pay the costs of operation and maintenance including replacement and that the system continues to provide for the proportional distribution of operation and maintenance including replacement costs among users.

99.14 USER NOTIFICATION. The City shall notify each user at least annually, in conjunction with a regular billing, of the rate being charged for operation and maintenance including replacement and the rate being charged for sewer bond debt service for the wastewater treatment works.

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CHAPTER 100

STORM WATER MANAGEMENT UTILITY

100.01 Purpose	100.09 Storm Water Service Charges Required
100.02 Definitions	100.10 Effective Date
100.03 Declaration of Purpose; Establish District	100.11 Basic Rate
100.04 Powers, Duties and Responsibilities	100.12 Rate Appeals
100.05 Organization	100.13 Exemption from Fees; Special Conditions
100.06 Right of Entry	100.14 Storm Water Service Billing
100.07 Prohibited Acts	100.15 Lien for Nonpayment
100.08 Penalties	100.16 Annual Review of Rates

100.01 PURPOSE. The purpose of this chapter is to establish a storm water management utility which shall be responsible for storm water management within the corporate boundaries of the City and shall provide for the management, protection, control, regulation, use, and enhancement of storm water management systems and facilities.

(Code of Iowa, Sec. 384.84)

1. Pursuant to Section 384.84 of the *Code of Iowa*, the City may establish a storm water drainage system utility and impose rates and charges for the operation, maintenance, and extension of the storm water drainage system, which in the City shall be known as the Elkhart Storm Water Management Utility.
2. It is the best interests of the City that the Storm Water Management Utility be established so as to provide a means of funding the construction, operation, and maintenance of storm water management facilities, including (but not limited to) detention and retention basins, storm water sewers, inlets, ditches and drains, and cleaning of streets and to provide for rates for the purposes of assuring sufficient funds for the same.
3. The City declares the entire area within the corporate limits of the City of Elkhart as the Storm Water Drainage System District pursuant to Section 384.84[5] of the *Code of Iowa*, which shall be the area governed by the Elkhart Storm Water Management Utility.

100.02 DEFINITIONS. Unless the context specifically indicates otherwise, the meaning of the terms used in this chapter shall be as follows:

1. “Apartment dwelling” means a self-contained housing unit that occupies only part of a building which consists of many similar housing units for rent or sale, wherein the land or lot beneath the multi-dwelling structure may be owned by the building owner. In the application of storm water management fees, each apartment dwelling shall be considered one residential unit.
2. “Bonds” means revenue bonds, notes, loans, or any other debt obligations issued or incurred to finance the costs of construction.
3. “Construction cost” means costs reasonably incurred in connection with providing capital improvements to the system or any portion thereof, including but not limited to the costs of the following:
 - A. Acquisition of all property, real or personal, and all interests in connection therewith, including all rights-of-way and easements therefor.

- B. Physical construction, installation and testing including the costs of labor, services, materials, supplies and utility services used in connection therewith.
 - C. Architectural, engineering, legal and other professional services.
 - D. Insurance premiums taken out and maintained during construction, to the extent not paid for by a contractor for construction and installation.
 - E. Any taxes or other charges which become due during construction.
 - F. Expenses incurred by the City or on its behalf with its approval in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to construction.
 - G. Principal and interest on any bonds.
 - H. Miscellaneous expenses incidental thereto.
4. "Customers of storm water utility" include all persons, properties, and entities served by and/or benefiting from the utility's acquisition, management, maintenance, extension and improvement of the public storm water management systems and facilities.
5. "Debt service" means the amount of money necessary annually to pay the interest on outstanding debt and pay the principal of maturing bonded debt.
6. "Developed property" means land that has been altered from its natural state by construction or installation of more than 500 square feet of impervious surface area thus increasing the amount of rainwater or surface water runoff.
7. "Duplex dwelling" means a building containing only two dwelling units and designed for and occupied exclusively by not more than two families with separate housekeeping and cooking facilities for each. In the application of storm water management fees, each duplex dwelling property shall be treated as two residential units.
8. "Exempt property" includes public streets, alleys and sidewalks; all undeveloped properties including land used for agriculture; all vacant properties and those which have been zoned but do not have building permits issued.
9. "Impervious surface" means those areas which prevent or impede the infiltration of storm water into the soil as it enters in natural conditions prior to development. Common impervious surface areas include, but are not limited to, rooftops, sidewalks, driveways, patios, parking lots, storage areas, compacted gravel surfaces and other surfaces which prevent or impede the natural infiltration of storm water runoff which existed prior to development.
10. "Mobile home dwelling" means a detached residential dwelling unit designed for transportation after fabrication on streets or highways on its own wheels or a flatbed or other trailer, and arriving at the site where it is occupied as a dwelling complete and ready for occupancy except for minor unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities, and the like. In the application of storm water management fees, each mobile home dwelling property shall be treated as one residential unit.

11. “Nonresidential properties” means all developed properties not encompassed by the definition of residential shall be defined as nonresidential. Nonresidential properties shall include: commercial property; industrial property; institutional property; churches; hospitals; schools; parking lots; and any other property not mentioned in the lists of properties. In the application of storm water management fees, each place of commerce, education, government, medicine, religion, or industry shall be one nonresidential unit whether in a single building on a single lot or in a multiple-use building on a single lot or multiple lot complex.

12. “Operating budget” means the annual operating budget for the storm water management utility adopted by the Council for the succeeding fiscal year.

13. “Pollutant” means anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects, so that the same may cause or contribute to pollution; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform bacteria and pathogens; dissolved and particulate metals; animal wastes; waste and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

14. “Residential” or “single-family dwelling” means a residence designed for or occupied by one family only, entirely surrounded by yard on the same lot. In the application of storm water management fees, each single-family dwelling shall be one residential unit.

15. “Revenues” means all rates, fees, assessments, rentals or other charges or other income received by the utility, in connection with the management and operation of the system, including amounts received from the investment or deposit of moneys in any fund or account and any amounts contributed by the City, all as calculated in accordance with sound accounting practice.

16. “Storm water drainage system” means the system of publicly or privately owned or operated manmade facilities, structures, and natural watercourses, including rivers, streams, creeks, canals, ditches, drainage channels, culverts, flumes, pipes, catch basins, streets, gutters, and lakes within the City through which or into which storm water runoff, surface water, or subsurface water is conveyed or deposited.

17. “Storm water management” means the tasks required to control storm water runoff using storm water management systems, to protect the health, safety, and welfare of the public, and comply with relevant State and federal regulations.

18. “Storm water management system and facilities” address the issue of drainage management (flooding) and environmental quality (pollution, erosion and sedimentation) of receiving rivers, streams, creeks, lakes and ponds through improvements, maintenance, and regulation of structures and property used in the collection, retention, detention, and treatment of storm water or surface water drainage.

19. “Storm water management utility” means the enterprise fund utility created by this section to operate, maintain and improve the storm water drainage system and for such other purposes as stated in this section including managing storm water and imposing charges for the recovery of costs connected with such storm water management.

20. “Townhome dwelling” means a dwelling unit which is detached or attached horizontally, and not vertically, to one or more other dwelling units, wherein the land or lot beneath each dwelling may be individually owned in common by a townhome association. In the application of storm water management fees, each townhome dwelling shall be treated as one residential unit.

21. “Undeveloped property” means land in its unaltered natural state or which has been modified to such minimal degree as to have a hydrologic response comparable to land in an unaltered state. Undeveloped land shall have less than 500 square feet of pavement, asphalt or compacted gravel surfaces or structures which create an impervious surface area. Agricultural property shall be classified as undeveloped property.

22. “Unit” means a residential property, a nonresidential property, or an undeveloped property for the purpose of assessing service charges. Each single-family dwelling shall be a residential unit and other types of dwellings have been defined as one residential unit previously in this section. Each place of commerce, education, government, medicine, religion, and industry shall be a nonresidential unit, whether in a single building on a single lot or in a multiple-use building on a single lot or multiple lot complex. Each unit shall be charged individually, but where a multiple dwelling, mobile home park, or complex is billed under one combined service utility account, the recipient of that bill shall be deemed the user and receive the total combined storm water management utility charges for the multiple dwellings or complex.

23. “User” means any person owning, operating, or otherwise responsible for property within the City which directly or indirectly discharges storm water or surface or subsurface waters to any portion of the storm water management system or which is directly or indirectly protected by the City’s flood protection system or storm water drainage system.

100.03 DECLARATION OF PURPOSE; ESTABLISH DISTRICT.

1. The City Council finds, determines, and declares it to be conducive to the health, welfare, safety, and convenience of the City and its residents that a storm water management utility district be established within the city. Consequently, pursuant to Section 384.84[1] of the *Code of Iowa*, a storm water management utility district, to be known as the Elkhart Storm Water Management Utility, is established, and it is ordained and declared that the property located within the City limits of Elkhart shall be and constitute the storm water management utility district, and that the utility shall comprise and include elements of the City’s storm water drainage and flood protection systems which provide for the collection, treatment, and disposal of storm water, surface water, and groundwater. It is further found, determined, and declared that the elements of the storm water management utility are of benefit and provide services to all real properties within the incorporated City limits, including property not directly served by the storm water drainage system, and that such benefits and services may include but are not limited to the provision of adequate systems of collection, conveyance, detention, treatment, and release of storm water; the reduction of hazard to property and life resulting from storm water runoff and flooding; improvement in general health and welfare through reduction of undesirable storm water conditions and flooding; and improvement to the water quality in the storm water and surface water system and its receiving waters.

2. It is further determined and declared to be necessary and conducive to the protection of the public health, welfare, safety and convenience of the City and its residents that charges be levied upon and collected from the owners or occupants of all lots, parcels of real estate, and buildings that discharge storm water or surface or subsurface waters, directly or indirectly, to the City storm water drainage system, and that the proceeds of such charges so derived be used for the purposes of operation, maintenance, repair, replacement and debt service for construction of the storm water drainage and flood protection improvements comprising the storm water management utility.

3. The City of Elkhart storm water management utility consists of all rivers, streams, creeks, branches, lakes, ponds, drainage ways, channels, ditches, swales, storm sewers, culverts, inlets, catch basins, pipes, dams, head walls, and other structures, natural or manmade, within the corporate boundaries of the City which control and /or convey storm water through which the City intentionally diverts surface waters from its public streets and properties. The City owns or has legal access for purposes of operation, maintenance, and improvement to those segments of this system which: (i) are located within public streets, rights-of-way and easements; (ii) are subject to easement or other permanent provisions for adequate access for operation, maintenance and improvement of systems or facilities; or (iii) are located on public lands to which the City of Elkhart has adequate access for operation, maintenance, and improvement of systems and facilities. Operations, maintenance, and improvement of storm water systems and facilities which are located on private property or public property not owned by the City and for which there has been no public dedication of such systems and facilities shall be and remain the legal responsibility of the property owner, or its occupant.

100.04 POWERS, DUTIES, RESPONSIBILITIES. The storm water management utility shall have the following powers, duties, and responsibilities:

1. Prepare ordinances as needed to implement this division and forward the ordinances to the City Council for consideration and adoption, and adopt such regulations and procedures as are required to implement this division and carry out its duties and responsibilities.
2. Administer the acquisition, design, construction, maintenance and operation of the storm water utility system, including capital improvements for storm water drainage.
3. Administer and enforce this chapter and all ordinances, regulations, and procedures adopted relating to the design, construction, maintenance, operation, and alteration of the utility system, including but not limited to the quantity, quality, and/or velocity of the storm water conveyed thereby.
4. Inspect private systems as necessary to determine the compliance of such systems with this chapter and any ordinances or regulations adopted pursuant to this chapter.
5. Prepare and revise a comprehensive drainage and flood protection plan for periodic review and adoption by the City Council.
6. Review plans, approve or deny, inspect, and accept extensions to the storm water drainage system.

7. Establish and enforce regulations to protect and maintain water quality within the system in compliance with water quality standards established by State, regional and/or federal agencies as adopted or amended.
8. Annually analyze the cost of services and benefits provided, and the system and structure of fees, charges, fines and other revenues of the utility, and make recommendations regarding adjustments to such fees, charges, fines and other revenues.
9. Prepare an annual operating budget for the utility and make recommendations regarding the financing of the cost of extending, improving, and replacing the system.

100.05 ORGANIZATION. The City Council shall be the governing body of the storm water management utility. The storm water management utility shall be under the daily direction, coordination, and control of the City Clerk. In that capacity, the City Clerk shall supervise the day-to-day operation of the storm water management utility, shall enforce this chapter and the provisions of all ordinances and regulations adopted pursuant to this chapter and shall carry out the policy directives of the City Council acting in its role as governing body of the storm water management utility.

100.06 RIGHT OF ENTRY. Authorized employees or representatives of the City bearing proper credentials and identification shall be permitted to enter all private properties for the purpose of inspection, observation, measurement, sampling, and testing all private storm water discharges directly or indirectly entering into any public storm water management system or facility in accordance with the provisions of this chapter.

100.07 PROHIBITED ACTS. No person shall do, or allow, any of the following:

1. Damage Storm Water Management Systems and Facilities. Maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, pipe, appurtenance or equipment which is part of the storm water management systems or facilities.
2. Illicit Discharges. No person shall throw, drain or otherwise discharge or cause to throw, drain, run or allow to seep or otherwise be discharged into the City storm water management systems and facilities, including but not limited to pollutants or waters containing any pollutants, other than storm water.
3. Manholes. Open or enter any manhole, structure or intake of the storm water system, except by authority of City Council members or authorized City employees or representatives.
4. Connection. Connection of any private storm water system to the City's storm water management system and facilities, except by authority of City Council members or authorized City employees or representatives.

100.08 PENALTIES. The following penalty provisions shall apply to violations of this chapter.

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

2. Continuing Violations. Any person who shall continue any violation beyond the time limit provided for in subsection 1 thereof, shall be subject to a civil penalty as set forth in the Schedule of Municipal Infractions in Chapter 3 of this Code of Ordinances. Each day which said violation shall continue shall be deemed a separate offense.
3. Liability Imposed. Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss or damage occasioned the City by reason of such violation.
4. Failure to remit timely payment to the City shall result in a 15 percent late fee penalty applied and subsequent submission for collection to the Iowa Income Offset Program or a lien filed against the property.

100.09 STORM WATER SERVICE CHARGES REQUIRED. Every customer whose premises is served by a connection with the storm water management system and facilities of the City, either directly or indirectly, shall pay to the City storm water service charges hereinafter established and specified for the purpose of contributing towards the costs of construction, maintenance, and operation of the storm water management system and facilities and at least sufficient to pay the principal and interest related to bonds issued for the purpose of financing all or part of those costs, and sufficient to comply with any covenants or conditions associated with any such bonds so issued.

100.10 EFFECTIVE DATE. Storm water service charges shall accrue beginning February 1, 2013, and shall be billed monthly thereafter to all customers.

100.11 BASIC RATE.

1. Except as hereinafter noted, each customer whose property lies within the corporate limits of the City shall pay to the City, as a part of the customer's combined water, sewer, recycling, and storm water service account with the City, monthly utility billings, at the same time payment for other City utilities are made, the following charges per unit associated with the customer's property:
 - A. Undeveloped properties. A flat storm sewer availability charge at the rate of \$0.00 per month.
 - B. Single-family dwelling, one residential unit: \$2.00 per month.
 - C. Duplex dwelling, one residential unit: \$2.00 per month.
 - D. Townhome dwelling, one residential unit: \$2.00 per month.
 - E. Mobile home dwelling, one residential unit: \$2.00 per month.
 - F. Apartment dwelling, one residential unit: \$2.00 per month.
 - G. Nonresidential properties: one nonresidential unit: \$4.00
2. The yearly rate shall increase by five percent per year through 2018. As a result of the annual review of rates, as detailed in Section 100.15 of this chapter, the Council may choose to adjust the monthly unit rate as necessary. Such rate adjustments shall be approved by resolution of the City Council.
3. Storm water fee billing will begin upon water meter installation or if no water service, billing will begin upon completion of structure or improvements that result in more than 500 square feet of developed impervious surface on such property. This is,

by definition, developed property that increases the amount of rainwater or surface water runoff.

100.12 RATE APPEALS. City staff will review all service charge and billing inquiries from customers to ensure the unit rate has been correctly applied to a property. Following this review, any customer who believes the provisions of this chapter have been applied in error may appeal in the following manner:

1. An appeal must be filed in writing to the City Clerk and include all necessary information to support the request for an appeal.
2. In the case of service charge appeals, the appeal shall include official property information, including total area for the property in question.
3. Using the information provided by the appellant, the City Clerk shall conduct a technical review of the conditions on the property, communicate with the Council member in charge of Utilities, and respond to the appeal in writing within 30 days.
4. In response to an appeal and with approval of the Council member in charge of Utilities, the City Clerk may adjust the storm water service charge applicable to a property in conformance with the general purpose and intent of this chapter.
5. A decision by the City Clerk which is adverse to an appellant may be further appealed to the entire City Council within 30 days of receipt of notice of the adverse decision. Notice of the appeal shall be served on the City Council by the appellant, stating the grounds for the appeal. The City Council shall schedule a public hearing within 30 days. All decisions of the City Council shall be served on the appellant by registered mail, sent to the billing address of the appellant.
6. All decisions of the City Council shall be final.

100.13 EXEMPTION FROM FEES; SPECIAL CONDITIONS. The storm water management utility service fee shall not apply:

1. If a written request is made, in special conditions the City Council may grant fee payment and collection variances after determining that granting the variance would be in the City's best interest, will improve efficiency and safety and is practical. Upon the granting of any variance, the City Clerk shall keep on file notice of granted variance, giving reasons for the variance.
2. To properties owned by the City.
3. To a subdivided lot until a substantially completed structure has been built or improvements on said lot meet the definition of developed property as defined in this chapter.

100.14 STORM WATER SERVICE BILLING.

1. All storm water management fees shall be due and payable under the same terms and conditions, including late fees, provided for payment of a combined water, sewer, recycling service account as contained in Section 92.03 of this Code of Ordinances. Water service may be discontinued or disconnected in accordance with the provisions contained in Section 92.04 if the combined service account becomes delinquent, and the provisions contained in Section 92.07 relating to lien notices shall also apply in the event of a delinquent account. Delinquent accounts may also be submitted to the Iowa Income Offset Program for collection.

2. Storm water fee billing will begin upon water meter installation or if no water service, billing will begin upon completion of structure or improvements that result in more than 500 square feet of developed impervious surface on such property. This is, by definition, developed property that increases the amount of rainwater or surface water runoff.

100.15 LIEN FOR NONPAYMENT. Except as provided for in Section 92.06 of this Code of Ordinances, the owner of the premises served and any lessee or tenant thereof shall be jointly and severally liable for storm water service charges to the premises. Storm water service charges remaining unpaid and delinquent shall constitute a lien upon the property or premises served and shall be certified by the Clerk to the County Treasurer for collection in the same manner as property taxes.

(Code of Iowa, Sec. 384.84)

100.16 ANNUAL REVIEW OF RATES. The City has the option to review the storm water service charges at least yearly and revise the storm water service charges as necessary to ensure that such charges as herein established and specified generate adequate revenues to pay the costs of maintenance and operation (including replacement and debt service) of a storm water management system and facilities and that the storm water service charges continue to provide for the proportional distribution of maintenance and operation costs (including replacement costs and debt service) for a storm water management system and facilities among the users and user classes. The liability of a storm water service user to pay for charges as provided in this chapter shall not be contingent, however, upon any such review or revision.

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CHAPTER 105

SOLID WASTE CONTROL

105.01 Purpose	105.06 Separation of Yard Waste Required
105.02 Definitions	105.07 Littering Prohibited
105.03 Sanitary Disposal Required	105.08 Toxic and Hazardous Waste
105.04 Health and Fire Hazard	105.09 Waste Storage Containers
105.05 Open Burning Restricted	105.10 Prohibited Practices

105.01 PURPOSE. The purpose of the chapters in this Code of Ordinances pertaining to Solid Waste Control and Collection is to provide for the sanitary storage, collection, and disposal of solid waste and, thereby, to protect the citizens of the City from such hazards to their health, safety and welfare as may result from the uncontrolled disposal of solid waste.

105.02 DEFINITIONS. For use in these chapters the following terms are defined:

1. “Collector” means any person authorized to gather solid waste from public and private places.
2. “Discard” means to place, cause to be placed, throw, deposit, or drop.
(Code of Iowa, Sec. 455B.361[1])
3. “Dwelling unit” means any room or group of rooms located within a structure and forming a single habitable unit with facilities that are used or are intended to be used for living, sleeping, cooking, and eating.
4. “Garbage” means all solid and semisolid, putrescible animal and vegetable waste resulting from the handling, preparing, cooking, storing, serving and consuming of food or of material intended for use as food, and all offal, excluding useful industrial by-products, and includes all such substances from all public and private establishments and from all residences.
(IAC, 567-100.2)
5. “Landscape waste” means any vegetable or plant waste except garbage. The term includes trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery, and yard trimmings.
(IAC, 567-20.2[455B])
6. “Litter” means any garbage, rubbish, trash, refuse, waste materials, or debris not exceeding 10 pounds in weight or 15 cubic feet in volume. Litter includes but is not limited to empty beverage containers, cigarette butts, food waste packaging, other food or candy wrappers, handbills, empty cartons, or boxes.
(Code of Iowa, Sec. 455B.361[2])
7. “Owner” means, in addition to the record titleholder, any person residing in, renting, leasing, occupying, operating or transacting business in any premises, and as between such parties the duties, responsibilities, liabilities and obligations hereinafter imposed shall be joint and several.

8. “Refuse” means putrescible and non-putrescible waste, including but not limited to garbage, rubbish, ashes, incinerator residues, street cleanings, market and industrial solid waste and sewage treatment waste in dry or semisolid form.

(IAC, 567-100.2)

9. “Residential premises” means a single-family dwelling and any multiple-family dwelling.

10. “Residential waste” means any refuse generated on the premises as a result of residential activities. The term includes landscape waste grown on the premises or deposited thereon by the elements, but excludes garbage, tires, trade wastes and any locally recyclable goods or plastics.

(IAC, 567-20.2[455B])

11. “Rubbish” means non-putrescible solid waste consisting of combustible and non-combustible waste, such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind.

(IAC, 567-100.2)

12. “Sanitary disposal” means a method of treating solid waste so that it does not produce a hazard to the public health or safety or create a nuisance.

(IAC, 567-100.2)

13. “Sanitary disposal project” means all facilities and appurtenances (including all real and personal property connected with such facilities) that are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the Director of the State Department of Natural Resources.

(Code of Iowa, Sec. 455B.301)

14. “Solid waste” means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles, as defined by Section 321.1 of the *Code of Iowa*. Solid waste does not include any of the following:

(Code of Iowa, Sec. 455B.301)

A. Hazardous waste regulated under the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6921-6934.

B. Hazardous waste as defined in Section 455B.411 of the *Code of Iowa*, except to the extent that rules allowing for the disposal of specific wastes have been adopted by the State Environmental Protection Commission.

C. Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

D. Petroleum contaminated soil that has been remediated to acceptable State or federal standards.

E. Steel slag which is a product resulting from the steel manufacturing process and is managed as an item of value in a controlled manner and not as a discarded material.

105.03 SANITARY DISPOSAL REQUIRED. It is the duty of each owner to provide for the sanitary disposal of all refuse accumulating on the owner’s premises before it becomes a

nuisance. Any such accumulation remaining on any premises for a period of more than 30 days shall be deemed a nuisance and the City may proceed to abate such nuisances in accordance with the provisions of Chapter 50 or by initiating proper action in district court.

(Code of Iowa, Ch. 657)

105.04 HEALTH AND FIRE HAZARD. It is unlawful for any person to permit to accumulate on any premises, improved or vacant, or on any public place, such quantities of solid waste that constitute a health, sanitation or fire hazard.

105.05 OPEN BURNING RESTRICTED. No person shall allow, cause or permit open burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack without first obtaining a permit and conducting such burning in accordance with the *International Fire Code*.

105.06 SEPARATION OF YARD WASTE REQUIRED. All yard waste shall be separated by the owner or occupant from all other solid waste accumulated on the premises and shall be composted or burned on the premises. As used in this section, "yard waste" means any debris such as grass clippings, leaves, garden waste, brush, and trees. Yard waste does not include tree stumps.

105.07 LITTERING PROHIBITED. No person shall discard any litter onto or in any water or land, except that nothing in this section shall be construed to affect the authorized collection and discarding of such litter in or on areas or receptacles provided for such purpose. When litter is discarded from a motor vehicle, the driver of the motor vehicle shall be responsible for the act in any case where doubt exists as to which occupant of the motor vehicle actually discarded the litter.

(Code of Iowa, Sec. 455B.363)

105.08 TOXIC AND HAZARDOUS WASTE. No person shall deposit in a solid waste container or otherwise offer for collection any toxic or hazardous waste. Such materials shall be transported and disposed of as prescribed by the Director of the State Department of Natural Resources. As used in this section, "toxic and hazardous waste" means waste materials, including (but not limited to) poisons, pesticides, herbicides, acids, caustics, pathological waste, flammable or explosive materials, and similar harmful waste that requires special handling and that must be disposed of in such a manner as to conserve the environment and protect the public health and safety.

(IAC, 567-100.2)

(IAC, 567-102.13[2] and 400-27.14[2])

105.09 WASTE STORAGE CONTAINERS. Every person owning, managing, operating, leasing, or renting any premises, dwelling unit or any place where refuse accumulates shall provide and at all times maintain in good order and repair portable containers for refuse in accordance with the following:

1. Container Specifications. Waste storage containers shall comply with the following specifications:

- A. Residential. Residential waste containers, whether they are reusable, portable containers or heavy-duty disposable garbage bags, shall be of sufficient capacity, and leak-proof and waterproof. Disposable containers shall be securely fastened, and reusable containers shall be fitted with a fly-tight lid that shall be kept in place except when depositing or removing the

contents of the container. Reusable containers shall also be lightweight and of sturdy construction and have suitable lifting devices.

B. Commercial. Every person owning, managing, operating, leasing or renting any commercial premises where an excessive amount of refuse accumulates and where its storage in portable containers as required above is impractical, shall maintain metal bulk storage containers approved by the City.

2. Storage of Containers. Residential solid waste containers shall be stored upon the residential premises. Commercial solid waste containers shall be stored upon private property, unless the owner has been granted written permission from the City to use public property for such purposes. The storage site shall be well drained and fully accessible to collection equipment, public health personnel, and fire inspection personnel. All owners of residential and commercial premises shall be responsible for proper storage of all garbage and yard waste to prevent materials from being blown or scattered around neighboring yards and streets.

3. Location of Containers for Collection. Containers for the storage of solid waste awaiting collection shall be placed at the curb or alley line by the owner or occupant of the premises served. Containers or other solid waste placed at the curb line shall not be so placed more than 12 hours in advance of the regularly scheduled collection day and shall be promptly removed from the curb line following collection.

4. Nonconforming Containers. Solid waste placed in containers that are not in compliance with the provisions of this section will not be collected.

105.10 PROHIBITED PRACTICES. It is unlawful for any person to:

1. Unlawful Use of Containers. Deposit refuse in any solid waste containers not owned by such person without the written consent of the owner of such containers.

2. Interfere with Collectors. Interfere in any manner with solid waste collection equipment or with solid waste collectors in the lawful performance of their duties as such, whether such equipment or collectors be those of the City, or those of any other authorized waste collection service.

3. Incinerators. Burn rubbish or garbage except in incinerators designed for high temperature operation, in which solid, semisolid, liquid, or gaseous combustible refuse is ignited and burned efficiently, and from which the solid residues contain little or no combustible material, as acceptable to the Environmental Protection Commission.

4. Scavenging. Take or collect any solid waste that has been placed out for collection on any premises, unless such person is an authorized solid waste collector.

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CHAPTER 106

COLLECTION OF SOLID WASTE

106.01 Collection Service
106.02 Collection Vehicles
106.03 Loading

106.04 Frequency of Collection
106.05 Bulky Rubbish
106.06 Right of Entry

106.01 COLLECTION SERVICE. The collection of solid waste within the City shall be by private contract with collectors.

106.02 COLLECTION VEHICLES. Vehicles or containers used for the collection and transportation of garbage and similar putrescible waste or solid waste containing such materials shall be leak-proof, durable and of easily cleanable construction. They shall be cleaned to prevent nuisances, pollution, or insect breeding and shall be maintained in good repair.

(IAC, 567-104.9[455B])

106.03 LOADING. Vehicles or containers used for the collection and transportation of any solid waste shall be loaded and moved in such a manner that the contents will not fall, leak, or spill therefrom, and shall be covered to prevent blowing or loss of material. Where spillage does occur, the material shall be picked up immediately by the collector or transporter and returned to the vehicle or container and the area properly cleaned.

106.04 FREQUENCY OF COLLECTION. All solid waste shall be collected from residential premises at least once each week and from commercial, industrial and institutional premises as frequently as may be necessary, but not less than once each week.

106.05 BULKY RUBBISH. Bulky rubbish that is too large or heavy to be collected in the normal manner of other solid waste may be collected by the collector upon request in accordance with procedures established by the Council.

106.06 RIGHT OF ENTRY. Solid waste collectors are hereby authorized to enter upon private property for the purpose of collecting solid waste, as required by this chapter; however, solid waste collectors shall not enter dwelling units or other residential buildings.

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CHAPTER 107

COLLECTION OF RECYCLABLE MATERIALS

107.01 Definitions

107.02 Establishment of Recyclable Collection Program

107.03 Nonexclusive Agreement

107.04 Collection of Fees

107.05 Lien for Nonpayment

107.06 Cart Replacement Fees

107.01 DEFINITIONS. The following terms are defined as used in this chapter:

1. “Eligible residence” means all one-and two-family residences of the City with the exception of mobile home parks.
2. “Facility” means the facility designated by the City to which the hauler shall deliver all recyclable materials collected by the hauler.
3. “Non-recyclable material” means any material not defined as recyclable material.
4. “Recyclable material” means old newspapers (ONP), old corrugated containers (OCC), magazines, catalogs, junk mail, kraft bags, bimetal and ferrous cans, aluminum cans, clear glass containers, high density polyethylene (HDPE) and polyethylene terephthalate (PETE), whether alone or in combination, and any other material that may be added to this list by the City in the future.
5. “Set out” means the action, event or instance comprised of the proper placement of the home storage containers of recyclable material for collection at the eligible residences.

107.02 ESTABLISHMENT OF RECYCLABLE COLLECTION PROGRAM.

1. The City has entered into an agreement with the Metro Waste Authority. This agreement authorizes and directs the Metro Waste Authority to contract on behalf of the City for the collection of recyclable materials under the Metro Waste Authority’s “Curb-It” program. The costs for collection of this program will be borne by the City. The costs for the purchase of recyclable bins, the costs of educational programs instructing citizens as to the program, and the costs for processing the recyclables collected will be paid for by the Metro Waste Authority.
2. The hauler designated by Metro Waste Authority as the recyclable collection hauler will provide collection once per week of recyclable materials to all eligible residences under the terms and conditions of the contract executed between Metro Waste Authority and the designated hauler.

107.03 NONEXCLUSIVE AGREEMENT. Nothing in the agreement between Metro Waste Authority and the City and/or Metro Waste Authority and the designated hauler for recyclable material within the City shall be construed or interpreted to constitute the grant of a franchise or exclusive right to the designated hauler to collect all recyclable materials within the City.

107.04 COLLECTION OF FEES. The fee for the collection of recyclable materials from each eligible residence is \$2.85 per month. Such charges shall be due and payable under the same terms and conditions provided for payment of a combined service account as contained

in Section 92.03 of this Code of Ordinances. Service may be discontinued in accordance with the provisions contained in Section 92.04 if the combined service account becomes delinquent, and the provisions contained in Section 92.07 relating to lien notices shall also apply in the event of a delinquent account.

107.05 LIEN FOR NONPAYMENT. Except as provided for in Section 92.06 of this Code of Ordinances, the owner of the premises served and any lessee or tenant thereof shall be jointly and severally liable for recyclable collection fees for the premises. Any charges remaining unpaid and delinquent shall constitute a lien upon the property or premises served and shall be certified by the Clerk to the County Treasurer for collection in the same manner as property taxes.

(Code of Iowa, Sec. 384.84)

107.06 CART REPLACEMENT FEES. Each eligible residence shall pay the fees incurred for cart replacement and delivery associated with that eligible residence. Such charges shall be due and payable under the same terms and conditions as contained in Section 107.04.

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CHAPTER 110

NATURAL GAS FRANCHISE

110.01 Franchise Granted	110.08 Relocation Reimbursement
110.02 Rights and Privileges	110.09 Indemnification
110.03 Pipes and Mains	110.10 Information
110.04 Construction and Maintenance	110.11 Applicable Regulations
110.05 Excavations	110.12 Franchise Fee
110.06 Utility Easements	110.13 Management Fees
110.07 Relocation not Required	110.14 Termination

110.01 FRANCHISE GRANTED. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, (hereinafter called “Company”,) and to its successors and assigns the right and franchise to acquire, construct, erect, maintain and operate in the City of Elkhart, Iowa, (hereinafter called the “City”), a gas distribution system, to furnish natural gas along, under and upon the right-of-way, streets, avenues, alleys and public places to serve customers within and without the City and to furnish and sell natural gas to the City and its inhabitants. For the term of this franchise, the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company. This franchise shall be effective for a twenty-five (25) year period from and after the effective date of this ordinance.[†]

110.02 RIGHTS AND PRIVILEGES. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa 2017 or as subsequently amended or changed.

110.03 PIPES AND MAINS. Company shall have the right to excavate in any public street for the purpose of laying, relaying, repairing or extending gas pipes, mains, conduits, and other facilities provided that the same shall be so placed as not to unreasonably interfere with any above or below-ground utility services or facilities which have been or may hereafter be located by or under authority of the City.

110.04 CONSTRUCTION AND MAINTENANCE. The Company shall, excluding facilities located in private easements (whether titled in Company exclusively or in Company and other entities), in accordance with Iowa law including Company’s tariff on file with and made effective by the Iowa Utilities Board as may subsequently be amended (“Tariff,”) at its cost and expense, locate and relocate its existing facilities or equipment in, on, over or under any public street or alley in the City in such a manner as the City may reasonably require for the purposes of facilitating the construction reconstruction, maintenance or repair of the street or alley. Relocation expenses for other hard surfaces, including pedestrian and non-motorized vehicle pathways, will be paid by the City. If the City has a reasonable alternative route for the street, alley or public improvements or an alternative construction method, which would not cause the relocation of the Company installations, the City shall select said alternative route, or construction method. The City shall be responsible for surveying and staking the

[†] **EDITOR’S NOTE:** Ordinance No. 2017-07, adopting a natural gas franchise for the City, was passed and adopted on August 21, 2017.

right-of-way for City projects that require the Company to relocate Company facilities. If requested the City shall provide, at no cost to the Company, copies of its relocation plan and profile and cross section drawings. If tree and vegetation removal must be completed by the City as part of the City's project and are necessary whether or not utility facilities must be relocated, the City at its own cost shall be responsible for said removals. If the timing of the tree/vegetation removal does not coincide with the Company facilities relocation schedule and Company must remove trees/vegetation that are included in the City's portion of the project, the City shall either remove the material at its cost or reimburse the Company for the expenses incurred to remove said vegetation or trees. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall attempt to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

110.05 EXCAVATIONS. In making excavations in any streets, avenues, alleys and public places for the installation of gas pipes, conduits or apparatus, Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring it to the condition as existed immediately prior to excavation. Company agrees any replacement of road surface shall conform to current City code regarding its depth and composition. The Company shall not be required to restore or modify public right-of-way, sidewalks or other areas in or adjacent to the Company project to a condition superior to its immediate previously existing condition or to a condition exceeding its previously existing condition to the extent any alterations are required for the City to comply with city, state or federal rules, regulations or laws.

110.06 UTILITY EASEMENTS. The City's vacating a street, avenue, alley, public ground or public right-of-way shall not deprive the Company of its right to operate and maintain existing facilities on, below, above, or beneath the vacated property. Prior to the City abandoning or vacating any street, avenue, alley or public ground where the Company has facilities in the vicinity, the City shall provide Company with not less than sixty (60) days advance notice of the City's proposed action and, upon request grant the Company a utility easement covering existing and future facilities and activities. If the City fails to grant the Company a utility easement for said facilities prior to abandoning or vacating a street, avenue, alley or public ground, the City shall at its cost and expense obtain easements for the existing Company facilities.

110.07 RELOCATION NOT REQUIRED. The Company shall not be required to relocate, at its cost and expense, Company facilities in the public right-of-way that have been relocated at Company expense at the direction of the City in the previous 10 years.

110.08 RELOCATION REIMBURSEMENT. Pursuant to relocation of Company facilities as may be required here under, if the City orders or requests the Company to relocate its existing facilities or equipment in order to directly or indirectly facilitate the project of a commercial or private developer or other non-public entity, City shall reimburse or the City shall require the developer or non-public entity to reimburse the Company for the cost of such relocation as a precondition to relocation. The Company shall not be required to relocate in order to facilitate such private project at its expense.

110.09 INDEMNIFICATION. The Company shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs or expenses, on account of injury or damage to any person or property, to the extent caused or occasioned by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the

natural gas facilities authorized by this franchise; provided, however, that the Company shall not be obligated to defend, indemnify and save harmless the City for any costs or damages to the extent arising from the negligence of the City, its officers, employees or agents.

110.10 INFORMATION. Upon reasonable request, the Company shall provide the City, on a project specific basis, information indicating the horizontal location, relative to boundaries of the right of way, of all equipment which it owns or over which it has control that is located in the public right of way, including documents, maps and other information in paper or electronic or other forms ("Information"). The Company and City recognize the Information may in whole or part be considered a confidential record under state or federal law or both. Upon receipt of a request from a third party for information concerning information about the Company's facilities within the City, the City will promptly submit same to Company. If the Company believes any of the information requested constitutes a trade secret which may otherwise be protected from public disclosure by state or federal law, or otherwise exempt from disclosure under the provisions of the Freedom of Information Act, the Federal Energy Regulatory Commission Critical Energy Infrastructure requirements pursuant to 18 CFR 388.112 and 388.113, or Chapter 22 of the Code of Iowa, as such statutes and regulations may be amended from time to time, then the Company shall provide the City with a written explanation of the basis for such assertion of confidentiality or exemption from disclosure within ten (10) days.

110.11 APPLICABLE REGULATIONS. The Company shall extend its mains and pipes and operate, and maintain the system in accordance with the applicable regulations of the Iowa Utilities Board or its successors and Iowa law. During the term of this franchise, the Company shall furnish natural gas in the quantity and quality consistent and in accordance with the applicable regulations of the Iowa Utilities Board the Company's tariff made effective by the Iowa Utilities Board or its successors and Iowa law. All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Company.

110.12 FRANCHISE FEE. A franchise fee of zero percent is imposed upon, and shall be collected from, the natural gas customers of the Company receiving service and located within the corporate limits of the City. The franchise fee shall be imposed upon the gross receipts, minus uncollectible accounts, generated from sales of natural gas and distribution service:

1. The City agrees to modify the level of franchise fees imposed only once in any 24-month period.
2. The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following 90 days of receipt of information required of the City to implement the franchise fee, including the City's documentation of customer classes subject to or exempted from City-imposed franchise fee.
3. The City shall be solely responsible for identifying customer classes subject to or exempt from paying the City imposed franchise fee. The Company shall have no obligation to collect franchise fees from customers in annexed areas until and unless such ordinances have been provided to the Company by certified mail. The Company shall commence collecting franchise fees in the annexed areas no sooner than 60 days after receiving annexation ordinances from the City.
4. The Company shall not, under any circumstances be required to return or refund any franchise fees that have been collected from customers and remitted to the

City. In the event the Company is required to provide data or information in defense of the City's imposition of franchise fees or the Company is required to assist the City in identifying customers or calculating any franchise fee refunds for groups of or individual customers the City shall reimburse the Company for the expenses incurred by the Company to provide such data or information

110.13 MANAGEMENT FEES. Upon implementation of a franchise fee the City shall not, pursuant to Chapter 480A.6 of the *Code of Iowa*, impose or charge Company right-of-way management fees for permits for Company construction, maintenance, repairs, excavation, pavement cutting, or inspections of Company work sites and projects or related matters.

110.14 TERMINATION. Either City or Company ("party") may terminate this franchise if the other party shall be materially in breach of its provisions. Upon the occurrence of a material breach, the non-breaching party shall provide the breaching party with notification by certified mail specifying the alleged breach. The breaching party shall have 60 days to cure the breach, unless it notifies the non-breaching party, and the parties agree upon a shorter or longer period for cure. If the breach is not cured within the cure period, the non-breaching party may terminate this franchise. A party shall not be considered to be in breach of this franchise if it has operated in compliance with State or federal law. A party shall not be considered to have breached this franchise if the alleged breach is the result of the actions of a third party or the other party.

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CHAPTER 111

ELECTRIC FRANCHISE

111.01 Franchise Granted	111.09 Indemnification
111.02 Rights and Privileges	111.10 Trimming Trees
111.03 Poles and Wires	111.11 Information
111.04 Construction and Maintenance	111.12 Applicable Regulations
111.05 Excavations	111.13 Franchise Fee
111.06 Utility Easements	111.14 Management Fees
111.07 Relocation not Required	111.15 Binding Agreement
111.08 Relocation Reimbursement	111.16 Termination

111.01 FRANCHISE GRANTED. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, (hereinafter called “Company”), and its successors and assigns, the right and non-exclusive franchise to acquire, construct, erect, maintain and operate in the City of Elkhart, Iowa, (hereinafter called the “City”), a system for the transmission and distribution of electric energy and communications signals along, under, over and upon the streets, avenues, rights of way and alleys to serve customers within the City, and to furnish and sell electric energy to the City and its inhabitants. The Company is granted the right to exercise of powers of eminent domain, subject to City Council approval. This franchise shall be effective for a twenty-five (25) year period from and after the effective date of this ordinance.[†]

111.02 RIGHTS AND PRIVILEGES. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa*, 2017, or as subsequently amended or changed.

111.03 POLES AND WIRES. The Company shall have the right to erect all necessary poles and to place thereon the necessary wires, fixtures and accessories as well as to excavate and bury conduits or conductors for the distribution of electric energy and communications signals in and through the City, provided the same shall be placed in accord with this franchise and City code regulations of the City, regarding the placement of structures, facilities, accessories or other objects in the right of way, including ordinances which assign corridors or other placements to users of the right of way and requirements which may be adopted regarding separation of structures, facilities, accessories or other objects.

111.04 CONSTRUCTION AND MAINTENANCE. The Company shall, excluding facilities located in private easements (whether titled in Company exclusively or in Company and other entities), in accordance with Iowa law including Company’s Tariff on file with and made effective by the Iowa Utilities Board as may subsequently be amended (“Tariff”), at its cost and expense, locate and relocate its existing installations located in, on, over or under the right-of-way of any public street, right of way or alley in the City in such a manner as the City may require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street right of way or alley. If the City has a reasonable alternative route for the street, right of way or alley or an alternative construction method, which would not cause the

[†] **EDITOR’S NOTE:** Ordinance No. 2017-08, adopting an electric franchise for the City, was passed and adopted on August 21, 2017.

relocation of Company installations or would minimize the cost or expense of relocation of Company installations, the City and Company shall work together to consider said alternative route or construction method. The City shall, in the extension or modification of streets and roads, make provision for the placement of company service lines and facilities on City-owned right of way without charge to Company. In planning for the extension or modification of streets, the City shall, to the extent practicable design such changes to limit the need for relocation of Company facilities. The City shall be responsible for surveying and staking the right-of-way for City projects that require the Company to relocate Company facilities. If requested, the City shall provide, at no cost to the Company, copies of the relocation plan and profile and cross section drawings. If vegetation and tree removals must be completed by the City as part of the City's project and are necessary whether or not utility facilities must be relocated, the City at its own cost shall be responsible for said removals. If the timing of vegetation and tree removals does not coincide with Company's facilities relocation schedule and the Company must remove vegetation and trees that are included in the City's portion of the project, the City shall either remove them or reimburse the Company for the expenses incurred to remove said materials. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall use its best efforts to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

111.05 EXCAVATIONS. In making excavations in any streets, avenues and public places for the installation, maintenance or repair of conductor, conduits or the erection of poles and wires or other appliances, the Company shall not unreasonably obstruct the use of the streets. The Company in making such excavations shall, if required by ordinance, obtain a City permit therefore and provide City representatives with advance notice prior to the actual commencement of the work, and shall comply with all provisions and requirements of the City in its regulation of the use of City right of way in performing such work. In emergencies which require immediate excavation, the Company may proceed with the work without first applying for or obtaining the permit, provided, however, that Company shall apply for and obtain the excavation permit as soon as possible after commencing such emergency work. The Company shall comply with all provisions and requirements of the City in its regulation of the use of City right of way in performing such work. The Company shall comply with all City ordinances regarding paving cuts, placement of facilities and restoration of pavement and other public infrastructure. The Company shall replace the surface, restoring the condition as existed prior to the Company's excavation but shall not be required to improve or modify the public right of way, sidewalks or other areas in or adjacent to the Company project to a condition superior to its immediate previously existing condition. Company shall complete all repairs in a timely manner. Company agrees any replacement of road surface shall conform to current City ordinances regarding its depth and composition.

111.06 UTILITY EASEMENTS. Vacating a street, avenue, alley, public ground or public right-of-way shall not deprive the Company of its right to operate and maintain existing facilities and their replacements on, below, above, or beneath the vacated property. Prior to the City abandoning or vacating any street, avenue, alley or public ground where the Company has electric facilities, the City shall grant the Company a utility easement for said facilities.

111.07 RELOCATION NOT REQUIRED. The Company shall not be required to relocate, at its cost and expense, Company facilities in the public right-of-way that have been relocated at Company expense at the direction of the City in the previous ten years.

111.08 RELOCATION REIMBURSEMENT. Pursuant to relocation of Company facilities, if the City orders or requests the Company to relocate its existing facilities or equipment in order to directly facilitate a project for the primary benefit of a commercial or private developer or other non-public entity, the City shall require the developer or non-public entity to reimburse the Company for the cost of such relocation as a precondition to relocation of its existing facilities or equipment. The Company shall not be required to relocate in order to facilitate such private project at its expense.

111.09 INDEMNIFICATION. The Company shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs or expenses, on account of injury or damage to any person or property, to the extent caused or occasioned by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the electric facilities authorized by this franchise; provided, however, that the Company shall not be obligated to defend, indemnify and save harmless the City for any costs or damages to the extent arising from the negligence of the City, its officers, employees or agents.

111.10 TRIMMING TREES. The pruning and removal of vegetation and trees shall be done in accordance with current nationally accepted safety and utility industry standards and federal and state law, rules and regulations. The Company is authorized and empowered to prune or remove at Company expense, any tree extending into any street, avenue, right-of-way, alley, public place or public grounds to maintain electric reliability, safety, to restore utility service and to prevent limbs, branches, or trunks from interfering with the wires and facilities of the Company. The pruning and removal of vegetation and trees shall be completed in accordance with nationally accepted safety and utility standards, NSI Z133.1-2012, American National Standard for Arboricultural Operations-Safety Requirements, and ANSI A300 (part 1) - 2008 Pruning, (Revision of ANSI A300 part 1-2001) American National Standard for Tree, Shrub, and other Woody Plant Management - Standard of Practices (Pruning) or subsequent revisions to these standards, and City ordinances regarding the pruning of trees that incorporate by reference that standard.

111.11 INFORMATION. Upon reasonable request, the Company shall provide the City, on a project specific basis, information indicating the horizontal location, relative to boundaries of the right-of-way, of all equipment which it owns or over which it has control that is located in City right-of-way, including documents, maps and other information in paper or electronic or other forms ("Information.") The Company and City recognize the Information may in whole or part be considered a confidential record under state or federal law or both. Therefore, City shall not release any Information without prior consent of the Company and shall return the Information to Company upon request. City recognizes that Company claims the Information may constitute a trade secret or is otherwise protected from public disclosure by state or federal law on other grounds, and agrees to retain the Information in its non-public files. Furthermore, the City agrees that no documents, maps or other Information provided to the City by the Company shall be made available to the public or other entities if such documents or Information are exempt from disclosure under the provisions of the Freedom of Information Act, the Federal Energy Regulatory Commission Critical Energy Infrastructure requirements pursuant to 18 CFR and 388.113, or Chapter 22 of the Code of Iowa, as such statutes and regulations may be amended from time to time. In the event any action at law, in equity or administrative is brought against the City regarding disclosure of any document which the Company has designated as a trade secret or as otherwise protected from disclosure, the Company shall assume, upon request of the City, the defense of said action and reimburse the City any and all costs, including attorney fees and penalties to the extent allowed by law.

111.12 APPLICABLE REGULATIONS. The Company shall construct, operate and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors and Iowa law. During the term of this franchise, the Company shall furnish electric energy in the quantity and quality consistent with and in accordance with the applicable regulations of the Iowa Utilities Board, the Company's tariff and made effective by the Iowa Utilities Board or its successors and Iowa law.

111.13 FRANCHISE FEE. There is hereby imposed upon the customers a franchise fee of zero percent upon the gross revenues, minus uncollectible accounts, generated from sales of electricity and distribution service, pursuant to the Tariff, by the Company within the corporate limits of the City. The franchise fee shall be remitted by the Company to the City on or before the last business day of the calendar quarter following the close of the calendar quarter in which the franchise fee is charged;

1. The City agrees to modify the level of franchise fees imposed only once in any 24-month period.
2. The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following ninety (90) days of receipt of information required of the City to implement the franchise fee, including the City's documentation of customer classes subject to or exempted from City-imposed franchise fee.
3. The City shall be solely responsible for identifying customer classes subject to or exempt from paying the City imposed franchise fee. The Company shall have no obligation to collect franchise fees from customers in annexed areas until and unless such ordinances have been provided to the Company by certified mail. The Company shall commence collecting franchise fees in the annexed areas no sooner than sixty (60) days after receiving annexation ordinances from the City.
4. The Company shall not, under any circumstances be required to return or refund any franchise fees that have been collected from customers and remitted to the City. In the event the Company is required to provide data or information in defense of the City's imposition of franchise fees or the Company is required to assist the City in identifying customers or calculating any franchise fee refunds for groups of or individual customers the City shall reimburse the Company for the expenses incurred by the Company to provide such data or information.

111.14 MANAGEMENT FEES. The City shall not, pursuant to Chapter 480A.6 of the *Code of Iowa*, impose or charge right-of-way management fees upon the Company or fees for permits for Company construction, maintenance, repairs, excavation, pavement cutting or inspections of Company work sites and projects or related matters.

111.15 BINDING AGREEMENT. This franchise shall apply to and bind the City and Company and their successors and assigns.

111.16 TERMINATION. Either City or Company ("party") may terminate this franchise if the other party shall be materially in breach of its provisions. Upon the occurrence of a material breach, the non-breaching party shall provide the breaching party with notification by certified mail specifying the alleged breach. The breaching party shall have 60 days to cure the breach, unless it notifies the non-breaching party, and the parties agree upon a longer period for cure. If the breach is not cured within the cure period, the non-breaching party may

terminate

this

franchise. A party shall not be considered to be in breach of this franchise if it has operated in compliance with state or federal law. A party shall not be considered to have breached this franchise if the alleged breach is the result of the actions of a third party or the other party.

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CHAPTER 112

CABLE TELEVISION FRANCHISE

112.01 Renewal of Franchise

112.03 Ownership of Franchise

112.02 Effective Date of Franchise

112.01 RENEWAL OF FRANCHISE. By Ordinance No. 89-1 and 89-1-A adopted 2-26-1989, the City previously granted to Valley Cable Systems, Inc., its successors and assigns, a franchise to establish, construct, operate, maintain, repair, replace, renew, reconstruct, and remove a cable television system across public property in the City limits. Said ordinance provided for an initial term of 25 years and was approved at an election held February 6, 1989. The franchise was assigned by Valley Cable Systems, Inc. to Walnut Creek Communications, Inc. by Assignment dated May 26, 1993. Walnut Creek Communications, Inc. subsequently changed its name to Huxley Communications Corp (the "Company"). The City hereby grants to the Company a renewal of said franchise for an additional period of 25 years. By accepting this renewal, the Company agrees that it will operate the cable television system in accordance with the laws and regulations of the United States of America and the State of Iowa and the ordinances and regulations of the City.

112.02 EFFECTIVE DATE OF FRANCHISE. This franchise shall be in full force and effect from and after the passage and publication of the ordinance codified in this chapter, as required by law, and after the receipt by the City Clerk of a written statement from Company which must be received within 30 days of the publication of such ordinance stating that the Company unconditionally accepts the franchise renewal and covenants to faithfully comply with and abide by all the provisions, terms and conditions of this chapter.

112.03 OWNERSHIP OF FRANCHISE. The Company shall not assign or transfer any right granted under this chapter to any other person, company or corporation without prior consent of the City Council, which consent shall not be unreasonably withheld, provided that the Company shall have the right to assign this franchise to an affiliated entity.

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CHAPTER 113

CABLE TELEVISION REGULATIONS

113.01 Purpose	113.12 System Construction, Maintenance and Procedures
113.02 Definitions	113.13 Line Extensions
113.03 Granting of Franchise	113.14 City Rights
113.04 Compliance Required Generally	113.15 Payments to City
113.05 National Electric Safety Code	113.16 Rates and Charges
113.06 FCC Regulations	113.17 Record Keeping
113.07 Modification of FCC Rules	113.18 Service Procedures
113.08 Transfer	113.19 Protection of Privacy
113.09 Company Rules and Regulations	113.20 Program Content Restrictions
113.10 Franchise Term	113.21 Liability and Indemnification
113.11 Franchise Renewal	113.22 Activities Prohibited

113.01 PURPOSE. The purpose of this chapter is to provide regulatory provisions of cable television systems in the City.

113.02 DEFINITIONS. The following words and phrases, when used herein, shall, for the purposes of this chapter, have the meanings ascribed to them in this section:

1. “Company” means Huxley Communications, an Iowa corporation with its offices in Huxley, Iowa, the grantee of rights under the regulatory ordinance codified in this chapter.
2. “Federal Communications Commission” or “FCC” means the Federal agency by that name as constituted by the Communications Act of 1934, as amended.
3. “Gross subscriber revenues” means only those revenues derived from the monthly service charges paid by subscribers located within the City for regular cable television reception service, which service includes only the transmission of broadcast signals and the programming presented on the required access and origination channels, if any. Gross subscriber revenues shall not include any revenues received:
 - A. As reimbursement of expenses in the operation of any access channels;
 - B. As advertising payments;
 - C. From the leasing of cable channels;
 - D. From programs for which a per-channel, per-program or tier charge is made; and
 - E. From furnishing other communications and nonbroadcast services either directly or as a carrier for another party or any other income derived from the system. Gross subscriber revenues shall also not include revenues received as installation charges and fees for reconnections, inspections, repairs or modifications of any installments.
4. “System” means the lines, fixtures, equipment, attachments and appurtenances thereto which are used in the construction, operation and maintenance of the cable television system authorized by this chapter.

113.03 GRANTING OF FRANCHISE. The regulatory ordinance codified herein which grants to the Company the nonexclusive right to construct, operate and maintain a cable television system in the City was passed and adopted by the Council after a full, open and public proceeding. The proceeding was held after public notice was given and afforded all interested parties the opportunity to comment. Therefore, the City grants to the Company a nonexclusive franchise, right and privilege to construct, erect, operate, modify and maintain in, upon, among, across, above and over and under the highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in the City, for poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a cable television system for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, data, telephone and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways and public places and all manner of easements for the purposes set forth in this chapter.

113.04 COMPLIANCE REQUIRED GENERALLY. The Company shall, at all times during the life of the regulatory ordinance codified in this chapter, be subject to all lawful exercise of the police power by the City and to such reasonable regulations as the City shall hereafter by resolution or ordinance provide. The construction, operation and maintenance of the system by the Company shall be in full compliance with such portions of the *National Electrical Safety Code* as may be applicable and as the same may be amended and revised from time to time, and in full compliance with all other applicable rules and regulations now in effect or hereafter adopted by the Federal Communications Commission, the City or any other agency of the State or the United States, which may hereafter acquire jurisdiction of the operations of the Company authorized in this chapter.

113.05 NATIONAL ELECTRIC SAFETY CODE. All facilities and equipment of the Company shall be constructed and maintained in accordance with the requirements of the *National Electrical Safety Code*.

113.06 FCC REGULATIONS. The Company shall, at all times, comply with the rules and regulations of the FCC governing CATV operations.

113.07 MODIFICATION OF FCC RULES. Consistent with the requirements of Rule 76.31 (a)(6) of the FCC, any modification of Rule 76.31 resulting from amendment thereto by the FCC shall be incorporated in this chapter by specific amendment thereto by lawful action of the Council within one year from the effective date of the FCC's amendment.

113.08 TRANSFER. The Company shall not sell or transfer any rights granted under this chapter to another without written notice and approval by the City; provided, that such approval shall not be unreasonably withheld if the Company or assignee has filed with the City an instrument duly executed, reciting the fact of such sale, assignment, accepting the terms of this chapter and agreeing to perform all conditions thereof. The Company shall have the right, without the consent of the City, to assign or transfer the franchise to a corporation owned by the Company or to a limited partnership of which the Company is a partner, general partner or affiliate. No consent by the Council shall be required for a transfer in trust, mortgage or other financial instrument to secure an indebtedness of the Cable System or Company.

113.09 COMPANY RULES AND REGULATIONS. The Company shall have the authority to establish such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this chapter and to assure uninterrupted service to each and all of its subscribers.

113.10 FRANCHISE TERM. The franchise granted under this chapter shall terminate 25 years from the date of grant, subject to renewal for additional 25-year periods of duration on the same terms and conditions as contained in this chapter, as are consistent with the requirements of Rule 76.31 of the FCC or as amended by the FCC. If the Company has reasonably performed to the requirements and conditions of this chapter, the City will not unreasonably withhold granting a renewal of the franchise to the Company.

113.11 FRANCHISE RENEWAL. The Company shall be a party to any proceedings in which its rights, privileges or interests would be affected and shall be fully entitled to such due process rights as may be available under applicable laws, ordinances, rules and regulations.

113.12 SYSTEM CONSTRUCTION, MAINTENANCE AND PROCEDURES.

1. In furtherance of the Company's execution of contracts with public utility companies, the Company may obtain right-of-way permits from appropriate State, County and Federal officials necessary to cross highways or roads to supply main trunk lines from the Company's receiving antennas. The Company shall construct its cable system using material of good and durable quality and all work involved in the construction, installation, maintenance and repair of the cable system shall be performed in a safe, thorough and reliable manner. Any municipal property damaged or destroyed shall be promptly repaired or replaced by the Company.
2. In the event that the City elects to alter or change the grade of any street, alley or other public way, the Company, upon notice by the City, shall remove, relay or relocate its wires, cables and other fixtures at its own expense.
3. The Company shall, on the request of any person holding a building moving permit issued by the City temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same and the Company shall have the authority to require such payment in advance. The Company shall be given no less than 48 hours' advance notice to arrange for such temporary wire changes.
4. The Company shall provide, upon request and without charge, service to any municipal buildings owned and operated by the City and to any public elementary or secondary school if located in the City where cable is already installed to service others. This shall mean only an energized cable to such building. The cost of any internal wiring shall be borne by the institution.

113.13 LINE EXTENSIONS. It shall be the obligation of the Company to serve all residents of the City except to the extent that density of homes, adverse terrain or other factors render providing service impracticable, technically infeasible or economically noncompensatory to the Company. For purposes of determining compliance with the provisions of this section, the Company shall extend service to new subscribers at the normal installation charge and monthly rate for customers of that classification where there is an average of forty-five (45) homes per each linear mile of new main cable construction.

Extensions of service shall be required only on a basis which is reasonable and compensatory to the Company and as determined by the Company.

113.14 CITY RIGHTS.

1. City Rules. The right is reserved by the City to adopt, in addition to the provisions contained in this chapter, such additional regulations as it shall find necessary in the exercise of its police power; provided, that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights granted in this chapter, and shall not be in conflict with the applicable laws of the State or the United States or any FCC regulations.
2. Emergency. In the case of any emergency, the Company shall, upon request of the City, make available its facilities to the City for emergency use during the emergency period.
3. Liability. The City shall not be liable for any damage occurring to the property of the Company caused by employees of the City in the performance of their duties. The City shall not be liable for the interruption of service by actions of City employees in the performance of their duties, nor shall the City be liable for the failure of the Company to be able to perform normal services due to acts of God or other factors beyond the control of the City.
4. No Property Right. Nothing in this chapter shall grant to the Company any right of property in the City-owned property.
5. Construction Approval by City. The City shall have the right to inspect the construction, operation and maintenance of the system by the Company.
6. Correction of Defects. In the event the Company should violate any of the terms of this chapter, the City shall immediately give to the Company 60 days' written notice to correct such violation and in the event the Company does not make such correction within 60 days after the receipt of such written notice, the City may make such correction itself and charge the cost of same to the Company, and the Company shall pay such charges.

113.15 PAYMENTS TO THE CITY. The Company shall, commencing one year from the date of the first service and during each year of operation under the franchise, pay to the City three percent of the annual gross subscriber revenues received by the Company for regular monthly cable television services rendered to customers located within the City. At the time of this annual payment, the Company shall furnish to the City a report showing the cable television system's annual gross subscriber revenues for the period that payment is being made. All payments as required by the Company to the City shall be made semiannually and shall be due 45 days after the close of the six-month period.

113.16 RATES AND CHARGES.

1. For the purpose of this section, "basic monthly cable television service" is the provision of television broadcast signals and access and origination channels, if any, and does not include advertising services, rental of studios or equipment, provision of program production services, tiered channels, per-channel or per-program charges to subscribers ("pay cable"), rental of channels, sale of channel time, provision of commercial services such as security systems, or any other services of the system, the rate and charges for which shall not require approval by the City.

2. In consideration for services rendered to subscribers, the Company shall have the right to charge and collect reasonable and just compensation which shall reflect, among other things, the Company's need to attract new capital and provide a reasonable return on invested capital. The Company and the City agree that rates charged to subscribers are no longer subject to regulation by local government. The Federal Cable Communications Policy Act deregulated cable television.

113.17 RECORD KEEPING. The Company shall keep accurate and current maps and plans of the system, and these items shall be made available to the City.

113.18 SERVICE PROCEDURES. During the term of the franchise, a toll-free telephone number shall be provided by the Company to receive complaints regarding quality of service, equipment malfunctions and similar matters. The office shall be open to receive inquiries or complaints from subscribers during normal business hours, Monday through Friday.

1. Any complaints from subscribers shall be investigated and acted upon as soon as possible, but at least within five business days of their receipt. The Company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received.

2. The Company shall by appropriate means, such as a card or brochure, as subscribers are connected or reconnected to the system, furnish information concerning the procedures for making inquiries and/or complaints, including the name, address and toll-free telephone number of the Company.

3. The equipment installed by the Company in the subscriber's home shall remain the property of the Company, and shall be subject to reasonable inspection and service by the Company at reasonable hours, and removal upon nonpayment or termination of the service.

4. In the event that any subscriber fails to meet his or her obligations for payment for CATV service and to meet reasonable Company rules and regulations, the Company shall have the right to withhold or deny or disconnect CATV services to such subscriber.

113.19 PROTECTION OF PRIVACY. The Company shall not permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from subscriber's premises of two-way services utilizing aural, visual or digital signals without first obtaining permission of the subscriber. It is unlawful for any person to attach or affix or cause to be attached or affixed any equipment or device which allows access or use of the cable television service without payment to the Company for same. Such action shall be a simple misdemeanor.

113.20 PROGRAM CONTENT RESTRICTIONS. In addition to providing basic cable television service consisting of broadcast and automated signals, the Company may offer subscribers optional services on a per-program or per-channel basis. However, the Company shall not display X-rated motion pictures either as part of its basic cable or pay cable services.

113.21 LIABILITY AND INDEMNIFICATION. The Company shall indemnify the City and hold it harmless from all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to this chapter. The City shall notify the Company's representative within 15 days after the presentation of any claim or demand to the City, either by suit, or otherwise, made against the

City on account of any negligence or contract as aforesaid on the part of the Company. The Company agrees as follows:

1. The Company shall carry Worker's Compensation insurance with statutory limits and Employers' Liability insurance with limits of not less than \$100,000.00 which shall cover all operations to be performed by the Company as a result of this chapter.
2. The amounts of insurance to be carried for liability due to property damage shall be \$100,000.00 as to any one occurrence and against liability due to injury or death of persons and \$100,000.00 as to any one person and \$500,000.00 as to any one occurrence.
3. Company's Worker's Compensation, Comprehensive General Liability and Comprehensive Automobile Liability insurance shall be written by an insurance Company authorized to do business in the State. Company agrees to furnish the City with certificates of insurance of said policies.

113.22 ACTIVITIES PROHIBITED.

1. The Company shall not allow its cable or other operations to interfere with television reception of others or the operation of the various utilities serving the residents of the City.
2. No person, whether or not a subscriber to the cable system, may intentionally or knowingly damage or cause to be damaged any wire, cable, conduit, equipment or apparatus of the Company or commit any act with intent to cause such damage or to tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus or appurtenances of the Company with the intent to obtain a signal or impulse from the cable system without authorization from or compensation to the Company, or to obtain cable television or other communications service with intent to cheat or defraud the Company of any lawful charge to which it is entitled.

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CHAPTER 115

CEMETERY

115.01 Definition

115.02 Records

115.03 Sale of Interment Rights

115.04 Rules and Regulations

115.05 Council Member in Charge

115.06 Cemetery Advisory Committee

115.07 Burial of Remains

115.01 DEFINITION. The term “cemetery” means the Elkhart Cemetery, which is a municipal cemetery under the provisions of Chapter 523I of the *Code of Iowa* and which shall be operated under the provisions of Chapter 523I of the *Code of Iowa* and this chapter. The description of the land comprising the cemetery is as follows:

Approximately three and forty-three hundredths (3.43) acres located in the Northeast Quarter (NE¼) of the Northwest Quarter (NW¼) of Section Thirty-four (34), Township Eighty-one (81) North, Range Twenty-three (23), West of the 5th P.M., Elkhart Township, Polk County, Iowa.

(Code of Iowa, Sec. 523I.501)

115.02 RECORDS. It is the duty of the Clerk to make and keep complete records identifying the owners of all interment rights sold by the cemetery and historical information regarding any transfers of ownership. The records shall include all of the following:

(Code of Iowa, Sec. 523I.311)

1. Sales or Transfers of Interment Rights.
 - A. The name and last known address of each owner or previous owner of interment rights.
 - B. The date of each purchase or transfer of interment rights.
 - C. A unique numeric or alphanumeric identifier that identifies the location of each interment space sold by the cemetery.
2. Interments.
 - A. The date the remains are interred.
 - B. The name, date of birth and date of death of the decedent interred, if those facts can be conveniently obtained.
 - C. A unique numeric or alphanumeric identifier that identifies the location of each interment space where the remains are interred.

115.03 SALE OF INTERMENT RIGHTS. The sale or transfer of interment rights in the cemetery shall be evidenced by a certificate of interment rights or other instrument evidencing the conveyance of exclusive rights of interment upon payment in full of the purchase price. The agreement for interment rights shall disclose all information required by Chapter 523I of the *Code of Iowa*. The payment of all fees and charges shall be made at the office of the Clerk where receipts will be issued for all amounts paid. Said fees and charges shall be based upon the charges as established by resolution of the Council.

(Code of Iowa, Sec. 523I.310)

115.09 RULES AND REGULATIONS. Rules and regulations for the cemetery may be adopted, and may be amended from time to time, by resolution of the Council and may cover such things as the use, care, control, management, restrictions and protection of the cemetery as necessary for the proper conduct of the business of the cemetery. The rules shall specify the cemetery's obligations in the event that interment spaces, memorials, or memorializations are damaged or defaced by acts of vandalism. Any veteran, as defined in Section 35.1 of the *Code of Iowa*, who is a landowner or who lives within the City shall be allowed to purchase an interment space and to be interred within the cemetery. In addition, any veteran who purchases an interment space within the cemetery shall be allowed to purchase an interment space for interment of the spouse of the veteran if such a space is available, and the surviving spouse of a veteran interred within the cemetery shall be allowed to purchase an interment space and be interred within the cemetery if such a space is available.

(Code of Iowa, Sec. 523I.304)

115.05 COUNCIL MEMBER IN CHARGE. At its first meeting in January of each year or as soon thereafter as may be, the Mayor shall designate a Council member in charge of Parks and Cemetery, who shall attend to the work of maintaining the grounds and shall have general charge of the same under the general supervision of the City Council. The duties of the Council member are as follows:

1. The Council member in charge of Parks and Cemetery shall be familiar with State law and the rules of the Iowa Department of Public Health in regard to the burial and disposal of dead bodies and shall see that all such laws and rules are strictly complied with.
2. The Council member in charge of Parks and Cemetery, at the first regular meeting of the Council in April of each year, shall make a full and detailed report of the past fiscal year and of all actions taken during the year, and shall attach to said report a complete list of all municipal property in possession of said Council member.
3. The Council member in charge of Parks and Cemetery shall have such other powers and shall perform such other duties as may be provided by the Council, the Ordinances, or the laws of the State.

115.06 CEMETERY ADVISORY COMMITTEE. There is hereby created the Elkhart Community Cemetery Advisory Committee. The object of such committee is to act as an advisory group to the Council member in charge of the cemetery and to assist with beautification and improvement projects for the cemetery.

1. The Committee shall consist of a Chairperson and such assistants and volunteers as may, from time to time, be deemed necessary for the effective operation of the Committee. The membership of the Committee shall consist of such persons who are interested in serving on the committee.
2. The Chairperson shall be accountable to the Council and shall be responsible for all property of the Department. The Chairperson shall make no less than one written annual report to the Council on or before February 1 each year. Additional reports, verbal or written, may be required from time to time by the Council.
3. The Committee, in its election, may incorporate as a nonprofit corporation under the laws of the State and elect such officers to be known as social officers as may be determined by the Articles of Incorporation and the membership of the Committee. The Articles of Incorporation shall be approved by the Council.

115.07 BURIAL OF CREMAINS.

1. Burial of one single urn containing cremains will be allowed in an individual grave site already occupied by an immediate family member, i.e., parent, spouse, child, sibling.
2. Burial of urns containing cremains of immediate family members will be limited to two such urns in an individual grave site not already occupied.

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CHAPTER 120

LIQUOR LICENSES AND WINE AND BEER PERMITS

120.01 License or Permit Required
120.02 General Prohibition
120.03 Investigation

120.04 Action by Council
120.05 Prohibited Sales and Acts
120.06 Amusement Devices

120.01 LICENSE OR PERMIT REQUIRED. No person shall manufacture for sale, import, sell, or offer or keep for sale, alcoholic liquor, wine, or beer without first securing a liquor control license, wine permit, or beer permit in accordance with the provisions of Chapter 123 of the *Code of Iowa*.

(Code of Iowa, Sec. 123.22, 123.122 & 123.171)

120.02 GENERAL PROHIBITION. It is unlawful to manufacture for sale, sell, offer or keep for sale, possess or transport alcoholic liquor, wine or beer except upon the terms, conditions, limitations, and restrictions enumerated in Chapter 123 of the *Code of Iowa*, and a license or permit may be suspended or revoked or a civil penalty may be imposed for a violation thereof.

(Code of Iowa, Sec. 123.2, 123.39 & 123.50)

120.03 INVESTIGATION. Upon receipt of an application for a liquor license, wine or beer permit, the Clerk may forward it to the peace officer, who shall then conduct an investigation and submit a written report as to the truth of the facts averred in the application. The Fire Chief may also inspect the premises to determine if they conform to the requirements of the City. The Council shall not approve an application for a license or permit for any premises that does not conform to the applicable law and ordinances, resolutions, and regulations of the City.

(Code of Iowa, Sec. 123.30)

120.04 ACTION BY COUNCIL. The Council shall either approve or disapprove the issuance of the liquor control license or retail wine or beer permit and shall endorse its approval or disapproval on the application, and thereafter the application, necessary fee and bond, if required, shall be forwarded to the Alcoholic Beverages Division of the State Department of Commerce for such further action as is provided by law.

(Code of Iowa, Sec. 123.32[2])

120.05 PROHIBITED SALES AND ACTS. A person or club holding a liquor license or retail wine or beer permit and the person's or club's agents or employees shall not do any of the following:

1. Sell, dispense, or give to any intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.

(Code of Iowa, Sec. 123.49[1])

2. Sell or dispense any alcoholic beverage on the premises covered by the license or permit, or permit its consumption thereon between the hours of 2:00 a.m. and 6:00 a.m. on a weekday, and between the hours of 2:00 a.m. on Sunday and 6:00 a.m. on the following Monday; however, a holder of a liquor control license or retail wine or beer permit granted the privilege of selling alcoholic liquor, wine, or beer on

Sunday may sell or dispense alcoholic liquor, wine, or beer between the hours of 8:00 a.m. on Sunday and 2:00 a.m. of the following Monday, and further provided that a holder of any class of liquor control license or the holder of a class "B" beer permit may sell or dispense alcoholic liquor, wine, or beer for consumption on the premises between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on Monday when that Monday is New Year's Day and beer for consumption off the premises between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday when that Sunday is the day before New Year's Day.

(Code of Iowa, Sec. 123.49[2b] & 123.150)

3. Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members, to sales by a hotel or motel to bona fide registered guests or to retail sales by the managing entity of a convention center, civic center, or events center.

(Code of Iowa, Sec. 123.49[2c])

4. Employ a person under 18 years of age in the sale or serving of alcoholic liquor, wine, or beer for consumption on the premises where sold.

(Code of Iowa, Sec. 123.49[2f])

5. In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine, or any other beverage in or about the permittee's place of business.

(Code of Iowa, Sec. 123.49[2i])

6. Knowingly permit any gambling, except in accordance with Iowa law, or knowingly permit any solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.

(Code of Iowa, Sec. 123.49[2a])

7. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.

(Code of Iowa, Sec. 123.49[2j])

8. Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the Alcoholic Beverages Division of the State Department of Commerce and except mixed drinks or cocktails mixed on the premises for immediate consumption. However, mixed drinks or cocktails that are mixed on the premises and are not for immediate consumption may be consumed on the licensed premises, subject to rules adopted by the Alcoholic Beverages Division.

(Code of Iowa, Sec. 123.49[2d])

9. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package that has been reused or adulterated.

(Code of Iowa, Sec. 123.49[2e])

10. Allow any person other than the licensee, permittee, or employees of the licensee or permittee to use or keep on the licensed premises any alcoholic liquor in any bottle or other container that is designed for the transporting of such beverages, except as allowed by State law.

(Code of Iowa, Sec. 123.49[2g])

11. Sell, give, possess, or otherwise supply a machine that is used to vaporize an alcoholic beverage for the purpose of being consumed in a vaporized form.

(Code of Iowa, Sec. 123.49[21])

120.06 PERSONS UNDER LEGAL AGE IN LICENSED OR PERMITTED ESTABLISHMENTS. Any person holding a liquor control license or wine or beer permit that authorizes on-the-premises consumption and any agents or employees of such person shall not allow a person under legal age, other than employees of the licensee or permittee, to enter or remain in the licensed or permitted establishment after 10:00 p.m. unless:

1. The licensee or permittee applies for and qualifies for an exception certificate from the City as follows:

- A. A licensee or permittee whose primary business purpose is not the sale of alcoholic beverages, wine, or beer may qualify for an exception upon submission of a verified statement from a certified public accountant or an accountant which establishes that more than 60 percent of the licensee's or permittee's gross sales are from the sale of goods or services other than for the sale of alcoholic beverages, wine or beer, which shall not include income from cover charges, entertainment fees, drink mixes, or nonalcoholic beverages.

- B. In addition to the statement mentioned in the previous paragraph, proof of qualification may include State and federal tax records for the previous year, articles of incorporation and receipts from specific vendors which itemize goods purchased related to the applicant's primary business purpose from the previous six months as requested by the City.

- C. The City may issue an exception certificate if the licensee or permittee has satisfied the requirements in this subsection.

- D. An exception certificate shall be effective for the duration of the alcoholic liquor control license, wine or beer permit.

2. The licensee or permittee applies for a special event exception from the City, which shall allow the holder to provide entertainment to persons under legal age, as follows:

- A. A licensee or permittee may qualify for a special event exception when an application is submitted to the City at least seven business days prior to the proposed special event. Such application shall include the name and address of the licensed or permitted establishment, the type of event for which an exception is applied, the proposed date for the event and the time of the event.

- B. All alcoholic liquor, wine or beer is removed or stored so that it is not available for sale or consumption during the period of the special event.

- C. A special event exception shall be valid through the date of the special event or for the duration of the alcoholic liquor control license, wine or beer permit, whichever is first in time.

- D. A licensee or permittee applying for a special event exception under this subsection agrees that failure to comply with the terms of this special event exception could result in the revocation of the licensee's or permittee's alcoholic liquor control license, wine or beer permit for one month.

E. Failure to comply with the terms of this special event exception shall result in the revocation or denial of such an exception application for one year.

3. For special events not exceeding five days in duration where a street closure has been authorized by the Council and a temporary liquor control license has been issued, the City may issue a special exception for the event, such exception to be limited to outdoor areas covered by the temporary liquor control license. The City's discretion may include, but is not limited to, past experience with policing the same event, staffing and any special difficulties in policing the proposed event.

4. The licensee or permittee posts a current exception certificate at the main entrance in the view of patrons of the licensed or permitted establishment.

Failure to post notices at all entrances to the licensed or permitted premises in the view of patrons of the licensed or permitted establishment that persons under legal age are not allowed in the premises after 10:00 p.m. unless the licensee or permittee has a current exception certificate under this section is a violation of this Code of Ordinances.

120.07 AMUSEMENT DEVICES. The following provisions pertain to electrical or mechanical amusement devices possessed and used in accordance with Chapter 99B of the *Code of Iowa*. (Said devices are allowed only in premises with a liquor control license or beer permit, as specifically authorized in said Chapter 99B.)

(Code of Iowa, Sec. 99B.57)

1. As used in this section, "registered electrical or mechanical amusement device" means an electrical or mechanical device required to be registered with the Iowa Department of Inspection and Appeals, as provided in Section 99B.53 of the *Code of Iowa*.

2. It is unlawful for any person under the age of 21 to participate in the operation of a registered electrical or mechanical amusement device.

3. It is unlawful for any person owning or leasing a registered electrical or mechanical amusement device, or an employee of a person owning or leasing a registered electrical or mechanical amusement device, to knowingly allow a person under the age of 21 to participate in the operation of a registered electrical or mechanical amusement device.

4. It is unlawful for any person to knowingly participate in the operation of a registered electrical or mechanical amusement device with a person under the age of 21.

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CHAPTER 121

CIGARETTE AND TOBACCO PERMITS

121.01 Definitions
121.02 Permit Required
121.03 Application
121.04 Fees
121.05 Issuance and Expiration

121.06 Refunds
121.07 Persons Under Legal Age
121.08 Self-Service Sales Prohibited
121.09 Permit Revocation

121.01 DEFINITIONS. For use in this chapter the following terms are defined:
(Code of Iowa, Sec. 453A.1)

1. “Alternative nicotine product” means a product, not consisting of or containing tobacco, that provides for the ingestion into the body of nicotine, whether by chewing, absorbing, dissolving, inhaling, snorting, or sniffing, or by any other means. “Alternative nicotine product” does not include cigarettes, tobacco products, or vapor products, or a product that is regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.
2. “Cigarette” means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. However, cigarette shall not be construed to include cigars.
3. “Place of business” means any place where cigarettes, tobacco products, alternative nicotine products, or vapor products are sold, stored, or kept for the purpose of sale or consumption by a retailer.
4. “Retailer” means every person who sells, distributes or offers for sale for consumption, or possesses for the purpose of sale for consumption, cigarettes, alternative nicotine products, or vapor products, irrespective of the quantity or amount or the number of sales, or who engages in the business of selling tobacco, tobacco products, alternative nicotine products, or vapor products to ultimate consumers.
5. “Self-service display” means any manner of product display, placement, or storage from which a person purchasing the product may take possession of the product, prior to purchase, without assistance from the retailer or employee of the retailer, in removing the product from a restricted access location.
6. “Tobacco products” means the following: cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts or refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or for both chewing and smoking, but does not mean cigarettes.
7. “Vapor product” means any noncombustible product, which may or may not contain nicotine, that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can

be used to produce vapor from a solution or other substance. "Vapor product" includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and any cartridge or other container of a solution or other substance, which may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Vapor product" does not include a product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

121.02 PERMIT REQUIRED.

1. Retail Cigarette Permits. It is unlawful for any person, other than a holder of a retail permit, to sell cigarettes, alternative nicotine products, or vapor products at retail and no retailer shall distribute, sell, or solicit the sale of any cigarettes, alternative nicotine products, or vapor products within the City without a valid permit for each place of business. The permit shall, at all times, be publicly displayed at the place of business so as to be easily seen by the public and the persons authorized to inspect the place of business.

(Code of Iowa, Sec. 453A.13)

2. Retail Tobacco Permits. It is unlawful for any person to engage in the business of a retailer of tobacco, tobacco products, alternative nicotine products, or vapor products at any place of business without first having received a permit as a retailer for each place of business owned or operated by the retailer.

(Code of Iowa, Sec. 453A.47A)

A retailer who holds a retail cigarette permit is not required to also obtain a retail tobacco permit. However, if a retailer only holds a retail cigarette permit and that permit is suspended, revoked, or expired, the retailer shall not sell any tobacco, tobacco products, alternative nicotine products, or vapor products, during such time.

121.03 APPLICATION. A completed application on forms furnished by the State Department of Revenue or on forms made available or approved by the Department and accompanied by the required fee shall be filed with the Clerk. Renewal applications shall be filed at least five days prior to the last regular meeting of the Council in June. If a renewal application is not timely filed, and a special Council meeting is called to act on the application, the costs of such special meeting shall be paid by the applicant.

(Code of Iowa, Sec. 453A.13 & 453A.47A)

121.04 FEES. The fee for a retail cigarette or tobacco permit shall be as follows:

(Code of Iowa, Sec. 453A.13 & 453A.47A)

FOR PERMITS GRANTED DURING:	FEE:
July, August or September	\$ 75.00
October, November or December	\$ 56.25
January, February or March	\$ 37.50
April, May or June	\$ 18.75

121.05 ISSUANCE AND EXPIRATION. Upon proper application and payment of the required fee, a permit shall be issued. Each permit issued shall describe clearly the place of business for which it is issued and shall be nonassignable. All permits expire on June 30 of each year. The Clerk shall submit a duplicate of any application for a permit to the Alcoholic Beverages Division of the Department of Commerce within 30 days of issuance.

121.06 REFUNDS. A retailer may surrender an unrevoked permit and receive a refund from the City, except during April, May, or June, in accordance with the schedule of refunds as provided in Section 453A.13 or 453A.47A of the *Code of Iowa*.

(Code of Iowa, 453A.13 & 453A.47A)

121.07 PERSONS UNDER LEGAL AGE. No person shall sell, give, or otherwise supply any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes to any person under 18 years of age. The provision of this section includes prohibiting a minor from purchasing tobacco, tobacco products, alternative nicotine products, vapor products, and cigarettes from a vending machine. If a retailer or employee of a retailer violates the provisions of this section, the Council shall, after written notice and hearing, and in addition to the other penalties fixed for such violation, assess the following:

1. For a first violation, the retailer shall be assessed a civil penalty in the amount of \$300.00. Failure to pay the civil penalty as ordered under this subsection shall result in automatic suspension of the permit for a period of 14 days.
2. For a second violation within a period of two years, the retailer shall be assessed a civil penalty in the amount of \$1,500.00 or the retailer's permit shall be suspended for a period of 30 days. The retailer may select its preference in the penalty to be applied under this subsection.
3. For a third violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of \$1,500.00 and the retailer's permit shall be suspended for a period of 30 days.
4. For a fourth violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of \$1,500.00 and the retailer's permit shall be suspended for a period of 60 days.
5. For a fifth violation within a period of four years, the retailer's permit shall be revoked.

The Clerk shall give 10 days' written notice to the retailer by mailing a copy of the notice to the place of business as it appears on the application for a permit. The notice shall state the reason for the contemplated action and the time and place at which the retailer may appear and be heard.

(Code of Iowa, Sec. 453A.2, 453A.22 and 453A.36[6])

121.08 SELF-SERVICE SALES PROHIBITED. Except for the sale of cigarettes through a cigarette vending machine as provided in Section 453A.36[6] of the *Code of Iowa*, a retailer shall not sell or offer for sale tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes through the use of a self-service display.

(Code of Iowa, Sec. 453A.36A)

121.09 PERMIT REVOCATION. Following a written notice and an opportunity for a hearing, as provided by the *Code of Iowa*, the Council may also revoke a permit issued pursuant to this chapter for a violation of Division I of Chapter 453A of the *Code of Iowa* or any rule adopted thereunder. If a permit is revoked, a new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the Council. The Clerk shall report the revocation or suspension of a retail permit to the Alcoholic Beverages Division of the Department of Commerce within 30 days of the revocation or suspension.

(Code of Iowa, Sec. 453A.22)

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CHAPTER 122

PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS

122.01 Purpose
122.02 Definitions
122.03 License Required
122.04 Application for License
122.05 License Fees
122.06 Bond Required
122.07 License Issued
122.08 Display of License
122.09 License Not Transferable

122.10 Time Restriction
122.11 Revocation of License
122.12 Hearing
122.13 Record and Determination
122.14 Appeal
122.15 Effect of Revocation
122.16 Rebates
122.17 License Exemptions
122.18 Charitable and Nonprofit Organizations

122.01 PURPOSE. The purpose of this chapter is to protect residents of the City against fraud, unfair competition, and intrusion into the privacy of their homes by licensing and regulating peddlers, solicitors, and transient merchants.

122.02 DEFINITIONS. For use in this chapter the following terms are defined:

1. “Peddler” means any person carrying goods or merchandise who sells or offers for sale for immediate delivery such goods or merchandise from house to house or upon the public street.
2. “Solicitor” means any person who solicits or attempts to solicit from house to house or upon the public street any contribution or donation or any order for goods, services, subscriptions or merchandise to be delivered at a future date.
3. “Transient merchant” means any person who engages in a temporary or itinerant merchandising business and in the course of such business hires, leases or occupies any building or structure whatsoever, or who operates out of a vehicle that is parked anywhere within the City limits. Temporary association with a local merchant, dealer, trader or auctioneer, or conduct of such transient business in connection with, as a part of, or in the name of any local merchant, dealer, trader, or auctioneer does not exempt any person from being considered a transient merchant.

122.03 LICENSE REQUIRED. Any person engaging in peddling, soliciting or in the business of a transient merchant in the City without first obtaining a license as herein provided is in violation of this chapter.

122.04 APPLICATION FOR LICENSE. An application in writing shall be filed with the Clerk for a license under this chapter. Such application shall set forth the applicant’s name, permanent and local address, and business address if any. The application shall also set forth the applicant’s employer, if any, and the employer’s address, the nature of the applicant’s business, the last three places of such business and the length of time sought to be covered by the license. An application fee of \$25.00 shall be paid at the time of filing such application to cover the cost of investigating the facts stated therein.

122.05 LICENSE FEES. The following license fees shall be paid to the Clerk prior to the issuance of any license.

1. Solicitors. In addition to the application fee for each person actually soliciting (principal or agent), a fee for the principal of \$10.00 per year.
2. Peddlers or Transient Merchants.
 - A. For one day.....\$ 25.00
 - B. For one week.....\$ 30.00
 - C. For up to six (6) months.....\$ 30.00
 - D. For one year or major part thereof\$ 30.00

122.06 BOND REQUIRED. Before a license under this chapter is issued to a transient merchant, an applicant shall provide to the Clerk evidence that the applicant has filed a bond with the Secretary of State in accordance with Chapter 9C of the *Code of Iowa*.

122.07 LICENSE ISSUED. If the Clerk finds the application is completed in conformance with the requirements of this chapter, the facts stated therein are found to be correct, and the license fee paid, a license shall be issued immediately.

122.08 DISPLAY OF LICENSE. Each solicitor or peddler shall keep such license in possession at all times while doing business in the City and shall, upon the request of prospective customers, exhibit the license as evidence of compliance with all requirements of this chapter. Each transient merchant shall display publicly such merchant's license in the merchant's place of business.

122.09 LICENSE NOT TRANSFERABLE. Licenses issued under the provisions of this chapter are not transferable in any situation and are to be applicable only to the person filing the application.

122.10 TIME RESTRICTION. All peddler's and solicitor's licenses shall provide that said licenses are in force and effect only between the hours of 8:00 a.m. and 6:00 p.m.

122.11 REVOCATION OF LICENSE. Following a written notice and an opportunity for a hearing, the Clerk may revoke any license issued pursuant to this chapter for the following reasons:

1. Fraudulent Statements. The licensee has made fraudulent statements in the application for the license or in the conduct of the business.
2. Violation of Law. The licensee has violated this chapter or has otherwise conducted the business in an unlawful manner.
3. Endangered Public Welfare, Health, or Safety. The licensee has conducted the business in such manner as to endanger the public welfare, safety, order, or morals.

The Clerk shall send the written notice to the licensee at the licensee's local address. The notice shall contain particulars of the complaints against the licensee, the ordinance provisions or State statutes allegedly violated, and the date, time, and place for hearing on the matter.

122.12 HEARING. The Clerk shall conduct a hearing at which both the licensee and any complainants shall be present to determine the truth of the facts alleged in the complaint and notice. Should the licensee, or authorized representative, fail to appear without good cause, the Clerk may proceed to a determination of the complaint.

122.13 RECORD AND DETERMINATION. The Clerk shall make and record findings of fact and conclusions of law, and shall revoke a license only when upon review of the entire record the Clerk finds clear and convincing evidence of substantial violation of this chapter or State law.

122.14 APPEAL. If the Clerk revokes or refuses to issue a license, the Clerk shall make a part of the record the reasons for such revocation or refusal. The licensee, or the applicant, shall have a right to a hearing before the Council at its next regular meeting. The Council may reverse, modify, or affirm the decision of the Clerk by a majority vote of the Council members present and the Clerk shall carry out the decision of the Council.

122.15 EFFECT OF REVOCATION. Revocation of any license shall bar the licensee from being eligible for any license under this chapter for a period of one year from the date of the revocation.

122.16 REBATES. Any licensee, except in the case of a revoked license, shall be entitled to a rebate of part of the fee paid if the license is surrendered before it expires. The amount of the rebate shall be determined by dividing the total license fee by the number of days for which the license was issued and then multiplying the result by the number of full days not expired. In all cases, at least \$5.00 of the original fee shall be retained by the City to cover administrative costs.

122.17 LICENSE EXEMPTIONS. The following are excluded from the application of this chapter.

1. Newspapers. Persons delivering, collecting for, or selling subscriptions to newspapers.
2. Club Members. Members of local civic and service clubs, Boy Scout, Girl Scout, 4-H Clubs, Future Farmers of America, and similar organizations.
3. Local Residents and Farmers. Local residents and farmers who offer for sale their own products.
4. Students. Students representing the local school District conducting projects sponsored by organizations recognized by the school.
5. Route Sales. Route delivery persons who only incidentally solicit additional business or make special sales.
6. Resale or Institutional Use. Persons customarily calling on businesses or institutions for the purposes of selling products for resale or institutional use.

122.18 CHARITABLE AND NONPROFIT ORGANIZATIONS. Authorized representatives of charitable or nonprofit organizations operating under the provisions of Chapter 504 of the *Code of Iowa* desiring to solicit money or to distribute literature are exempt from the operation of Sections 122.04 and 122.05. All such organizations are required to submit in writing to the Clerk the name and purpose of the cause for which such activities are sought, names and addresses of the officers and directors of the organization, the period during which such activities are to be carried on, and whether any commissions, fees or wages are to be charged by the solicitor and the amount thereof. If the Clerk finds that the organization is a bona fide charity or nonprofit organization, the Clerk shall issue, free of charge, a license containing the above information to the applicant. In the event the Clerk

denies the exemption, the authorized representatives of the organization may appeal the decision to the Council, as provided in Section 122.14 of this chapter.

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CHAPTER 125

ADULT ENTERTAINMENT FACILITIES

125.01 Purpose

125.02 Definitions

125.03 Location of Adult Bookstores, Movie Theaters, Nightclubs, Motels, Adult Businesses

125.04 Adult Magazines and Publications to be Covered

125.05 Enforcement

125.06 Permitted Areas

125.01 PURPOSE. It is recognized that adult entertainment facilities have certain objectionable side effects which render these adult facilities incompatible with residential and family-oriented uses, when the adult facilities are located directly adjacent to such uses. This chapter seeks to ensure that residential or family-oriented uses and adult entertainment facilities will be located in separate and compatible locations. It is a subject of legitimate concern for the City to use its zoning power to preserve the quality of life, preserve the City's neighborhoods, and to meet effectively the increasing encroachments of urbanization upon the quality of life within the City.

125.02 DEFINITIONS. As used in this chapter, the following terms have the following meanings:

1. "Adult entertainment facilities" include but are not limited to the following:
 - A. "Adult bookstore" means an establishment having as the primary portion of its stock in trade, books, magazines, and other periodicals which are substantially devoted to the depiction of specified sexual activities and specified anatomical areas.
 - B. "Adult movie theater" means any theater, arcade, or similar establishment where an enclosed building or open-air facility is used for presenting material in the form of motion picture film, video tape, or other similar means which is substantially devoted to the depiction of specified sexual activities and specified anatomical areas for observation by persons therein.
 - C. "Adult nightclub" means any club, cabaret, nightclub, bar, restaurant, or similar establishment where an enclosed building or open-air facility is used for live performance which is characterized by the exposure of specified sexual activities and specified anatomical areas for observation by persons therein.
 - D. "Adult motel" means a motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
 - E. "Adult business" means any business or establishment where a specified sexual activity or a specified anatomical area is displayed.

2. “Specified anatomical areas” means:
 - A. Less than completely and opaquely covered:
 - (1) Human genitals;
 - (2) Human buttocks;
 - (3) Human female breast below a point immediately above the top of the areola; and
 - B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
3. “Specified sexual activities” means:
 - A. Human genitals in a state of sexual stimulation or arousal;
 - B. Acts of human masturbation, sexual intercourse, or sodomy;
 - C. Fondling or other touching of human genitals, pubic region, buttock, or female breast; and
 - D. Minors engaged in a prohibited sexual act or simulation of a prohibited sexual act.

125.03 LOCATION OF ADULT BOOKSTORES, MOVIE THEATERS, NIGHTCLUBS, MOTELS, ADULT BUSINESSES.

1. Locations. No person, whether as principal or agent, clerk or employee, either for such person or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any adult bookstore, adult movie theater, adult nightclub, adult motel, or adult business in the following locations.
 - A. In any residential area in the City, including upon any sidewalk abutting upon such residential area;
 - B. Within 2,000 feet of any residentially zoned or used property, or any property designated on the City’s Comprehensive Plan as residentially oriented.
 - C. Within 2,000 feet of any parcel of real property upon which is located any of the following facilities:
 - (1) An elementary school, junior high school, or senior high school;
 - (2) A church which conducts religious programs;
 - (3) Park or recreational facilities operated and approved by the City, County, the Polk County Conservation Board, the State of Iowa, or a not-for-profit institution;
 - (4) Federal, State, County, City, or special district governmental offices;
 - (5) Supermarket or convenience market primarily engaged in the sale of food;
 - (6) Restaurant, fast-food, or food establishment catering to family trade.

D. Within 2,000 feet of any other adult entertainment facility, as defined in Section 125.02.

2. **Measurement of Distance.** The distance between any two adult entertainment facilities shall be measured in a straight line, without regard to intervening structures from the closest exterior structural wall of each business. The distance between any adult entertainment facilities and any religious institution, school or public park, government office, supermarket, restaurant or any property designated for residential use or used for residential purposes shall be measured in a straight line without regard to intervening structures, from the closest property line of the adult entertainment facilities to the closest property line of the religious institution, school, public park, government office, supermarket, restaurant, or the property designated for residential use or used for residential purposes.

3. **Viewing Area.**

A. It is unlawful to maintain, operate or manage or permit to be maintained, operated or managed any adult theater or arcade in which the viewing areas are not visible from a continuous main aisle or are obscured by a curtain, door, wall, or other enclosure. For purposes of this section, "viewing area" means the area where a patron or customer would ordinarily be positioned while watching the performance, picture, show, or film.

B. It is unlawful for more than one person at a time to occupy any individually partitioned viewing area or booth.

C. It is unlawful to create, maintain, or permit to be maintained any holes or other openings between any two booths or individual viewing areas for the purpose of providing viewing or physical access between the booth or individual viewing area.

D. The opening to the viewing area shall be from the main aisle.

125.04 ADULT MAGAZINES AND PUBLICATIONS TO BE COVERED. The display of adult magazines and publications in a public place, other than a public place from which minors are excluded, is prohibited unless a device commonly known as a blinder rack is placed in front of such material, so that the lower two-thirds of the material is not exposed to view. As used herein, "public place" includes grocery stores, convenience stores, drug stores, supermarkets, and other retail establishments unless minors are excluded therefrom by law.

125.05 ENFORCEMENT. In case any building, structure, or sign is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building structure, sign, or land is used in violation of this chapter, the City Attorney, in addition to other remedies, shall institute any proper action or proceedings in the name of the City to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of the building, structure or land, or to prevent any illegal act, conduct business or use in or about the premises.

125.06 PERMITTED AREAS. The areas in the City in which adult entertainment facilities are permitted are defined in Section 125.03.

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CHAPTER 135

STREET USE AND MAINTENANCE

135.01 Removal of Warning Devices	135.08 Burning Prohibited
135.02 Obstructing or Defacing	135.09 Excavations
135.03 Placing Debris On	135.10 Property Owner's Responsibility for Maintenance
135.04 Playing In	135.11 Failure to Maintain
135.05 Traveling on Barricaded Street or Alley	135.12 Dumping of Snow
135.06 Use for Business Purposes	135.13 Driveway Culverts
135.07 Washing Vehicles	

135.01 REMOVAL OF WARNING DEVICES. It is unlawful for a person to willfully remove, throw down, destroy or carry away from any street or alley any lamp, obstruction, guard or other article or things, or extinguish any lamp or other light, erected or placed thereupon for the purpose of guarding or enclosing unsafe or dangerous places in said street or alley without the consent of the person in control thereof.

(Code of Iowa, Sec. 716.1)

135.02 OBSTRUCTING OR DEFACING. It is unlawful for any person to obstruct, deface or injure any street or alley in any manner.

(Code of Iowa, Sec. 716.1)

135.03 PLACING DEBRIS ON. It is unlawful for any person to throw or deposit on any street or alley any glass, glass bottle, nails, tacks, wire, cans, trash, garbage, rubbish, litter, offal, leaves, grass or any other debris likely to be washed into the storm sewer and clog the storm sewer, or any substance likely to injure any person, animal or vehicle.

(Code of Iowa, Sec. 321.369)

135.04 PLAYING IN. It is unlawful for any person to coast, sled, or play games on streets or alleys, except in the areas blocked off by the City for such purposes.

(Code of Iowa, Sec. 364.12[2])

135.05 TRAVELING ON BARRICADED STREET OR ALLEY. It is unlawful for any person to travel or operate any vehicle on any street or alley temporarily closed by barricades, lights, signs, or flares placed thereon by the authority or permission of any City official, police officer or member of the Fire Department.

135.06 USE FOR BUSINESS PURPOSES. It is unlawful to park, store or place, temporarily or permanently, any machinery or junk or any other goods, wares, and merchandise of any kind upon any street or alley for the purpose of storage, exhibition, sale or offering same for sale, without permission of the Council.

135.07 WASHING VEHICLES. It is unlawful for any person to use any public sidewalk, street, or alley for the purpose of washing or cleaning any automobile, truck equipment, or any vehicle of any kind when such work is done for hire or as a business. This does not prevent any person from washing or cleaning his or her own vehicle or equipment when it is lawfully parked in the street or alley.

135.08 BURNING PROHIBITED. No person shall burn any trash, leaves, rubbish, or other combustible material in any curb and gutter or on any paved or surfaced street or alley.

135.09 EXCAVATIONS. No person shall dig, excavate, or in any manner disturb any street, parking or alley except in accordance with the following:

1. Permit Required. No excavation shall be commenced without first obtaining a permit. A written application for such permit shall be filed with the City and shall contain the following:
 - A. An exact description of the property, by lot and street number, in front of or along which it is desired to excavate;
 - B. A statement of the purpose, for whom and by whom the excavation is to be made;
 - C. The person responsible for the refilling of said excavation and restoration of the street or alley surface; and
 - D. Date of commencement of the work and estimated completion date.
2. Public Convenience. Streets and alleys shall be opened in the manner that will cause the least inconvenience to the public and admit the uninterrupted passage of water along the gutter on the street.
3. Barricades, Fencing and Lighting. Adequate barricades, fencing and warning lights meeting standards specified by the City shall be so placed as to protect the public from hazard. Any costs incurred by the City in providing or maintaining adequate barricades, fencing or warning lights shall be paid to the City by the permit holder/property owner.
4. Bond Required. The applicant shall post with the City a penal bond in the minimum sum of \$10,000.00 issued by a surety company authorized to issue such bonds in the State. The bond shall guarantee the permittee's payment for any damage done to the City or to public property, and payment of all costs incurred by the City in the course of administration of this section. In lieu of a surety bond, a cash deposit of \$10,000.00 may be filed with the City.
5. Insurance Required. Each applicant shall also file a certificate of insurance indicating that the applicant is carrying public liability insurance in effect for the duration of the permit covering the applicant and all agents and employees for the following minimum amounts:
 - A. Bodily Injury - \$50,000.00 per person; \$100,000.00 per accident.
 - B. Property Damage - \$50,000.00 per accident.
6. Restoration of Public Property. Streets, sidewalks, alleys and other public property disturbed in the course of the work shall be restored to the condition of the property prior to the commencement of the work, or in a manner satisfactory to the City, at the expense of the permit holder/property owner.
7. Inspection. All work shall be subject to inspection by the City. Backfill shall not be deemed completed, and no resurfacing of any improved street or alley surface shall begin, until such backfill is inspected and approved by the City. The permit holder/property owner shall provide the City with notice at least 24 hours prior to the time when inspection of backfill is desired.

8. Completion by the City. Should any excavation in any street or alley be discontinued or left open and unfinished for a period of 24 hours after the approved completion date, or in the event the work is improperly done, the City has the right to finish or correct the excavation work and charge any expenses for such work to the permit holder/property owner.
9. Responsibility for Costs. All costs and expenses incident to the excavation shall be borne by the permit holder and/or property owner. The permit holder and owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by such excavation.
10. Notification. At least 48 hours prior to the commencement of the excavation, excluding Saturdays, Sundays and legal holidays, the person performing the excavation shall contact the Statewide Notification Center and provide the center with the information required under Section 480.4 of the *Code of Iowa*.
11. Permit Issued. Upon approval of the application and filing of bond and insurance certificate, a permit shall be issued. A separate permit shall be required for each excavation.
12. Permit Exemption. Utility companies are exempt from the permit application requirement of this section. They shall, however, comply with all other pertinent provisions and shall post with the City a yearly bond in the amount of \$10,000.00 to guarantee such compliance.

135.10 PROPERTY OWNER'S RESPONSIBILITY FOR MAINTENANCE. The abutting property owner shall maintain all property outside the lot and property lines and inside the curb lines upon public streets and shall keep such area in a safe condition, free from nuisances, obstructions, and hazards. In the absence of a curb, such property shall extend from the property line to that portion of the public street used or improved for vehicular purposes. The abutting property owner shall not be required to remove diseased trees or dead wood on the publicly owned property or right-of-way. Maintenance includes, but is not limited to, timely mowing, trimming trees and shrubs, and picking up litter and debris. The abutting property owner may be liable for damages caused by failure to maintain the publicly owned property or right-of-way.[†]

(Code of Iowa, Sec. 364.12[2c])

135.11 FAILURE TO MAINTAIN. If the abutting property owner does not perform an action required under the above section within a reasonable time, the City may perform the required action and assess the cost against the abutting property for collection in the same manner as a property tax.

(Code of Iowa, Sec. 364.12[2e])

135.12 DUMPING OF SNOW. It is unlawful for any person to throw, push, or place or cause to be thrown, pushed or placed, any ice or snow from private property, sidewalks, or driveways onto the traveled way of a street or alley so as to obstruct gutters, or impede the passage of vehicles upon the street or alley or to create a hazardous condition therein; except where, in the cleaning of large commercial drives in the business district it is absolutely necessary to move the snow onto the street or alley temporarily, such accumulation shall be

[†] **EDITOR'S NOTE:** See also Section 136.04 relating to property owner's responsibility for maintenance of sidewalks.

removed promptly by the property owner or agent. Arrangements for the prompt removal of such accumulations shall be made prior to moving the snow.

(Code of Iowa, Sec. 364.12[2])

135.13 DRIVEWAY CULVERTS. The property owner shall, at the owner's expense, install any culvert deemed necessary under any driveway or any other access to the owner's property, and before installing a culvert, permission must first be obtained from the City. In the event repairs are needed at any time with respect to culverts, it shall be the responsibility of the property owner to make such repairs, and, in the event the owner fails to do so, the City shall have the right to make the repairs. If the property owner fails to reimburse the City for the cost of said repairs, the cost shall be certified to the County Treasurer and specially assessed against the property as by law provided.

CHAPTER 136

SIDEWALK REGULATIONS

136.01 Purpose	136.11 Interference with Sidewalk Improvements
136.02 Definitions	136.12 Awnings
136.03 Removal of Snow, Ice, and Accumulations	136.13 Encroaching Steps
136.04 Property Owner's Responsibility for Maintenance	136.14 Openings and Enclosures
136.05 City May Order Repairs	136.15 Fires or Fuel on Sidewalks
136.06 Sidewalk Construction Ordered	136.16 Defacing
136.07 Permit Required	136.17 Debris on Sidewalks
136.08 Sidewalk Standards	136.18 Merchandise Display
136.09 Barricades and Warning Lights	136.19 Sales Stands
136.10 Failure to Repair or Barricade	

136.01 PURPOSE. The purpose of this chapter is to enhance safe passage by citizens on sidewalks, to place the responsibility for the maintenance, repair, replacement, or reconstruction of sidewalks upon the abutting property owner and to minimize the liability of the City.

136.02 DEFINITIONS. For use in this chapter the following terms are defined:

1. "Broom finish" means a sidewalk finish that is made by sweeping the sidewalk when it is hardening.
2. "Established grade" means that grade established by the City for the particular area in which a sidewalk is to be constructed.
3. "One-course construction" means that the full thickness of the concrete is placed at one time, using the same mixture throughout.
4. "Owner" means the person owning the fee title to property abutting any sidewalk and includes any contract purchaser for purposes of notification required herein. For all other purposes, "owner" includes the lessee, if any.
5. "Portland cement" means any type of cement except bituminous cement.
6. "Sidewalk" means all permanent public walks in business, residential or suburban areas.
7. "Sidewalk improvements" means the construction, reconstruction, repair, replacement, or removal, of a public sidewalk and/or the excavating, filling or depositing of material in the public right-of-way in connection therewith.
8. "Wood float finish" means a sidewalk finish that is made by smoothing the surface of the sidewalk with a wooden trowel.

136.03 REMOVAL OF SNOW, ICE, AND ACCUMULATIONS. The abutting property owner shall remove snow, ice, and accumulations promptly from sidewalks. If a property owner does not remove snow, ice, or accumulations within a reasonable time, the City may do so and assess the costs against the property owner for collection in the same manner as a property tax. The abutting property owner may be liable for damages caused by failure to remove snow, ice, and accumulations promptly from the sidewalk.

(Code of Iowa, Sec. 364.12[2b & e])

136.04 PROPERTY OWNER'S RESPONSIBILITY FOR MAINTENANCE. The abutting property owner shall maintain in a safe and hazard-free condition any sidewalk outside the lot and property lines and inside the curb lines or, in the absence of a curb, any sidewalk between the property line and that portion of the public street used or improved for vehicular purposes. The abutting property owner may be liable for damages caused by failure to maintain the sidewalk.

(Code of Iowa, Sec. 364.12[2c])

136.05 CITY MAY ORDER REPAIRS. If the abutting property owner does not maintain sidewalks as required, the Council may serve notice on such owner, by certified mail, requiring the owner to repair, replace or reconstruct sidewalks within a reasonable time and if such action is not completed within the time stated in the notice, the Council may require the work to be done and assess the costs against the abutting property for collection in the same manner as a property tax.

(Code of Iowa, Sec. 364.12[2d & e])

136.06 SIDEWALK CONSTRUCTION ORDERED. The Council may order the construction of permanent sidewalks upon any street or court in the City and may specially assess the cost of such improvement to abutting property owners in accordance with the provisions of Chapter 384 of the *Code of Iowa*.

(Code of Iowa, Sec. 384.38)

136.07 PERMIT REQUIRED. No person shall remove, reconstruct, or install a sidewalk unless such person has obtained a permit from the City and has agreed in writing that said removal, reconstruction, or installation will comply with all ordinances and requirements of the City for such work. A written application for such permit shall be filed with the City.

136.08 SIDEWALK STANDARDS. Sidewalks repaired, replaced, or constructed under the provisions of this chapter shall be of the following construction and meet the following standards:

1. Cement. Portland cement shall be the only cement used in the construction and repair of sidewalks.
2. Construction. Sidewalks shall be of one-course construction.
3. Sidewalk Base. Concrete may be placed directly on compact and well-drained soil. Where soil is not well drained, a three-inch sub-base of compact, clean, coarse gravel or sand shall be laid. The adequacy of the soil drainage is to be determined by the City.
4. Sidewalk Bed. The sidewalk bed shall be so graded that the constructed sidewalk will be at established grade.
5. Length, Width and Depth. Length, width and depth requirements are as follows:
 - A. Residential sidewalks shall be at least three feet wide and four inches thick, and each section shall be no more than four feet in length.
 - B. All sidewalks throughout the Business District shall be constructed from lot line to the curb line unless the location of the sidewalk is varied by an appropriate resolution of the Council upon application by the landowner.
 - C. Driveway areas shall be not less than six inches in thickness.

6. Location. Residential sidewalks shall be located with the inner edge (edge nearest the abutting private property) one foot from the property line, unless the Council establishes a different distance due to special circumstances.
7. Grade. Curb tops shall be on level with the centerline of the street, which is the established grade.
8. Elevations. The street edge of a sidewalk shall be at an elevation even with the curb at the curb or not less than one-half inch above the curb for each foot between the curb and the sidewalk.
9. Slope. All sidewalks shall slope one-fourth inch per foot toward the curb.
10. Finish. All sidewalks shall be finished with a broom finish or wood float finish.
11. Curb Ramps and Sloped Areas for Persons with Disabilities. If a street, road, or highway is newly built or reconstructed, a curb ramp or sloped area shall be constructed or installed at each intersection of the street, road, or highway with a sidewalk or path. If a sidewalk or path is newly built or reconstructed, a curb ramp or sloped area shall be constructed or installed at each intersection of the sidewalk or path with a street, highway, or road. Curb ramps and sloped areas that are required pursuant to this subsection shall be constructed or installed in compliance with applicable federal requirements adopted in accordance with the Federal Americans with Disabilities Act, including (but not limited to) the guidelines issued by the Federal Architectural and Transportation Barriers Compliance Board.

(Code of Iowa, Sec. 216C.9)

136.09 BARRICADES AND WARNING LIGHTS. Whenever any material of any kind is deposited on any street, avenue, highway, passageway or alley when sidewalk improvements are being made or when any sidewalk is in a dangerous condition, it shall be the duty of all persons having an interest therein, either as the contractor or the owner, agent, or lessee of the property in front of or along which such material may be deposited, or such dangerous condition exists, to put in conspicuous places at each end of such sidewalk and at each end of any pile of material deposited in the street, a sufficient number of approved warning lights or flares, and to keep them lighted during the entire night and to erect sufficient barricades both at night and in the daytime to secure the same. The party or parties using the street for any of the purposes specified in this chapter shall be liable for all injuries or damage to persons or property arising from any wrongful act or negligence of the party or parties, or their agents or employees or for any misuse of the privileges conferred by this chapter or of any failure to comply with provisions hereof.

136.10 FAILURE TO REPAIR OR BARRICADE. It is the duty of the owner of the property abutting the sidewalk, or the owner's contractor or agent, to notify the City immediately in the event of failure or inability to make necessary sidewalk improvements or to install or erect necessary barricades as required by this chapter.

136.11 INTERFERENCE WITH SIDEWALK IMPROVEMENTS. No person shall knowingly or willfully drive any vehicle upon any portion of any sidewalk or approach thereto while in the process of being improved or upon any portion of any completed sidewalk or approach thereto, or shall remove or destroy any part or all of any sidewalk or approach thereto, or shall remove, destroy, mar or deface any sidewalk at any time or destroy, mar, remove or deface any notice provided by this chapter.

136.12 AWNINGS. It is unlawful for a person to erect or maintain any awning over any sidewalk unless all parts of the awning are elevated at least eight feet above the surface of the sidewalk and the roof or covering is made of duck, canvas or other suitable material supported by iron frames or brackets securely fastened to the building, without any posts or other device that will obstruct the sidewalk or hinder or interfere with the free passage of pedestrians.

136.13 ENCROACHING STEPS. It is unlawful for a person to erect or maintain any stairs or steps to any building upon any part of any sidewalk without permission by resolution of the Council.

136.14 OPENINGS AND ENCLOSURES. It is unlawful for a person to:

1. Stairs and Railings. Construct or build a stairway or passageway to any cellar or basement by occupying any part of the sidewalk, or to enclose any portion of a sidewalk with a railing without permission by resolution of the Council.
2. Openings. Keep open any cellar door, grating, or cover to any vault on any sidewalk except while in actual use with adequate guards to protect the public.
3. Protect Openings. Neglect to properly protect or barricade all openings on or within six feet of any sidewalk.

136.15 FIRES OR FUEL ON SIDEWALKS. It is unlawful for a person to make a fire of any kind on any sidewalk or to place or allow any fuel to remain upon any sidewalk.

136.16 DEFACING. It is unlawful for a person to scatter or place any paste, paint, or writing on any sidewalk.

(Code of Iowa, Sec. 716.1)

136.17 DEBRIS ON SIDEWALKS. It is unlawful for a person to throw or deposit on any sidewalk any glass, nails, glass bottle, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris, or any substance likely to injure any person, animal, or vehicle.

(Code of Iowa, Sec. 364.12[2])

136.18 MERCHANDISE DISPLAY. It is unlawful for a person to place upon or above any sidewalk, any goods or merchandise for sale or for display in such a manner as to interfere with the free and uninterrupted passage of pedestrians on the sidewalk; in no case shall more than three feet of the sidewalk next to the building be occupied for such purposes.

136.19 SALES STANDS. It is unlawful for a person to erect or keep any vending machine or stand for the sale of fruit, vegetables or other substances or commodities on any sidewalk without first obtaining a written permit from the Council.

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CHAPTER 137

VACATION AND DISPOSAL OF STREETS

137.01 Power to Vacate

137.02 Planning and Zoning Commission

137.03 Notice of Vacation Hearing

137.04 Findings Required

137.05 Disposal of Vacated Streets or Alleys

137.06 Disposal by Gift Limited

137.01 POWER TO VACATE. When, in the judgment of the Council, it would be in the best interest of the City to vacate a street, alley, portion thereof, or any public grounds, the Council may do so by ordinance in accordance with the provisions of this chapter.

(Code of Iowa, Sec. 364.12[2a])

137.02 PLANNING AND ZONING COMMISSION. Any proposal to vacate a street, alley, portion thereof, or any public grounds shall be referred by the Council to the Planning and Zoning Commission for its study and recommendation prior to further consideration by the Council. The Commission shall submit a written report including recommendations to the Council within 30 days after the date the proposed vacation is referred to the Commission.

(Code of Iowa, Sec. 392.1)

137.03 NOTICE OF VACATION HEARING. The Council shall cause to be published a notice of public hearing of the time at which the proposal to vacate shall be considered.

137.04 FINDINGS REQUIRED. No street, alley, portion thereof, or any public grounds shall be vacated unless the Council finds that:

1. Public Use. The street, alley, portion thereof, or any public ground proposed to be vacated is not needed for the use of the public, and therefore, its maintenance at public expense is no longer justified.
2. Abutting Property. The proposed vacation will not deny owners of property abutting on the street or alley reasonable access to their property.

137.05 DISPOSAL OF VACATED STREETS OR ALLEYS. When in the judgment of the Council it would be in the best interest of the City to dispose of a vacated street or alley, portion thereof or public ground, the Council may do so in accordance with the provisions of Section 364.7, *Code of Iowa*.

(Code of Iowa, Sec. 364.7)

137.06 DISPOSAL BY GIFT LIMITED. The City may not dispose of real property by gift except to a governmental body for a public purpose or to a fair.

(Code of Iowa, Sec. 174.15[2] & 364.7[3])

[illegible]

CHAPTER 138

STREET GRADES

138.01 Established Grades

138.02 Record Maintained

138.01 ESTABLISHED GRADES. The grades of all streets, alleys and sidewalks, which have been heretofore established by ordinance, are hereby confirmed, ratified, and established as official grades.

138.02 RECORD MAINTAINED. The Clerk shall maintain a record of all established grades and furnish information concerning such grades upon request.

EDITOR'S NOTE			
All ordinances previously adopted vacating certain streets, alleys, and/or public grounds are not codified herein but are specifically saved from repeal and remain in full force and effect. The following ordinances, not codified herein and specifically saved from repeal, have been adopted vacating certain streets, alleys and/or public grounds and remain in full force and effect.			
ORDINANCE NO.	ADOPTED	ORDINANCE NO.	ADOPTED

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CHAPTER 139

NAMING OF STREETS

139.01 Naming New Streets
139.02 Changing Name of Street
139.03 Recording Street Names

139.04 Official Street Name Map
139.05 Revision of Street Name Map

139.01 NAMING NEW STREETS. New streets shall be assigned names in accordance with the following:

1. Extension of Existing Street. Streets added to the City that are natural extensions of existing streets shall be assigned the name of the existing street.
2. Resolution. All street names, except streets named as a part of a subdivision or platting procedure, shall be named by resolution.
3. Planning and Zoning Commission. Proposed street names shall be referred to the Planning and Zoning Commission for review and recommendation.

139.02 CHANGING NAME OF STREET. The Council may, by resolution, change the name of a street.

139.03 RECORDING STREET NAMES. Following official action naming or changing the name of a street, the Clerk shall file a copy thereof with the County Recorder, County Auditor and County Assessor.

(Code of Iowa, Sec. 354.26)

139.04 OFFICIAL STREET NAME MAP. Streets within the City are named as shown on the Official Street Name Map, which is hereby adopted by reference and declared to be a part of this chapter. The Official Street Name Map shall be identified by the signature of the Mayor, and bearing the seal of the City under the following words: "This is to certify that this is the Official Street Name Map referred to in Section 139.04 of the Code of Ordinances of Elkhart, Iowa."

139.05 REVISION OF STREET NAME MAP. If in accordance with the provisions of this chapter, changes are made in street names, such changes shall be entered on the Official Street Name Map promptly after the change has been approved by the Council with an entry on the Official Street Name Map as follows: "On (date), by official action of the City Council, the following changes were made in the Official Street Name Map: (brief description)," which entry shall be signed by the Mayor and attested by the Clerk.

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CHAPTER 140

SNOW AND ICE REMOVAL POLICY

140.01 Purpose

140.02 Level of Service

140.03 Sequence of Service

140.04 Liability of City

140.05 Limitation of Service

140.06 Emergency Conditions

140.07 Removal of Parked Vehicles

140.01 PURPOSE. The purpose of this chapter is to establish the City's policy and level of service in respect to clearance of snow or ice and maintenance of its road system during the winter months, as provided in Section 668.10 of the *Code of Iowa*.

140.02 LEVEL OF SERVICE. Clearance of snow, ice or compacted snow and maintenance of the City's road system during the winter months is primarily for the benefit of the motoring public. Each storm has individual characteristics and must be dealt with accordingly. From time to time, the portion of the roadway improved for travel will have upon it snow and ice in a compacted condition. These conditions may be continuous, or they may be more concentrated on hills, on sheltered areas, in valleys, curves, and/or intersections. The City's existing snow removal equipment will be utilized for this purpose. All clearance of snow or ice, sanding, salting, and other maintenance respecting winter conditions shall be accomplished within the amount of money approved in advance by the Council for this service. The entire width of that portion of the road improved for travel may not be cleared of snow, ice, compacted snow or ice or frost. Snow cleared from that part of the roadway improved for travel shall be placed on or in the adjacent shoulder, ditch, or right-of-way. Snow can be expected to accumulate adjacent to the traveled portion to the extent that a motorist's sight distance to both the left and right may be greatly reduced or impaired. The snow removed from intersections will be piled in its corners in piles of unequal height. The line of sight, sight distance or visibility of motorists approaching these intersections may be greatly reduced or impaired. The City shall not be responsible for snow pushed or otherwise placed on the roadway or shoulders by others. Motorists shall drive their vehicles during these conditions with additional caution and care, especially in respect to the surface of the roadway. In respect to roadways that have only one lane open, caution and care should be exercised by motorists, whose speed should not exceed 10 miles per hour. During these conditions, no additional warning or regulatory signs will be placed warning of impaired sight distances, visibility at intersections, road blockages, one-lane conditions, or that the road surface is slick or slippery, or what the advised speed should be.

140.03 SEQUENCE OF SERVICE. In the implementation of snow and ice removal and other maintenance of the City's road system during the winter months, the Council shall, at the beginning of each winter season, select the actual sequence of roads to be cleared as provided for herein, and shall determine when snow accumulation, drifting snow, wind velocity and additional snow or snowstorms require that the snow removal equipment be placed in operation or removed from operation, in accordance with the following principles:

1. The initial effort will be to get Walnut, Grant, Main and Railroad Streets open to two-lane traffic as soon as possible and thereafter to remove snow on the remaining streets within the City.

2. The snow removal equipment will be called off the road if snow and/or blowing snow reduces visibility to hazardous working conditions, in the professional judgment of the Mayor.
3. It is not the policy of the County to provide a “dry” pavement condition.
4. After roads have been plowed as provided in this section, intersections, hills, sheltered areas and curves may have placed on them salt, sand or other abrasives as deemed necessary by the Mayor.

140.04 LIABILITY OF CITY. Snow removal operations may cause snow to be deposited in the driveway of property owners. The City will not remove this snow or ice from private driveways. Snow from property owners’ driveways shall not be placed on the City roadway or shoulders. The City will not be responsible for damage caused by snow removal operations to structures or any other objects on or within the City road right-of-way, other than mailboxes. The City will replace or repair mailboxes damaged by snow removal equipment if the City determines the mailbox was located as far from the traveled portion of the roadway as possible and in compliance with United States Postal Service rules and regulations.

140.05 LIMITATION OF SERVICE. The policy and level of service provided for in this chapter shall not include the performance of the following services:

1. Sanding, salting, or placing of other abrasives upon the roadways that are slick, slippery, and dangerous due to the formation of frost that occurs suddenly.
2. Sanding, salting, or placing other abrasives upon paved roadways that are slick, slippery or dangerous due to freezing rain that occurs suddenly.
3. Placing of additional warning or regulatory signs warning of impaired sight distances, visibility at intersections, road blockages, one-lane conditions, or that the road surface is slick or slippery, or what the advised speed should be.
4. Sanding, salting or placing abrasives upon gravel roadways, except at those locations approved in advance by the City.

140.06 EMERGENCY CONDITIONS. The sequence of service may be suspended during “emergency” conditions declared by the Mayor. An “emergency” condition shall be considered as one where a loss of life is probable, where a serious injury has occurred, or where extensive loss of property is imminent. The City will respond to all “emergency” conditions, either during or after a snowstorm.

140.07 REMOVAL OF PARKED VEHICLES. In order to facilitate the removal of snow from the streets of the City, all parked vehicles shall be removed from the streets of the City within a period of eight hours after the snow has started falling until the streets have been cleared of accumulated snow to each curb. Any person violating this section shall be subject to a fine in accordance with Section 70.03 of this Code of Ordinances. In addition, the vehicle may be towed and the fair and reasonable expense of towing and storage shall be at the expense of the violator.

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CHAPTER 145

DANGEROUS BUILDINGS

145.01 Enforcement Officer
145.02 General Definition of Unsafe
145.03 Unsafe Building
145.04 Notice to Owner

145.05 Conduct of Hearing
145.06 Posting of Signs
145.07 Right to Demolish; Municipal Infraction
145.08 Costs

145.01 ENFORCEMENT OFFICER. The Mayor is responsible for the enforcement of this chapter.

145.02 GENERAL DEFINITION OF UNSAFE. All buildings or structures that are structurally unsafe or not provided with adequate egress, or that constitute a fire hazard, or are otherwise dangerous to human life, or that in relation to existing use constitute a hazard to safety or health, or public welfare, by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, are, for the purpose of this chapter, unsafe buildings. All such unsafe buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedure specified in this chapter.

(Code of Iowa, Sec. 657A.1 & 364.12[3a])

145.03 UNSAFE BUILDING. “Unsafe building” means any structure or mobile home meeting any or all of the following criteria:

1. Various Inadequacies. Whenever the building or structure, or any portion thereof, because of: (i) dilapidation, deterioration, or decay; (ii) faulty construction; (iii) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay, or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.
2. Manifestly Unsafe. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
3. Inadequate Maintenance. Whenever a building or structure, used or intended to be used for dwelling purposes, because of dilapidation, decay, damage, faulty construction, or otherwise, is determined by any health officer to be unsanitary, unfit for human habitation or in such condition that it is likely to cause sickness or disease.
4. Fire Hazard. Whenever any building or structure, because of dilapidated condition, deterioration, damage, or other cause, is determined by the Fire Marshal or Fire Chief to be a fire hazard.
5. Abandoned. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

145.04 NOTICE TO OWNER. The enforcement officer shall examine or cause to be examined every building or structure or portion thereof reported as dangerous or damaged and, if such is found to be an unsafe building as defined in this chapter, the enforcement

officer shall give to the owner of such building or structure written notice stating the defects thereof. This notice may require the owner or person in charge of the building or premises, within 48 hours or such reasonable time as the circumstances require, to commence either the required repairs or improvements or demolition and removal of the building or structure or portions thereof, and all such work shall be completed within 90 days from date of notice, unless otherwise stipulated by the enforcement officer. If necessary, such notice shall also require the building, structure, or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the enforcement officer.

(Code of Iowa, Sec. 364.12[3h])

1. Notice Served. Such notice shall be served by sending by certified mail to the owner of record, according to Section 364.12[3h] of the *Code of Iowa*, if the owner is found within the City limits. If the owner is not found within the City limits, such service may be made upon the owner by registered mail or certified mail. The designated period within which said owner or person in charge is required to comply with the order of the enforcement officer shall begin as of the date the owner receives such notice.
2. Hearing. Such notice shall also advise the owner that he or she may request a hearing before the Council on the notice by filing a written request for hearing within the time provided in the notice.

145.05 CONDUCT OF HEARING. If requested, the Council shall conduct a hearing in accordance with the following:

1. Notice. The owner shall be served with written notice specifying the date, time and place of hearing.
2. Owner's Rights. At the hearing, the owner may appear and show cause why the alleged nuisance shall not be abated.
3. Determination. The Council shall make and record findings of fact and may issue such order as it deems appropriate.[†]

145.06 POSTING OF SIGNS. The enforcement officer shall cause to be posted at each entrance to such building a notice to read: "DO NOT ENTER. UNSAFE TO OCCUPY. CITY OF ELKHART, IOWA." Such notice shall remain posted until the required demolition, removal or repairs are completed. Such notice shall not be removed without written permission of the enforcement officer and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building.

145.07 RIGHT TO DEMOLISH; MUNICIPAL INFRACTION. In case the owner fails, neglects, or refuses to comply with the notice to repair, rehabilitate, or to demolish and remove the building or structure or portion thereof, the Council may order the owner of the building prosecuted as a violator of the provisions of this chapter and may order the enforcement officer to proceed with the work specified in such notice. A statement of the cost of such work shall be transmitted to the Council. As an alternative to this action, the City may utilize the municipal infraction process to abate the nuisance.

[†] **EDITOR'S NOTE:** Suggested forms of notice and of a resolution and order of the Council for the administration of this chapter are provided in the APPENDIX to this Code of Ordinances. Caution is urged in the use of this procedure. We recommend you review the situation with your attorney before initiating procedures and follow his or her recommendation carefully.

(Code of Iowa, Sec. 364.12[3h])

145.08 COSTS. Costs incurred under Section 145.07 shall be paid out of the City treasury. Such costs shall be charged to the owner of the premises involved and levied as a special assessment against the land on which the building or structure is located, and shall be certified to the County Treasurer for collection in the manner provided for other taxes. In addition, the City may take any other action deemed appropriate to recover costs incurred.

(Code of Iowa, Sec. 364.12[3h])

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CHAPTER 146

MANUFACTURED AND MOBILE HOMES

146.01 Definitions

146.03 Foundation Requirements

146.02 Conversion to Real Property

146.01 DEFINITIONS. For use in this chapter the following terms are defined:

(Code of Iowa, Sec. 435.1)

1. “Manufactured home” means a factory-built structure built under the authority of 42 U.S.C. Sec. 5403 which was constructed on or after June 15, 1976, and is required by federal law to display a seal from the United States Department of Housing and Urban Development.
2. “Manufactured home community” means any site, lot, field, or tract of land under common ownership upon which ten or more occupied manufactured homes are harbored, either free of charge or for revenue purposes, and includes any building, structure or enclosure used or intended for use as part of the equipment of the manufactured home community.
3. “Mobile home” means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons; but also includes any such vehicle with motive power not registered as a motor vehicle in Iowa. A mobile home means any such vehicle built before June 15, 1976, which was not built to a mandatory building code and which contains no State or federal seals.
4. “Mobile home park” means any site, lot, field or tract of land upon which three or more mobile homes or manufactured homes, or a combination of any of these homes, are placed on developed spaces and operated as a for-profit enterprise with water, sewer or septic, and electrical services available.

The term “manufactured home community” or “mobile home park” is not to be construed to include manufactured or mobile homes, buildings, tents, or other structures temporarily maintained by any individual, educational institution, or company on its own premises and used exclusively to house said entity’s own labor or students. The manufactured home community or mobile home park shall meet the requirements of any zoning regulations that are in effect.

146.02 CONVERSION TO REAL PROPERTY. A mobile home or manufactured home that is located outside a manufactured home community or mobile home park shall be converted to real estate by being placed on a permanent foundation and shall be assessed for real estate taxes except in the following cases:

(Code of Iowa, Sec. 435.26 & Sec. 435.35)

1. **Retailer’s Stock.** Mobile homes or manufactured homes on private property as part of a retailer’s or a manufacturer’s stock not used as a place for human habitation.

2. Existing Homes. A taxable mobile home or manufactured home that is located outside of a manufactured home community or mobile home park as of January 1, 1995, shall be assessed and taxed as real estate, but is exempt from the permanent foundation requirement of this chapter until the home is relocated.

146.03 FOUNDATION REQUIREMENTS. A mobile home or manufactured home located outside of a manufactured home community or mobile home park shall be placed on a permanent frost-free foundation system that meets the support and anchorage requirements as recommended by the manufacturer or required by the *State Building Code*. The foundation system must be visually compatible with permanent foundation systems of surrounding residential structures. Any such home shall be installed in accordance with the requirements of the *State Building Code*.

(Code of Iowa, Sec. 103A.10 & 414.28)

CHAPTER 150

TREES

150.01 Definition

150.02 Planting Restrictions

150.03 Duty to Trim Trees

150.04 Trimming Trees to Be Supervised

150.05 Disease Control

150.06 Inspection and Removal

150.01 DEFINITION. For use in this chapter, “parking” means that part of the street, avenue, or highway in the City not covered by sidewalk and lying between the lot line and the curb line or, on unpaved streets, that part of the street, avenue, or highway lying between the lot line and that portion of the street usually traveled by vehicular traffic.

150.02 PLANTING RESTRICTIONS. No tree shall be planted in any parking or street except in accordance with the following:

1. Alignment. All trees planted in any street shall be planted in the parking midway between the outer line of the sidewalk and the curb. In the event a curb line is not established, trees shall be planted on a line 10 feet from the property line.
2. Spacing. Trees shall not be planted on any parking that is less than nine feet in width, or contains less than 81 square feet of exposed soil surface per tree. Trees shall not be planted closer than 20 feet from street intersections (property lines extended) and 10 feet from driveways. If it is at all possible, trees should be planted inside the property lines and not between the sidewalk and the curb.
3. Prohibited Trees. No person shall plant in any street any fruit-bearing tree or any tree of the kinds commonly known as cottonwood, poplar, box elder, Chinese elm, evergreen, willow, black walnut, or birch.

150.03 DUTY TO TRIM TREES. The owner or agent of the abutting property shall keep the trees on, or overhanging the street, trimmed so that all branches will be at least 15 feet above the surface of the street and eight feet above the sidewalks. If the abutting property owner fails to trim the trees, the City may serve notice on the abutting property owner requiring that such action be taken within five days. If such action is not taken within that time, the City may perform the required action and assess the costs against the abutting property for collection in the same manner as a property tax.

(Code of Iowa, Sec. 364.12[2c, d & e])

150.04 TRIMMING TREES TO BE SUPERVISED. Except as allowed in Section 150.03, it is unlawful for any person to trim or cut any tree in a street or public place unless the work is done under the supervision of the City.

150.05 DISEASE CONTROL. Any dead, diseased, or damaged tree or shrub that may harbor serious insect or disease pests or disease injurious to other trees is hereby declared to be a nuisance.

150.06 INSPECTION AND REMOVAL. The Council shall inspect or cause to be inspected any trees or shrubs in the City reported or suspected to be dead, diseased or damaged, and such trees and shrubs shall be subject to the following:

1. City Property. If it is determined that any such condition exists on any public property, including the strip between the curb and the lot line of private property, the Council may cause such condition to be corrected by treatment or removal. The Council may also order the removal of any trees on the streets of the City which interfere with the making of improvements or with travel thereon.

2. Private Property. If it is determined with reasonable certainty that any such condition exists on private property and that danger to other trees or to adjoining property or passing motorists or pedestrians is imminent, the Council shall notify by certified mail the owner, occupant or person in charge of such property to correct such condition by treatment or removal within 14 days of said notification. If such owner, occupant, or person in charge of said property fails to comply within 14 days of receipt of notice, the Council may cause the condition to be corrected and the cost assessed against the property.

(Code of Iowa, Sec. 364.12[3b & h])

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CHAPTER 155

BUILDING CODE

155.01 Short Title

155.02 Administrative Provisions

155.03 Adoption of Building Codes

155.01 SHORT TITLE. This chapter shall be known as the Elkhart, Iowa, Building Code, may be cited as such, and will be referred to herein as the “Building Code.”

155.02 ADMINISTRATIVE PROVISIONS. Administration of this chapter shall be as provided in this section and in the following sections of the several codes named, which are hereby adopted by reference, to provide procedures for local enforcement of the codes constituting the City’s Building Code. The Building Official shall be appointed by the Mayor, subject to approval of the City Council, for the enforcement of the codes adopted in this chapter and such other ordinances assigned to said official, and shall perform such other duties as may be required by the Mayor/City Council. The Building Official shall be accountable for the issuance of all applicable permits under this chapter and shall have the power to render interpretations of this Building Code and to adopt and enforce rules and regulations supplemental to this Code, subject to approval of the Council, as said official may deem necessary in order to clarify the application of the provisions of this Building Code. Such rules, regulations, and interpretations shall be in conformity with the intent and purpose of this Code of Ordinances.

155.03 ADOPTION OF BUILDING CODES. Pursuant to published notice and public hearing, as required by law, the following Codes are hereby adopted as, and constitute, the Building Code of the City, to regulate the erection, construction, enlargement, alteration, repair, moving, removal, conversion, demolition, occupancy, equipment, use, height, area, and maintenance of buildings or structures within the City and the same are by this reference incorporated herein as fully and completely as if set forth in full herein.

1. The *International Building Code*, 2015 Edition, as published by the International Code Council, amended as follows:

- A. Sec. 101.1. Title. Insert “City of Elkhart, Iowa.”
- B. Sec. 101.4.1. Electrical. Delete “ICC Electrical Code” and insert “*National Electrical Code*, 2008 Edition, as published by the National Fire Protection Association.”
- C. Sec. 104.11. Alternative methods. After paragraph insert “the Iowa Administrative Code 661, Chapter 16, Div. VI, Part 2, Manufactured Home Construction, is hereby adopted for installation of mobile (manufactured) homes.”
- D. Sec. 108.2. Fees. After “in accordance with the” insert “resolution setting fees as established by City of Elkhart.”
- E. Sec. 108.3. Valuations. At the end of last sentence delete period and insert “using the latest Building Valuation Data Sheet.”
- F. Sec. 1612.3. Insert “City of Elkhart, Iowa.”

- G. Sec. 1612.3. Insert date of latest flood map.
- 2. The *International Mechanical Code* and Appendix Chapters, 2015 Edition, as published by the International Code Council, amended as follows.
 - A. Sec. 101.1. Title. Insert “City of Elkhart, Iowa.”
 - B. Sec. 106.6.2. Fee Schedule. Insert “as set by the City of Elkhart trade permit.”
 - C. Sec. 108.4. Penalties. Insert “per Chapter 3, Municipal Infractions, of the Code of Ordinances of the City of Elkhart.”
 - D. Sec. 108.5. Stop work. Insert “\$500.00”.
 - E. Delete Appendix B.
- 3. The *International Plumbing Code* and Appendix Chapters, 2015 Edition, as published by the International Code Council, amended as follows.
 - A. Sec. 101.1. Title. Insert “City of Elkhart, Iowa.”
 - B. Sec. 106.6.2. Fee schedule. Insert “as set by the City of Elkhart trade permit.”
 - C. Sec. 108.4. Penalties. Insert “per Chapter 3, Municipal Infractions, of the Code of Ordinances of the City of Elkhart.”
 - D. Sec. 108.5. Stop work. Insert “\$500.00”.
 - E. Sec. 305.6.1. Insert “42 inches” in 2 places.
 - F. Sec. 904.1. Insert “12 inches.”
 - G. Delete Appendix A.
- 4. State of Iowa Section 661 Iowa Administrative Code Chapter 504, including the *National Electrical Code* and Appendix Chapters, 2008 Edition, as published by the National Fire Protection Association with amendments:
 - A. Permit fees for electrical work shall be according to the fees established by the City of Elkhart trade permit.
- 5. The *International Fire Code* and Appendix Chapters, 2015 Edition, as published by the National Fire Protection Association, as amended:
 - A. Sec. 101.1. Title. Insert “City of Elkhart, Iowa.”
 - B. Sec. 109.3. Penalties. Insert “per Chapter 3, Municipal Infractions, of the Code of Ordinances of the City of Elkhart.”
 - C. Sec. 111.4. Stop work. Insert “\$500.00.”
- 6. The *International Property Maintenance Code*, 2015 Edition, as published by the International Code Council, amended as follows:
 - A. Sec. 101.1. Title. Insert “City of Elkhart, Iowa.”
 - B. Sec. 303.14. Screens. Insert “April 15” and “September 15.”
 - C. Sec. 602.3. Heat. Delete “during the period from (date) to (date).”
 - D. Sec. 602.4. Work spaces. Delete “during the period from (date) to (date).”

7. The *International Residential Code for One- and Two-Family Dwellings* and Appendix Chapters, 2015 Edition, as published by the International Code Council, amended as follows:

- A. Sec. R101.1. Title. Insert “City of Elkhart, Iowa.”
- B. Sec. R104.11. Alternative methods. After paragraph insert “the Iowa Administrative Code 661, Chapter 16, Div. VI, Part 2, Manufactured Home Construction, is hereby adopted for installation of manufactured (mobile) homes.”
- C. Sec. R108.2. Permit fees. After “in accordance with the,” insert “attached schedule as established by Elkhart for the regular Building Permit Fee Schedule.”
- D. Delete Appendix F.
- E. Delete Appendix L.
- F. Delete Appendix P.
- G. R105.5 – 12-Month Expiration. Every permit issued under the provisions of this Code shall expire 12 months from the date of issue, unless the application is accompanied by a construction schedule of specific longer duration, in which instance the permit may be issued for the term of the construction schedule, with approval of the Building Official. If the work has not been completed by the expiration date of the permit, no further work shall be done until the permit shall have been renewed by the owner or his or her agent and by payment of the renewal fee as established by resolution of the City Council, and provided no changes have been made in plans or location. No permit shall be renewed more than once. The fee for the extension shall be \$75.00 re-inspection fee if the project is at the finish stage (drywall and trim installed) and 50 percent of the original building permit fee if the project is at the rough-in stage (drywall and trim not installed).
- H. Table R301.2(1) Climatic and Geographic Design Criteria. Table R301.2(1), Climatic and Geographic Design Criteria is hereby amended by modifying said table as follows:

TABLE R301.2(1)

Climatic and Geographic Design Criteria

Ground Snow Load	Wind Speed MPH	Seismic Design Category	Subject to Damage From:				Winter Design Temp	Ice Barrier Required	Flood Hazards	Air Freezing Index	Mean Annual Temp
			Weathering	Frost Line Depth	Termite	Decay			NFIP Adoption		
30 PSF	90	A	Severe	42"	Moderate-Heavy	Slight-Moderate	-5° F	Yes	1982	1833	48.6° F

- I. Replace Table R403.1 with the following:

**TABLE R403.1
FOUNDATIONS FOR STUD BEARING WALLS**

Number of Stories	Thickness of Foundation Walls (inches)	Minimum Width of Footing (inches)	Thickness of Footing (inches)	Minimum Depth of Foundation Below Natural Surface of Ground and Finish Grade (inches)
1	8	16	8	42
2	8	16	8	42
3	10	18	12	42

8. The *International Energy Conservation Code* and Appendix Chapters, 2015 Edition, as published by the International Code Council, as amended:

A. Sec. 101.1. Title. Insert “City of Elkhart, Iowa.”

9. *International Fuel Gas Code* and Appendix Chapters, 2015 Edition, as published by the International Code Council, amended as follows:

A. Sec. 101.1. Title. Insert “City of Elkhart, Iowa.”

B. Sec. 105.5.2. Fee Schedule. Insert “as set by the City of Elkhart trade permit fees schedule as attached for the Mechanical and Plumbing permit fee.”

- (1) The permit fee schedule is as follows:

A. Fee Schedule

B. Building Code Enforcement

Valuation	Permit Fee	TBI Fee	City Revenue
\$1.00 to \$500.00	\$50.00	80%	20%
\$501.00 to \$2,000.00	\$50.00	80%	20%
\$2,001.00 to \$25,000.00	\$50.00 for first \$2,000.00 plus \$12.50 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00	80%	20%
\$25,001.00 to \$50,000.00	\$352.00 for first \$25,001.00 plus \$9.00 for each additional \$1,000.00 or fraction thereof, to and including \$50,000.00	75%	25%
\$50,001.00 to \$100,000.00	\$580.00 for first \$50,001.00 plus \$6.25 for each additional \$1,000.00 or fraction thereof, to and including \$100,000.00	70%	30%
\$100,001.00 to \$500,000.00	\$895.00 for first \$100,001.00 plus \$5.00 for each additional \$1,000.00 or fraction thereof, to and including \$500,000.00	65%	35%
\$500,001.00 to \$1,000,000.00	\$2,855.00 for first \$500,001.00 plus \$4.25 for each additional \$1,000.00 or fraction thereof, to and including \$1,000,000.00	65%	35%
\$1,000,001.00 and up	\$4,955.00 for first \$1,000,001.00 plus \$2.75 for each additional \$1,000.00 or	60%	40%

	fraction thereof		
Trade Permit	Electrical, Plumbing, Mechanical	100%	0%

Re-inspection fee is \$75.00. When plans, engineering calculations, or specifications are necessary, a plan check fee is required equal to 65 percent of the permit fee. Generally, this plan check fee is waived for conventional one-, two-, and three-family residential projects. All other projects normally require the plan check fee in addition to the regular permit fees. TBI retains 100% of the plan check fee.

(2) For any code enforcement, consulting, or miscellaneous service fees provided which are not covered by a permit fee, the following rates plus expenses apply:

Hourly - \$75.00

Mileage – Current government reimbursement rate

Expenses – Actual costs (receipts provided)

C. Sec. 108.4. Penalties. Insert “per Chapter 3, Municipal Infractions, of the Code of Ordinances of the City of Elkhart.”

D. Sec. 108.5. Stop work. Insert “\$500.00” (amount in two places).

10. The *International Existing Building Code* and Appendix Chapters, 2015 Edition, as published by the International Code Council, amended as follows:

A. Sec. 101.1. Title. Insert “City of Elkhart, Iowa.”

B. Sec. 108.2. Permit fees. Delete after “established” and insert “for the various disciplines herein adopted.”

[The next page is 701]

CHAPTER 156

URBAN DESIGN STANDARDS

156.01 Purpose

156.02 Adoption of Standards

156.03 Adoption of Specifications

156.04 Additional Standards

156.01 PURPOSE. The City desires to implement uniform design standards, procedures and regulations for the design and construction of public improvements.

156.02 ADOPTION OF STANDARDS. The *Iowa Statewide Urban Design Standards for Public Improvements*, published by the Center for Transportation Research and Education of Iowa State University, dated 2005, and as from time to time amended or supplemented, are hereby adopted by reference as if set out fully herein as the City's design standards for public improvements.

156.03 ADOPTION OF SPECIFICATIONS. The *Iowa Statewide Urban Standard Specifications for Public Improvements*, published by the Center for Transportation Research and Education of Iowa State University, dated 2005, and as from time to time amended or supplemented, are hereby adopted by reference as if set out fully herein as the City's standard specifications for public improvements.

156.04 ADDITIONAL STANDARDS. In addition to the standards set forth in this chapter and consistent with this Code of Ordinances, the Council may, from time to time, adopt by resolution technical standards or specifications for public improvements. Such technical standards or specifications may vary for classes of improvements, giving due regard to the classification of streets or other improvements, and the extent and character of the area served by the improvements. Upon adoption by the Council by resolution, such technical standards or specifications for public improvements shall have such force and effect as if they were fully set forth in this section.

[The next page is 705]

CHAPTER 157

FENCES, WALLS AND VISION CLEARANCE

157.01 Permit Required

157.02 Installation

157.03 Fence Material

157.04 Corner Lots

157.05 Front Yards and Street Side Yards

157.06 Height

157.07 Industrial District

157.08 Retaining Walls

157.09 Easements and Drainage

157.10 Temporary Snow Fences

157.01 PERMIT REQUIRED. No fence shall be installed or altered without prior approval of a building permit in accordance with Chapter 155. Each application for a fence permit shall be accompanied by a plot plan, in duplicate, drawn to scale, showing the actual dimensions of the lot; the size, shape, and location of all existing buildings; location, height, and material type of the proposed fence; and such other information as may be necessary to provide for the enforcement of this chapter. All permit fees shall be in accordance with the fee schedules set by the City.

157.02 INSTALLATION. A fence shall be constructed such that the finished side of the fence is facing the street or adjacent yard.

157.03 FENCE MATERIAL. Acceptable materials for fences in all yards shall include wrought iron and similar decorative steel, treated or decay-resistant wood, vinyl, polymer, or decorative masonry components, as approved by the Council. Additional acceptable materials for fences in rear yards and interior side yards only shall include chain link and vinyl-clad chain link. Unacceptable material shall include woven wire, barbed wire, or electrical fencing.

157.04 CORNER LOTS. On a corner lot, nothing shall be erected, placed, planted, or allowed to grow in such a manner as to impede vision between a height of two and one-half and 10 feet above the centerline grades of the area described as follows: that area bounded by the street right-of-way lines of a corner lot and a straight line joining points on said right-of-way lines 25 feet from the point of intersection of said right-of-way lines.

157.05 FRONT YARDS AND STREET SIDE YARDS. In any residential district, a fence or wall not exceeding 42 inches in height and not greater than 50 percent opaque is permitted within the limits of front yards or street side yards.

157.06 HEIGHT. In any district, fences and walls not exceeding six feet in height are permitted within the limits of interior side and rear yards with the exception of double frontage lots. Fences and walls in the required rear yards of double frontage lots and in the street side yards of corner lots shall not exceed 42 inches in height, shall be not greater than 50 percent opaque; and may encroach a maximum distance of 15 feet into the required rear or street side yard provided said encroachment does not intrude into a required buffer.

157.07 INDUSTRIAL DISTRICT. In any industrial district, a chain link fence not exceeding eight feet in height is permitted in the limits of the rear yards and interior side yards.

157.08 RETAINING WALLS. In the case of retaining walls supporting embankments, the above requirements shall apply only to that part of the wall above the ground surface of the retained embankment.

157.09 EASEMENTS AND DRAINAGE. Fences will be permitted in public utility easements and in storm water drainage or water flow easements as long as they do not hinder, obstruct, or block water flow or drainage. Fences may be permitted within required buffers if specifically approved by the City Council. Property owners are required to determine and identify their property boundaries before installing a fence.

157.10 TEMPORARY SNOW FENCES. Temporary plastic snow fences shall be permitted from November 1 through April 1 of each year without a permit.

[The next page is 731]

CHAPTER 165

ZONING REGULATIONS

165.01 Title	165.15 I-1 Industrial Districts
165.02 Purpose	165.16 L-1 Light Industrial Districts
165.03 Definitions	165.17 A-1 Agricultural Districts
165.04 Establishment of Districts	165.18 Administration and Enforcement
165.05 Official Zoning Map	165.18A Building Code Violations
165.06 Amending Official Zoning Map	165.19 Permits and Certificate of Occupancy
165.07 Replacing Official Zoning Map	165.20 Board of Adjustment Created
165.08 Application of Regulations	165.21 Nonconforming Buildings and Uses
165.09 R-1 Residential Districts	165.22 Amendments
165.10 R-2 Residential Districts	165.23 Procedures for Amendment by Petition
165.11 R-3 Multi-Family Residential Districts	165.24 Public Water Supply Wells
165.12 R-4 Mobile Home Park District	165.25 Architectural Design and Treatment of Buildings
165.13 C-1 Core Business Districts	165.26 Screening
165.14 C-2 General Commercial Districts	165.27 Surfacing Requirements

165.01 TITLE. This chapter shall be known and may be cited as “The City of Elkhart, Iowa, Zoning Ordinance,” or cited as the “Zoning Ordinance.”

165.02 PURPOSE. The purpose of this chapter is to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to regulate the use of land, and to promote the health, morals, safety and general welfare in the City.

165.03 DEFINITIONS. As used in this chapter, the word “lot” includes the words “plat or parcel.” The words “used or occupied” as applied to any land or building include the words “intended, arranged or designed to be used or occupied.” The following terms shall be interpreted or defined as follows:

1. “Agriculture” includes the use of land for agricultural purposes, including animal husbandry, apiculture, dairying, farming, floriculture, forestry, groves, horticulture, orchards, poultry husbandry, ranching, viticulture, and the necessary uses for packing, treating or storing the produce; however, the operation of accessory uses shall be subordinate to that of normal agricultural activities.
2. “Dwelling” means a building used as the living quarters for one or more families, not including auto courts, rooming homes or tourist homes.
 - A. A “private dwelling” is a dwelling occupied by one family alone.
 - B. A “two-family dwelling” is a dwelling occupied by two families alone.
 - C. A “multiple dwelling” is a dwelling occupied by more than two families.
3. “Mobile home” and “manufactured home” mean any structure without motive power used or to be manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed or reconstructed as to permit the vehicle to be used as a place for human habitation by one or more persons. Such terms also include any such vehicle with motive power not registered as a motor vehicle in Iowa.
4. “Mobile home park” means any site, lot, field or tract of land upon which two or more occupied mobile homes are harbored, either free of charge or for revenue

purposes, and includes any building, structure, tent, vehicle or enclosure used or intended for use as part of the equipment of such mobile home park. The term “mobile home park” shall not be construed to include mobile homes, buildings, tents or other structures temporarily maintained by any individual, educational institution or company on such person’s own premises and used exclusively to house such person’s own labor or students.

5. “Structure” means a combination of materials other than a building to form a construction that is safe and stable and includes, among other things, stadiums, platforms, radio towers, sheds, storage bins, fences, signs and chicken coops.

165.04 ESTABLISHMENT OF DISTRICTS. The City is hereby divided into the following types of districts: The City is divided into the following types of districts:

1. R-1 One- and Two-Family Residential Districts.
2. R-2 One- and Two-Family Residential Districts.
3. R-3 Multiple Family Residential Districts.
4. R-4 Mobile Home Park Districts.
5. C-1 Commercial Districts.
6. C-2 General Commercial Districts
7. I-1 Industrial Districts
8. L-I Light Industrial Districts
9. A-1 Agricultural Districts

165.05 OFFICIAL ZONING MAP. As shown by the official zoning map, the City is divided into seven classes of districts. The boundaries of these districts are hereby established as shown on the official zoning map of the City, and said map and all notations, references and other information shown thereon shall be and are hereby made a part of this chapter by reference. The official zoning map, signed by the Mayor and properly attested by signature of the Clerk, bearing the date of adoption, shall be and remain on file in the office of the Clerk.

165.06 AMENDING OFFICIAL ZONING MAP. Amendments, supplements or changes of the boundaries of districts as shown on the official zoning map shall be made by an ordinance amending the zoning ordinance. The amending ordinance shall refer to the official zoning map and shall set out the identification of the area affected by legal description and identify the zoning district as the same exists and the new district designation applicable to said property. Said ordinance shall, after adoption and publication, be recorded by the Clerk as other ordinances and a certified copy thereof attached to the official zoning map. Such amendatory ordinance shall, however, not repeal or re-enact said map, but only amend it. The official zoning map, together with amending ordinances, shall be the final authority as to the current zoning status of land and water areas, buildings and other structures in the City.[†]

165.07 REPLACING OFFICIAL ZONING MAP. In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of use, the Council may by resolution adopt a new official zoning map which shall supersede the prior map. The new official zoning map may correct drafting or other errors or omissions in the prior map, but

[†] (See EDITOR’S NOTE at the end of this chapter for ordinances amending the zoning map.)

no such correction shall have the effect of amending the original zoning ordinance or any subsequent amendment thereof. The new official zoning map shall be identified by date and the signature of the Mayor, attested by the Clerk, under the following words: *This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted as part of the Zoning Ordinance of the City.*

165.08 APPLICATION OF REGULATIONS. Except as hereinafter provided:

1. No building or land shall be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which it is located.
2. No building shall be erected or altered:
 - A. To exceed the height;
 - B. To accommodate or house a greater number of families;
 - C. To occupy a greater percentage of lot area; or
 - D. To have narrower or smaller rear yards, side yards, or front yards than are specified herein for the district in which such building is located.
3. No part of a yard or other open space required about any building for the purpose of complying with the provisions of this chapter shall be included as a part of a yard or other open space similarly required for another building.
4. Requirements for accessory buildings are as follows:
 - A. Accessory buildings or structures shall be erected at least five feet from property lines in side or rear yards in all Residential Districts. Accessory buildings must be erected separately from and at least 10 feet distant from the principal structure. If an accessory building or structure is connected to a principal building, the accessory building or structure shall be deemed to be part of the principal building and shall comply with all yard requirements applicable to the principal building. An accessory building or structure which is not connected to a principal building shall not exceed 20 feet in height, which shall be measured between the grade and peak for gable roof structures and by the tallest point for flat roof structures.
 - B. In no case shall any portion of the accessory building, including the overhang, be placed into an easement.
 - C. On “through” lots, also known as “double frontage” lots, no accessory buildings shall be closer than 18 feet from the street. In no case shall any portion of the accessory building, including the overhang, be placed into an easement.
 - D. On corner lots, accessory buildings shall comply with all yard requirements applicable to the principal building. In no case shall any portion of the accessory building, including the overhang, be placed into an easement.
 - E. For accessory buildings that have either already been built and encroach upon the required setback, or in the limited circumstances for properties that present unique access or building site conditions only in R-1 Residential Districts, R-2 Residential Districts, and for one- and two-family dwellings in R-3 Multi-Family Residential Districts, a property owner may submit a written request to the City Council for the Council’s consent to build

or permit an existing accessory building encroaching upon the required setback, but in no event less than three feet from the property line. Property owner must provide documented justification for the request and a survey from a licensed professional land surveyor providing verification of the existence of property lines and location of proposed accessory building. For any such structure less than five feet from property lines, additional Building and /or Fire Code requirements shall be met, including, but not limited to:

- (1) Any accessory building placed closer than five feet to the property lines shall meet the requirements for a one-hour rated wall construction on the wall closest to the property line.
- (2) Gutter and downspouts shall be required on the wall closest to the property line.
- (3) There shall be at least 12 inches from the property line to the eaves including the gutter.
- (4) In no case shall any portion of the accessory building, including the overhang and gutter, be placed into an easement.

Council's consent will be valid only if in writing and issued to the property owner.

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165.09 R-1 RESIDENTIAL DISTRICTS.

1. Permitted Uses. The following uses of land are permitted in all R-1 Residential Districts:

- A. Private and two-family dwelling units, provided that mobile homes are not permitted, except as provided by this chapter.
- B. Churches and places of worship and parochial schools.
- C. Public schools, public libraries, parks, playgrounds.
- D. Small home occupations, provided that there are no signs or other evidence of such use other than a small announcement or professional sign not over two square feet in size.
- E. Other customary accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity conducted as a business.

2. Height of Buildings in R-1 Residential Districts. No principal building shall be erected to a height in excess of 35 feet.

3. Density of Population in R-1 Residential Districts. Lot area shall not be less than 5,000 feet square and lot width not less than 50 feet. There shall be no more than one dwelling placed on each lot of the above size.

4. Percentage of Lot Covered in R-1 Residential Districts. All dwellings or other structures, including accessory buildings, shall not cover more than 40 percent of the area of the lot. If more than one lot is used, the percentage shall be computed on the combined size of the lots.

5. Yards and Open Spaces in R-1 Districts. Each lot shall have front, side and rear yards not less than the following depth and width:

- A. Front yard depth 25 feet.
- B. Each side yard width 5 feet.
- C. Rear yard depth 25 feet.

6. References to Other Standards that may Apply.

- A. See requirements for accessory buildings in Section 165.08(4) of this chapter.
- B. See Architectural Design and Treatment of Buildings in Section 165.25 of this chapter.
- C. See Screening in Section 165.26.
- D. See Sign Code in Chapter 181.
- E. See Surfacing Requirements in Section 165.27.
- F. All uses shall meet the parking and other standards in this Code of Ordinances.

7. Requirements for R-1 Lots after July 1, 2016. Each R-1 residential lot created after July 1, 2016, shall have a lot area not less than 7,800 feet square and lot width not less than 65 feet. Each dwelling on each lot shall include, at a minimum, a two-

car attached garage with a driveway with a minimum length of 30 feet between the front lot line and building with the driveway width adequate for parking at least two vehicles. Each R-1 lot created after July 1, 2016, shall have at a minimum the following requirements:

- A. Lot width – not less than 65 feet.
- B. Lot area – not less than 7,800 square feet.
- C. Front yard depth – 30 feet.
- D. Rear yard depth – 25 feet.
- E. Each side yard depth – 7 feet.
- F. Maximum percentage of lot covered by structures – 50 percent.

All other requirements in this section shall apply to R-1 residential lots created after July 1, 2016.

8. Two-Unit Structures. Bi-attached zero lot line two-unit residential structures are allowed provided each dwelling unit is located on a separate platted lot with common wall construction and each unit includes a two-car attached garage with a driveway with a minimum length of 30 feet between the front lot line and building with the driveway width adequate for parking two cars. Each lot for a bi-attached unit shall comply with the following requirements:

- A. Lot width – not less than 42.5 feet.
- B. Lot area – not less than 5,100 square feet.
- C. Front yard depth – 30 feet.
- D. Rear yard depth – 25 feet.
- E. Side yard, common wall side – 0 feet.
- F. Side yard, non-common wall side – 7 feet.
- G. Maximum percentage of lot covered by structures – 50 percent.

All other requirements in this section shall apply to R-1 residential lots, including each lot for a bi-attached unit, created after July 1, 2016.

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165.10 R-2 RESIDENTIAL DISTRICTS.

1. Permitted Uses. All uses permitted in R-1 Residential Districts are permitted in R-2 Residential Districts.
2. Height of Buildings in R-2 Residential Districts. No dwelling or other structure shall be erected to a height in excess of 35 feet.
3. Density of Population in R-2 Residential Districts. Lot area shall not be less than 12,000 feet square and lot width not less than 80 feet. There shall be no more than one dwelling placed on each lot of the above size.
4. Percentage of Lot Covered by Buildings, Dwellings, and Other Structures in R-2 Residential Districts. All dwellings or other structures, including accessory buildings, shall not cover more than 40 percent of the area of the lot. If more than one lot is used, the percentage shall be computed on the combined size of the lots.
5. Yards and Open Spaces in R-2 Districts. Each lot shall have front, side and rear yards not less than the following depth and width:
 - A. Front yard depth.....35 feet.
 - B. Each side yard depth 12 feet.
 - C. Rear yard depth 35 feet.
6. References to Other Standards that May Apply.
 - A. See requirements for accessory buildings in Section 165.08(4) of this chapter.
 - B. See Architectural Design and Treatment of Buildings in Section 165.25 of this chapter.
 - C. See Screening in Section 165.26.
 - D. See Sign Code in Chapter 181.
 - E. See Surfacing Requirements in Section 165.27.
 - F. All uses shall meet the parking and other standards in this Code of Ordinances.
 - G. All uses shall meet the parking, design, screening, sign, and other standards in this code of ordinances.

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165.11 R-3 MULTI-FAMILY RESIDENTIAL DISTRICTS.

1. Permitted Uses. The following uses of land are permitted in all R-3 Residential Districts:

- A. All uses permitted in R-1 Residential Districts.
- B. Multiple dwelling units, including rooming and boarding houses and tourist homes.
- C. Other customary accessory uses and buildings, provided such uses are incidental to the principal use and do not include an activity commonly conducted as a business, unless otherwise provided.

2. Height of Buildings in R-3 Residential Districts. No dwelling or other structure shall be erected to a height of 50 feet or exceed 4 stories, unless hereinafter provided.

3. Density of Population in R-3 Residential Districts. Lot area for multiple family dwellings shall be not less than 6,000 square feet and lot width not less than 50 feet, plus an additional 1,000 square feet for each unit over three (3).

4. Percentage of Lot Covered by Buildings, Dwellings and other Structures in R-3 Residential Districts. All dwellings or other structures, including accessory buildings, shall not cover more than 40 percent of the area of the lot. If more than one lot is used, the percentage shall be computed on the combined size of the lots.

5. Yards and Open Spaces in R-3 Residential Districts. Each lot shall have front, side and rear yards not less than the following depth and width:

- A. Front yard depth 25 feet.
- B. Each side yard depth 5 feet.
- C. Rear yard depth 25 feet.

6. Distance Between Buildings on Same Lot. No principal building shall be closer to any other principal building than the average of the heights of said buildings.

7. Automobile Storage or Parking Space. In connection with every multi-family dwelling, there shall be provided automobile storage or parking space equal to not less than two (2) parking spaces for each family unit in each structure; provided, however, no front yard shall be used for the open-air parking or storage of any motor vehicle.

8. References to Other Standards that May Apply.

- A. See requirements for accessory buildings in Section 165.08(4) of this chapter.
- B. See Architectural Design and Treatment of Buildings in Section 165.25 of this chapter.
- C. See Screening in Section 165.26.
- D. See Sign Code in Chapter 181.
- E. See Surfacing Requirements in Section 165.27.
- F. All uses shall meet the parking and other standards in this Code of Ordinances.

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165.12 R-4 MOBILE HOME PARK DISTRICT.

1. Permitted Uses. The following uses of land are permitted in R-4 Mobile Home Park Districts:

- A. Mobile homes.
- B. Mobile home parks.
- C. Other customary and accessory uses incidental to the principal use.

2. Location of Mobile Homes Outside R-4 Districts. It is unlawful for any person to park or place any mobile home on a street, alley, highway or public place or on any private land within the City, except as is provided by State law and this chapter. This section does not apply to mobile homes parked or placed within mobile home parks or upon private property as part of a dealer's or a manufacturer's stock not used as a place for human habitation.

3. Permanent Occupancy of Mobile Homes. A mobile home shall not be used as a permanent dwelling place or for indefinite periods of time except in a mobile home park except those so used on May 5, 1974. Any mobile home removed from property not a mobile home park shall not be replaced by a mobile home, unless permitted by the Zoning Ordinance at such place.

4. Exceptions. Nothing in this chapter shall be construed to allow a mobile home or manufactured home to be located in other than an approved mobile home park, except as governed by State law. Where State law supersedes the provisions of this or other ordinances or regulations, detached single-family manufactured dwellings shall be allowed in any residential district where new single-family dwellings are permitted, subject to compliance with the following provisions in addition to all other applicable requirements:

A. Such dwelling shall comply with the minimum floor area and with requirements of the *Uniform Building Code* and such other Codes or ordinances which may have been adopted by the City; provided, however, such dwelling shall measure not less than 20 feet in width and 36 feet in length.

B. Such dwelling shall be certified by the Federal Department of Housing and Urban Development (hereinafter referred to as "HUD"), or HUD-approved third-party agency as being in compliance with all requirements of the most recent edition of the *Federal Manufactured Home Construction and Safety Standards*. The HUD certification label shall be placed on each section or module of the dwelling in accordance with HUD regulations.

C. Evidence shall be submitted to verify that such dwelling is designed to be and will be placed on, supported by, and attached to a continuous perimeter foundation which shall be permanent and constructed in accordance with the *Uniform Building Code* provisions for site-built housing. Pier or other isolated foundation systems and/or systems in conjunction with ground anchors or similar installation shall not be deemed permanent foundations and are not permitted. The manufacturer shall provide written instructions and plans for the installation and attachment, which shall include certification by a qualified registered professional engineer.

D. The vehicular frame shall be removed, or if not removable, permanently modified or destroyed to the extent of making the dwelling non-transportable, and the dwelling shall be permanently attached to the foundation. Each dwelling shall be converted to and taxed as real estate. Evidence shall be provided in the form of an affidavit that any and all indebtedness applicable to the dwelling is secured as a real estate mortgage, as opposed to a chattel loan. If no indebtedness exists, the owner shall so certify and provide evidence of clear title. The vehicle title, registration card, registration plates (unless such plates are retained to be attached to another manufactured dwelling) and any other required information shall be filed with the Assessor when applying for a building permit, and evidence provided that the application for conversion is satisfactory in the form of a certified statement signed by the Assessor.

E. No certificate of occupancy, either permanent or temporary, shall be granted until the Assessor has certified that the conversion has been satisfactorily completed, and the property entered upon the tax rolls. A bond or other security may be required in the discretion of the City Clerk, to insure that the conversion is satisfactorily completed. The dwelling shall be new and undamaged and shall not have been previously installed or occupied for any purpose as evidenced by the chain of title and certification by the dealer.

F. Sewer, water, utility services and all other site improvements shall conform to the applicable provisions of this Code of Ordinances.

G. A permit may be granted by the Board of Adjustment by issuance of a special permit for the location of a mobile or manufactured home outside mobile home parks. Not more than one mobile or manufactured home shall be permitted on the same premises or tract of property outside mobile home parks. The Board of Adjustment shall issue such special permits when it appears that location within a local mobile home park is impracticable and provided that public health, safety and welfare interests will not be seriously affected by granting the permit. Special permits shall not be granted for periods in excess of six (6) months but upon expiration of a special permit, reapplication may be made. Application for the permit shall include:

- (1) A statement concerning the practicability of location within a local mobile home park.
- (2) A description of sanitation facilities contained within the mobile home and those facilities available at the proposed location.
- (3) A statement of the desired duration of the special permit and necessity therefor.

5. R-4 Area and Yard Requirements. Mobile home or trailer parks shall be designed and maintained in accordance with the following requirements:

A. Minimum Requirements for Parks.

- (1) Mobile home park area – 8 acres.
- (2) Front yard (to be measured from all streets on which park abuts) – 50 feet
- (3) Side yard – 35 feet.

- (4) Rear yard – 35 feet.
- (5) Sanitary Facilities. Connection with the municipal sewer system or adequate private sewage disposal facilities as approved by the City.
- (6) Streets. Each mobile home lot shall have direct access to a park street. The minimum roadway width of interior park streets shall be as follows:

One-way, no parking.....	11 feet
One-way, parking one side.....	18 feet
One-way, parking both sides.....	24 feet
Two-way, no parking	24 feet
Two-way, parking one side.....	27 feet
Two-way, parking both sides.....	34 feet

Such streets shall be surfaced with Portland cement or asphaltic cement concrete according to City specifications for residential streets, and shall be maintained in good condition and lighted at night.

B. Mobile Home Spaces. The following are minimum requirements:

- (1) Area – 50 feet by 80 feet.
- (2) Size – 4,000 square feet.
- (3) Parking – one off-drive parking space for each mobile home space and one on- or off-street space for each two such lots to accommodate guests.
- (4) Front yard – 15 feet.
- (5) Rear yard – 10 feet.
- (6) Side yard – 5 feet each side, with a minimum of 20 feet between any two homes.

C. Landscaping Unused Areas. All area not used for access, parking, circulation, buildings and service shall be completely and permanently landscaped and the entire site maintained in good condition. A landscaped strip of land not less than 10 feet in width shall be established and maintained within the mobile home park along its exterior boundaries.

D. Concrete Slab. Each mobile home unit lot shall be equipped with a concrete slab or slabs of sufficient size to support the wheels and the front parking jack. Said slabs shall have minimum dimensions of 2.5 feet by 60 feet and a minimum thickness of four inches.

E. Recreation Areas. There shall be provided within each mobile home park an adequate site or sites for recreational use by residents. The minimum area provided for such recreation site or sites shall consist of an aggregate of 100 square feet for each mobile home space in said park. The recreation sites shall be of appropriate design and provided with appropriate equipment.

F. Length of Occupancy. No mobile home or trailer shall remain in a mobile home park for a period exceeding 15 days without connection to the permanent sanitary sewer system of the park.

G. References to Other Standards that May Apply:

- (1) See requirements for accessory buildings in Section 165.08(4) of this chapter.
- (2) See Architectural Design and Treatment of Buildings in Section 165.25 of this chapter.
- (3) See Screening in Section 165.26.
- (4) See Sign Code in Chapter 181.
- (5) See Surfacing Requirements in Section 165.27.
- (6) All uses shall meet the parking and other standards in this Code of Ordinances.

6. Emergency and Temporary Parking of Mobile Homes. Emergency or temporary parking of mobile homes upon the streets, alleys or highways of any other public or private place for a period not in excess of seven days shall not constitute a violation of subsection 2 of this section, but such parking shall be subject to all other prohibitions or regulations contained in this Code of Ordinances.

7. Regulations to which R-4 Districts Are Subject. No person shall make alterations to the sanitary facilities or construct, expand, or remodel a mobile home park within the City without first obtaining a permit therefor from the State Department of Health. Said park, its facilities and the mobile homes therein shall comply with all other applicable ordinances of the City.

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165.13 C-1 CORE BUSINESS DISTRICTS.

1. Permitted Uses. The following regulations and uses permitted shall apply to all general business districts, otherwise known as C-1 Core Business Districts:

- A. All the uses permitted in any residential district, except R4 Districts, subject to all the provisions specified for such residential districts.
- B. Stores and shops for the conducting of any lawful retail business.
- C. Personal service shops such as barber and beauty shops.
- D. Banks, theaters, offices, restaurants and cafes.
- E. Other Uses Permitted:
 - (1) Advertising signs and billboards.
 - (2) Antique shops.
 - (3) Art shops/ studios.
 - (4) Auction rooms.
 - (5) Bakeries; must include retail sales and have a maximum total floor space of 5,000 square feet.
 - (6) Bicycle shops, sales and repairs.
 - (7) Confectionary stores, including ice cream or snack bars.
 - (8) Dance studios.
 - (9) Decorating shops.
 - (10) Drug stores.
 - (11) Funeral Homes.
 - (12) Gift shops.
 - (13) Hotels.
 - (14) Key and locksmith shops
 - (15) Photography galleries, studios, and stores.
 - (16) Police and fire department stations.
 - (17) Post offices.
 - (18) Pottery shops and studios including production in conjunction with sales
 - (19) Printing and photocopy shops.
 - (20) Preschool and child day care centers.
 - (21) Recreation buildings and structures.
 - (22) Sales and/or showrooms.
 - (23) Shoe, boot, and /or hat sales and repair shops.
 - (24) Taverns, pubs, and brew pubs

(25) Other uses which in the opinion of the Zoning Administrator are of the same general character as those listed above as permitted uses and which will not be detrimental to the district in which they are located.

2. Building Height Limit in C-1 Core Business Districts. No building shall be erected to a height in excess of 50 feet.
3. Required Dimensions in C-1 Core Business Districts. Lot dimensions shall not be less than 25 feet in width and 50 feet in depth.
4. Yards Required.
 - A. Rear yard – not less than 10 percent of the depth of the lot.
 - B. Side yard (if provided) – not less than 3 feet wide.
5. Percentage of Lot Covered in C-1 Core Business Districts. No building with its accessory buildings, to be used for said commercial purposes, shall occupy in excess of 90 percent of the area of the lot. Any building used for residence purposes shall have a lot area and lot width equal to that required in the least restricted residential district for the same type of dwelling.
6. Buffers. If abutting or adjacent to a residential or industrial district parcel, a buffer is required as described in Section 165.26, Screening.
7. Surfacing Requirements. See surfacing requirements in Section 165.27.
8. Other Standards. All uses shall meet the parking, architectural design, sign and other standards in this Code of Ordinances.

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165.14 C-2 GENERAL COMMERCIAL DISTRICTS. The C-2 District is intended and designed to provide for general retail and service commercial uses, in an efficient and compact manner. The uses permitted are intended to accommodate both the needs of the resident consumer and the traveling consumer. The C-2 District is subject to the following regulations:

1. Permitted Uses. Only the following uses of structures or land shall be permitted in the C-2 Districts:

- A. Any use permitted in a C-1 District except multi-family housing.
- B. Animal hospitals, veterinary clinics with overnight boarding and lodging, and kennels with indoor runs only.
- C. Apparel shops.
- D. Arcades and other commercial amusements.
- E. Auto and home accessory and supply stores.
- F. Ballrooms and dancehalls.
- G. Billiard parlors and pool halls.
- H. Bookstores.
- I. Bowling alleys.
- J. Business schools, colleges, commercial trade schools, and other school buildings used for accredited educational purposes.
- K. Car washes.
- L. Clubs and lodges.
- M. Collection offices.
- N. Commercial ball fields, golf driving ranges, miniature golf courses, skating rinks, swimming pools, trampoline centers, and similar recreational uses and facilities.
- O. Convenience stores with fuel sales and pumps, provided that lubricating or other devices are located at least 25 feet from any street and at least 100 yards from any City water wells. All fuels, oil, or similar substances must be stored at least 35 feet distant from any street or lot line.
- P. Department stores.
- Q. Drive-in restaurants or drive-in theaters.
- R. Dry cleaning/laundry/laundrette.
- S. Exterminator sales.
- T. Florist shops, greenhouses, and nurseries.
- U. Furniture stores.
- V. Grocery stores, including supermarkets, health food stores, delicatessens, dairy stores, all retail only.

- W. Hardware and dry goods stores.
- X. Health establishments.
- Y. Hobby shops.
- Z. Hotels and motels.
- AA. Household appliance stores.
- BB. Jewelry stores and watch repair shops.
- CC. Labor union offices, including assembly halls.
- DD. Lawnmower sales and repair shops and other small equipment repair shops.
- EE. Leather goods stores.
- FF. Meat and cheese shops.
- GG. Monument sales yards.
- HH. Music stores/studios/record stores.
- II. Office supply stores.
- JJ. Packaged-goods stores for the sale of alcoholic beverages.
- KK. Paint and wallpaper stores.
- LL. Parking garages and parking lots.
- MM. Pet shops including aquariums.
- NN. Plumbing/heating/air conditioning/refrigeration shops.
- OO. Public auction rooms.
- PP. Public buildings and utilities, including administrative, collection and sales offices, equipment storage buildings, and enclosed storage.
- QQ. Radio and television sales/repair shops.
- RR. Real estate, insurance and financial offices.
- SS. Service stations where pumps, lubricating or other devices are located at least 25 feet from any street and at least 100 yards from any City water wells. All fuels, oil, or similar substances must be stored at least 35 feet distant from any street or lot line.
- TT. Sign painting shops.
- UU. Sporting goods stores.
- VV. Sports medicine and physical therapy offices.
- WW. Tailor and dressmaking shops.
- XX. Toy stores.
- YY. Upholstery shops.
- ZZ. Variety stores.
- AAA. Video stores.

- BBB. Wholesale display and sales rooms.
- CCC. Any combination of the above listed uses.
- DDD. Any uses determined by the Zoning Administrator to be of a similar nature to the above listed uses.
- 2. Permitted Accessory Uses and Structures.
 - A. Signs as regulated in Chapter 181 of this Code of Ordinances.
 - B. Storage of merchandise incidental to the principal use, but not to exceed 40 percent of the floor area used for such use.
 - C. Temporary buildings for uses incidental to construction work; said buildings shall be removed upon completion of construction or abandonment of the construction site.
 - D. Uses of land or structures customarily incidental and subordinate to a permitted principal use, unless otherwise excluded.
 - E. Agricultural uses, provided that no offensive odors or dust are created.
 - F. All mechanical equipment or other utility hardware on roof, ground, or buildings, refuse and waste removal areas, service yards, storage yards, and exterior work areas shall be screened from or located as not to be visible from public view, using materials consistent with the building and site. See also screening requirements in Section 165.26.
- 3. Permitted Conditional Uses.
 - A. Light manufacturing, assembly, or treatment of articles or merchandise from the following previously prepared material: canvas, cellophane cloth, fiber, glass, leather, paper, clay, plastic, precious or semiprecious metals, textiles, and yarn, provided that the entire operation is conducted within a building and that no raw materials or manufactured products are stored outside the building and further providing that such use is not noxious or offensive by reason or vibration or noise beyond the confines of the building or emissions of dust, fumes, gas, odor or smoke.
 - B. Wind Energy Conversion Systems (WECS).
- 4. Bulk Regulations. The following minimum requirements shall be observed in the C-2 Districts:
 - A. Minimum Lot Area – 7,500 square feet
 - B. Minimum Lot Width – 50 feet
 - C. Minimum Front Yard – 25 feet
 - D. Minimum Side Yard – 10 feet
 - E. Minimum Rear Yard – 25 feet
 - F. Maximum Height - principal building: 35 feet; accessory building: 20 feet
- 5. Buffers. If abutting or adjacent to a residential or industrial district parcel, a buffer is required as described in Section 165.26, Screening.

6. Open Spaces. A minimum of 15 percent of the lot area shall be retained as landscaped open space to include such items as walks, trees, shrubs, fountains, or other ornamental features.
7. Surfacing Requirements. See surfacing requirements in Section 165.27.
8. Other Standards. All uses shall meet the parking, design, sign and other standards in this Code of Ordinances.

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165.15 I-1 INDUSTRIAL DISTRICTS.

1. Permitted Uses. The following uses are permitted in all I-1 Industrial Districts:

A. All uses except residential uses and uses otherwise prohibited by law or ordinance, except the owner of industrial use property may own and occupy a private dwelling within an I-1 Industrial District if such dwelling is on or adjacent to the property which said owner has devoted to an industrial use.

B. Junk yards or automobile wrecking yards, commercial scrap iron, scrap paper or rag storage operations. Sorting or baling must be entirely enclosed within a solid fence or be concealed by other means as approved by the Board of Adjustment.

2. Uses Prohibited in I-1 Districts. All uses of land, buildings and structures or industrial processes that may be noxious or injurious by reason of the production or emission of dust, smoke, refuse matter, odor, gas, fumes, noise, vibration or similar substances or conditions. Prohibited uses include (but are not limited to) those which have been declared a nuisance in any court of record, or which may be unreasonably obnoxious, unhealthful or offensive by reason of emission of odor, dust, smoke or noise.

3. Review by Board of Adjustment. The above prohibitions are subject to review by the Board of Adjustment and such uses may be permitted if approved by the Board and subject to the securing of a permit therefor and to such conditions, restrictions and safeguards as may be deemed necessary for the purpose of protecting the health, safety, morals or general welfare of the community.

4. Building Height Limit in I-1 Districts. No building in this district shall exceed 60 feet in height.

5. Yards Required in I-1 Industrial District. Each lot shall have a front yard not less than 25 feet in depth.

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165.16 L-1 LIGHT INDUSTRIAL DISTRICTS.

1. Permitted Uses. Only the uses of structures or land listed in this section are permitted in the L-1 Districts; provided, however, all manufacturing, assembling, compounding, processing, packaging, or other comparable treatment, including storage of any materials or products used in connection therewith, must be within completely enclosed buildings, except for parked motor vehicles, off-street parking and loading or as otherwise approved specifically by City Council as required. In addition, all open areas not used for off-street parking or loading shall be planted with grass, shrubs, or trees, properly maintained, and kept free from refuse and debris.

- A. Any use permitted in C Districts except residential uses.
- B. Assembly of small electrical appliances, small industrial and electronic instruments and devices, radios, phonographs and television sets, including the manufacture of small accessory parts only, such as coils, condensers, transformers, crystal holders and similar products.
- C. Automotive (including boat, car, motorcycle, snowmobile and truck), and farm implement display, equipment, rentals, sales, service and repair, including retail fuel sales.
- D. Automotive body or fender repair shops including painting but not wrecking or used parts yards.
- E. Beverage bottling, creamery, ice cream and ice manufacturing, distribution and warehousing facilities; cold storage plant.
- F. Compounding and packaging of drugs, pharmaceuticals, cosmetics, perfumes and toiletries.
- G. Concrete mixing, concrete products manufacture and ready-mix plants. Any outside storage yards must be specifically approved by Council in accordance with an approved Site Plan.
- H. Contractors offices, plant, and storage buildings, or rental or repair of equipment commonly used by contractors including: general contractors, plumbers, electricians, heating, ventilating, and air conditioning contractors, masons, painters, refrigeration contractors, roofing contractors and other such construction occupations. Any outside storage yards must be specifically approved by the Council in accordance with an approved Site Plan. See Section 165.26, Screening.
- I. Cooperaage works.
- J. Data center.
- K. Enamel, lacquering or japanning.
- L. Foundry casting lightweight nonferrous metals or electric foundry not causing noxious fumes or odors.
- M. Furniture manufacturing.
- N. Laboratories, research, experimental and testing.
- O. Locker plants for storage and retail sales.

- P. Livery stable or riding academy.
- Q. Lumber yards and building materials sales yards, provided that outside storage not be located in the front yard and that it is opaquely screened from view.
- R. Machine shops, fabrication, metal, welding, large equipment repair and tool and die shops.
- S. Mail order and distribution centers.
- T. Manufacture and repair of electric and neon signs, advertising structures, light sheet metal products, including heating and ventilating equipment.
- U. Manufacturing , assembling, compounding, processing, packaging, or other comparable treatment of the following:
 - (1) Bakery goods, candy and food products, except: cereals, dairy products, fish and meat processing, flour milling, rendering of refining fats and oils, sauerkraut, stock feed, vinegar, and yeast.
 - (2) Cameras and other photographic equipment.
 - (3) Computers and related hardware and electronic devices.
 - (4) Electrical appliances, instruments, and devices.
 - (5) Medical, dental and drafting instruments.
 - (6) Musical instruments, toys, novelties, and rubber and metal hand stamps.
 - (7) Pottery and other ceramic products using only previously pulverized clay, and kilns fired only by electricity or gas.
 - (8) Products from previously prepared materials such as bone, canvas, cardboard, cellophane, cloth, cord, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, metal pipe, paper, plastics, precious and semi- precious metals or stones, rods, rope, rubber, shells, strips or wire, textiles, tobacco, wax, wood, and yarns.
 - (9) Small precision instruments, such as barometers, clocks, watches and compasses.
- V. Office buildings and office warehouses.
- W. Publicly owned storage and rental mini storage facilities; storage containers; warehouse and maintenance facilities. All storage shall be on paved surfaces and enclosed within screened areas. See Section 165.26, Screening.
- X. Recreational and utility trailer dealers.
- Y. RV, boat, or camper storage shall be on paved surfaces and screened as per Section 165.26.
- Z. Storage and sale of livestock feed, provided dust is effectively controlled.
- AA. Tire vulcanizing, retreading, recapping, service, sales, and repairs.

- BB. Truck rentals, delivery services, terminals, moving and storage facilities and truck maintenance facilities.
- CC. Wholesale or bulk storage of petroleum and other explosive or combustible mixtures is permitted subject to conformance with all Iowa departmental rules, local fire and safety ordinances, and such other regulations as issued by government officials pertinent to the storage of such products.
- DD. Any other similar light industrial use which is found by the Zoning Administrator to be a use similar to one of the above-named uses and, in said official's opinion, conforms to the intent of this section.
2. Height Limit in L-1 Light Industrial Districts. Maximum total building shall be 70 feet, with commonly occupied areas not to exceed 45 feet or 3 stories.
 3. Required Dimension in L-1 Light Industrial Districts. All lots shall have a minimum area of 15,000 square feet and have a minimum width of 100 feet, at the front yard setback line.
 4. Yards Required.
 - A. Front yard – 40 feet
 - B. Rear yard – 20 feet
 - C. Side yard – not less than 25 feet each side
 - D. If adjacent or abutting a residential or commercial district parcel or facing a main arterial street, setbacks will be 50 feet front, side, or rear for each side or sides that abut, adjoin or face.
 5. Percentage of Lot Covered in L-1 Light Industrial Districts. No building, its accessory building, driveway, parking lot, or other improvements shall occupy in excess of 85 percent of the area of the lot.
 6. Buffers Required. Screening of a sufficient height and density to obscure structures and activities immediately adjacent to or at the sides facing, shall be erected at all locations where an L-1 District is immediately adjacent to or abutting a residential or commercial district parcel or when facing a main arterial street. The screens are required to partially block visual contact between uses and/or the arterial street and also to provide a strong impression of separation of spaces. See Screening in Section 165.26.
 7. Ancillary Outside Storage. Outside storage yard, accessory or principal in use are permitted providing that materials and equipment are obstructed from public view by their locations or by fencing, screening, or berm and landscaping, or by any combination thereof, all in accordance with an approved Site Plan. Such screening shall comply with Section 165.26.
 8. Mechanical Equipment Shielded from Public View. All mechanical equipment or other utility hardware on roof, ground, or buildings, refuse and waste removal areas, service yards, storage yards, and exterior work areas shall be screened from or located as not to be visible from public view, using materials consistent with the building and site.
 9. All fuel pumps, lubricating or other devices shall be located at least 25 feet from any street and at least 100 yards from any City water wells. All fuels,

oil or similar substances must be stored at least 35 feet distant from any street or lot line.

10. Site Plans. Site plans shall be required in accordance with the provisions of Chapter 180 of this Code of Ordinances.

11. Surfacing Requirements. See surfacing requirements in Section 165.27.

12. Other Standards. All uses shall meet the parking, design, sign and other standards in this Code of Ordinances.

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165.17 A-1 AGRICULTURAL DISTRICTS.

1. Permitted Uses. The following uses of land are permitted in all A-1 Agricultural Districts.

- A. Agriculture with the usual buildings and structures, including farm homes.
- B. Cemeteries.
- C. Municipal sewage treatment plant and equipment necessary for the operation thereof.
- D. Accessory buildings and uses customarily incidental to any of the above uses.

2. A-1 Restrictions. All dwellings within A-1 Agricultural Districts shall conform to the restrictions for R-2 Residential Districts as set forth in Section 165.10 of this chapter.

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165.18 ADMINISTRATION AND ENFORCEMENT. This chapter shall be enforced by the Building Inspector. No building permit or certificate of occupancy shall be issued by such official except where the provisions of this chapter have been complied with.

165.18A BUILDING CODE VIOLATIONS. The City Building Inspector is responsible for enforcing compliance with the adopted Uniform Building Code and ordinance sections regulating building construction (here-in-after "building requirements"). The City Building Inspector is responsible for citing violations of the building requirements which the City Building Inspector discovers in building construction which present a structural and/or safety issue to construction workers, occupants or future occupants, or neighbors.

1. Violations – It shall unlawful for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure in Elkhart, in violation of the building requirements, including but not limited to building or construction done:

- A. Without a required building permit.
- B. That allows occupancy of a structure that has not been issued a required occupancy permit.
- C. That involves substandard construction that has or will cause a risk of injury or illness to present or future occupants of the building or structure that is in violation of the building requirements.

2. Penalties - If the City Building Inspector or the Inspector's duly appointed Assistant City Building Inspector determines that a building or construction violation has occurred as outlined in Section 1, the City Building Inspector or Deputy Inspector may by service of written notice or citation on the property owner or builder:

- A. Order an immediate stop of the building or construction that violates the building construction until the violation is remedied, or order that the violation be remedied within 48 hours or the building or construction at the site will be stopped.
- B. Order the immediate evacuation of a structure that has no occupancy permit.
- C. Suspend the builder's privileges to request and receive building, construction and/or occupancy permits until a violation or violations is/are corrected.

3. Appeals - An action of the City Building Inspector taken under Section 2 may be appealed to the City Council in writing that specifies the reason for the request for City Council review of the Inspector's decision. After public hearing, the City Council may:

- A. Affirm the decision of the City Building Inspector.
- B. Modify the decision of the City Building Inspector utilizing the available penalties provided under Section 2.
- C. Reverse the decision of the City Building Inspector.

(Section 165.18A – Ord. 2017-10 – Dec. 17 Supp.)

165.19 PERMITS AND CERTIFICATE OF OCCUPANCY. No land shall be used or occupied and no building hereafter erected, altered or extended shall be used or changed in use until a certificate of occupancy and a building permit shall have been issued by the Building Inspector or other authorized representatives of the City in accordance with the provisions of this chapter and other ordinances of the City.

165.20 BOARD OF ADJUSTMENT CREATED. A Board of Adjustment is hereby created. The Board of Adjustment shall consist of five members, each to be appointed by the Council for staggered terms of five years. The Board shall elect a Chairperson from its membership and appoint a Secretary. The procedures, powers and judicial review relating to the Board, as set forth in Chapter 414 of the *Code of Iowa*, are hereby adopted.

165.21 NONCONFORMING BUILDINGS AND USES. The lawful uses of any building or land existing at the time of the enactment of the Zoning Ordinance may be continued although such use does not conform to the provisions of this chapter.

1. No existing structure devoted entirely or in part to a use not permitted by this chapter in the district in which it is located, except when required by law, shall be enlarged, extended, reconstructed, moved or structurally altered, unless the use is changed to a use permitted in the district in which such structure is located.
2. Any structure devoted to a use made nonconforming by this chapter that is destroyed by any means to an extent of 60 percent or more of its replacement cost at the time of destruction, exclusive of the foundations, shall not be reconstructed and used as before such happening. If the structure is less than 60 percent destroyed above the foundation, it may be reconstructed and used as before, provided it is done within six months of such happening, and built of like or similar materials.

Whenever a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be reestablished, and any future use shall be in conformity with the provisions of this chapter.

165.22 AMENDMENTS. The boundaries of districts as now established and the regulations thereof may be amended, supplemented or changed, or repealed by the Council from time to time, either upon its own motion, or upon a petition as herein provided for, or upon recommendation of Planning and Zoning Commission. Provided:

1. No such amendment, supplement or change shall be adopted until after a notice thereof is duly published as provided by State law.
2. When a proposed amendment, supplement or change does not originate with the Planning and Zoning Commission, the same shall be submitted to said Commission 30 days in advance of the date on which action is to be taken for its recommendation thereon.
3. This requirement shall not act as a stay upon the proposed action by the Council where said Commission fails to submit its recommendation to the Council within 30 days after receiving written notice requesting the same.

165.23 PROCEDURES FOR AMENDMENT BY PETITION. Whenever any person desires that any amendment or change be made in the Zoning Ordinance, including the text and/or map, as to any property in the City, and there shall be presented to the Council a petition requesting such change or amendment and clearly describing the property and its boundaries as to which the change or amendment is desired, duly signed by the owners of 50

percent of the area of all real estate included within the boundaries of said tract as described in the petition and, in addition, duly signed by the owners of 50 percent of the area of all real estate lying outside of said tract but within 250 feet of the boundaries thereof (intervening streets and alleys not to be included in computing such 250 feet), it shall be the duty of the Council to vote upon such petition within a reasonable time after the filing of such petition with the Clerk. In case the proposed amendment, supplement or change is disapproved by the Planning and Zoning Commission, including the text and/or map, or a protest is presented duly signed by the owners of 20 percent or more either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof, extending the depth of one lot or not to exceed 200 feet therefrom or of those directly opposite thereto, extending the depth of one lot or not to exceed 200 feet from the street frontage of such opposite lots, such amendments shall not become effective except by the favorable vote of at least four-fifths of all members of the Council. Whenever any petition for an amendment, supplement or change of the Zoning Ordinance or regulations herein contained or subsequently established shall have been denied by the Council, then no new petition, including the text and/or map covering the same property or the same property and additional property shall be filed with or considered by the Council until one year shall have elapsed from the date of filing of the first petition.

165.24 PUBLIC WATER SUPPLY WELLS. In all zoning districts, it shall be prohibited to construct on or utilize land surrounding any public water supply well for any of the following uses when said use would be located within the following distances to said water supply well:

1. Within 200 feet:
 - A. Mechanical wastewater treatment plants;
 - B. Cesspools and earth privies;
 - C. Soil absorption field;
 - D. Storage of chemicals and minerals on or underground;
 - E. Solid stockpiles of animal waste;
 - F. Cemeteries;
 - G. Private wells.
2. Within 400 feet:
 - A. Point discharge to ground surface of sanitary and industrial wastes;
 - B. Wastewater lagoons;
 - C. Storage basins or lagoons for animal wastes.
3. Within 1,000 feet:
 - A. Private waste disposal sites.

165.25 ARCHITECTURAL DESIGN AND TREATMENT OF BUILDINGS. In order to maintain character, continuity, enhance physical appearance, and recognize the importance of the City's image and future development the following standards shall apply to all property within the corporate limits of the City. In the event that any of the standards below conflict with other standards, regulations or requirements of Federal, State, County laws or regulations, or as outlined elsewhere within this Code, the more restrictive regulation shall apply.

1. Business Districts (Core Business, Commercial, and Industrial) Design Standards.

A. Definitions.

(1) "Primary building face" means the side or sides of the building fronting on a street right-of-way, excluding any appurtenances such as projecting fins, columns, pilasters, canopies, marquees, showcases or decorations. This would include corner and double frontage properties involving more than one primary face.

(2) "Enforcement area" means all improvements and/or developments within the corporate limits of the City within all Commercial (including Core Business) Districts or Industrial (including Light Industrial) Districts as specified for each.

B. Design Standards: Commercial and Core Business Districts.

(1) All principal and accessory buildings must be constructed so that the primary building face has as 100 percent of its covering and the walls adjoining the primary face have as at least 30 percent of their covering, in any combination using one or more: natural brick and stone, cultured stone, granite, or marble, exterior finish insulation system (E.F.I.S.), wood, architecturally designed concrete tilt up panels, split faced or textured or fluted concrete block masonry materials, stucco with staccato board and trim, architectural aluminum panels and/or masonry veneer with a minimum of one and one-half inches in thickness and which is mechanically fastened to the exterior of the building structure. If E.F.I.S., stucco, or architectural aluminum panels are being utilized for more than 50 percent of the total primary wall surface, architectural accenting utilizing at least one of the other acceptable materials is required for a minimum of 20 percent of the wall surface.

(2) Unacceptable building materials include the following which are not deemed sufficient to provide permanency and strength of materials in proportion to the aesthetic characteristics of the buildings bulk and shape: plywood and similar sheet, non-textured wood coverings; particle board, pressed board and similar composite siding; common concrete block when used for exterior fascia whether painted or not; vertical steel siding and metal panels or sheet metal.

(3) Commercial and core business buildings adjacent to or abutting residential developments are recommended to include articulated roofline, giving emphasis to architectural elements that

will help divide the mass of a large building into smaller, identifiable pieces.

(4) Commercial and core business buildings shall incorporate architectural design elements, materials, and colors into the side and rear building elevations similar to those used in the front elevation.

(5) Commercial and core business buildings shall incorporate façade modulation in all building elevations in order to preserve building scale and reduce the aesthetic impact of long, large expansive wall surfaces. The variation in wall surfaces can be accomplished either by physical offsets or by the use of color, pattern, or texture.

(6) Commercial and core business buildings shall not be designed or oriented to expose loading docks, service areas, or other materials used in operations to the public rights-of-way or toward adjacent residential developments. Additional landscaping, setbacks, buffering, screening walls, or fences may be required to provide adequate separation and obstruction of public view. See required screening in Section 165.24.

(7) Roof mounted mechanical units, satellite dishes, or other similar equipment shall be screened from public view by the extension of a parapet wall or other roof mounted equipment, point-in-place screening shall be required. Such screening shall have similar design features as the building including material, shape, and color considerations. Wooden fences shall not be considered appropriate. See also screening requirements in Section 165.24.

C. Design Standards: Industrial Districts and Light Industrial Districts.

(1) The orientation of any proposed industrial building shall be designed to mitigate the visual and audible impact of service areas, loading docks, loading areas or similar operations on the adjoining properties and the general public. Additional landscaping, setbacks, buffering, screening walls, or fences may be required to provide adequate separation and obstruction of public view.

(2) Buffers and screening are required when an Industrial District building adjoins or abuts any Residential or Commercial (including Core Business) District Parcel or when facing a main arterial street. See screening requirements in Section 165.26.

(3) Unacceptable building materials include the following, which are not deemed sufficient to provide permanency and strength of materials in proportion to the aesthetic characteristics of the buildings bulk and shape: plywood and similar sheet, nontextured wood coverings; particle board, pressed board and similar composite siding.

D. Awnings. Awnings are allowed and encouraged on any building consistent with other City codes and requirements. Any awning extending over a public sidewalk or passageway shall require a building permit with a condition of issuance being the Planning and Zoning Commission's

determination that the proposed awning complies with the appropriate snow loading standard determined to be appropriate by the Commission.

E. Exclusions. Manufactured window frames, window glass, door frames and doors shall be excluded from the total wall area in making any area calculations and are otherwise excluded from the design standards.

F. Applicability to Existing Buildings. The architectural design standards shall also apply to additions to existing buildings except additions to existing buildings in the amount of 50 percent or less of its existing ground cover and/or total first floor area, all in an amount of less than 1,000 square feet, whichever is less. Whenever additions to existing buildings are subject to the design standards, then the existing building which received the addition shall also be subject to the same requirements.

G. Relief from Architectural Design Standards. These standards shall not be construed to prevent the use of innovative materials or progressive structural designs. Plans or designs which deviate from the listed materials for the exterior of the Commercial (Core Business included) and Industrial (Light Industrial included) building structures found in this Business Districts Designs Standards in this subsection 1 may be submitted to the Planning and Zoning Commission and the City Council for their review and approval.

2. Residential Districts Design Standards for Principal and Accessory Buildings.

A. "Enforcement area" means all improvements and/or developments within the corporate limits of the City within R-1, R-2, or R-3 Residential districts.

B. Accessory buildings covering more than two percent of the area of the lot shall be constructed with the exterior walls composed of composite masonry façade material or the same materials of construction as the principal building.

C. All proposed principal residences in R-1 and R-2 shall be designed with attached garages.

D. Relief from Architectural Design Standards. Plans or designs that deviate from the requirements of this subsection 2 may be submitted to the Planning and Zoning Commission and the City Council for their review and approval.

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165.26 SCREENING.

1. Intent. The intent of screening regulations is to lessen the transmission from one lot to another of noise, dust, and glare; to lessen visual pollution by providing an impression of separation of spaces or entirely shielding one land use from another; and/or establishing a sense of privacy from visual or physical intrusion. The provisions of this chapter are necessary to safeguard the public health, safety and welfare.
2. General Screening. Every development shall provide sufficient screening so that neighboring properties are shielded from any adverse external effects of that development; and the development is shielded from the negative impacts of adjacent uses including streets and railroads.
3. Compliance with General Standards. The following table illustrates the type of screen required between zoning classifications. Where such screening is required the applicant or burdened use is responsible for installation prior to receiving an occupancy permit for the use in questions. A description of the screen types (A, B, and C) are described in the following subsection. Where screening is to be approved at site plan review (*), the screening objectives described in the Site Plan Ordinance, Section 180.04, are to be adhered to. The City Council may require additional screening where deemed appropriate.

TABLE OF SCREENING REQUIREMENTS											
Benefited Zoning Classification/Use											
Zone	R-1	R-2	R-3	R4		C-1	C-2			L-1	I-1
R-1	-	-	A	A		B	B			C	C
R-2	-	-	A	A		B	B			C	C
R-3	A	A	-	-		A	B			C	C
R-4	A	A	-	-		A	B			C	C
C-1	B	B	A	A		-	A			C	C
C-2	B	B	B	B		A	-			C	C
L-1	C	C	C	C		C	C			-	B
I-1	C	C	C	C		C	C			B	-

* Screening to be approved with site plan review.

- No screening required.

A,B,C described below.

4. Descriptions of Screens. The following three basic types of screens are established and are used as the basis for the table of screening requirements.

A. Broken Screen, Type A. A screen composed of intermittent visual obstructions from the ground to a height of at least 20 feet. The broken screen is intended to create the impression of a separation of spaces without necessarily eliminating visual contact between the spaces. It may be composed of a wall, fence, landscaped earth berm, planted vegetation, or existing vegetation. Compliance of planted vegetative screens or natural vegetations will be judged on the basis of the average mature height and

density of foliage of the subject species, or field observation of existing vegetation. The screen may contain deciduous plants.

B. Semi-Opaque Screen, Type B. A screen that is opaque from the ground to a height of three feet, with intermittent visual obstruction from above the opaque portion to a height of at least 20 feet. The semi-opaque screen is intended to partially block visual contact between uses and to create a strong impression of the separation of spaces. The semi-opaque screen may be composed of a wall, fence, landscaped earth berm, planted vegetation, or existing vegetation. Compliance of planted vegetative screens or natural vegetation will be judged on the basis of the average mature height and density of foliage of the subject species, or field observation of existing vegetation. At maturity, the portion of intermittent visual obstructions should not contain any completely unobstructed openings more than 10 feet wide. The zone of intermittent visual obstruction may contain deciduous plants.

C. Opaque Screen, Type C. A screen that is opaque from the ground to a height of at least six feet, with intermittent visual obstructions from the opaque portion to a height of at least 20 feet. An opaque screen is intended to exclude all visual contact between uses and to create a strong impression of spatial separation. The opaque screen may be composed of a wall, fence, landscaped earth berm, planted vegetation, or existing vegetation. Compliance of planted vegetative screens or natural vegetation will be judged on the basis of the average mature height and density of foliage of the subject species, or field observation of existing vegetation. The opaque portion of the screen must be opaque in all seasons of the year. At maturity, the portion of intermittent visual obstructions should not contain any completely unobstructed openings more than ten feet wide. The portion of intermittent visual obstructions may contain deciduous plants.

5. Storage Areas. The outdoor storage of materials, equipment, or supplies, when permitted in any commercial or industrial district, shall be so located or screened, fenced or landscaped so as to effectively prevent visibility of such storage from all abutting residential zoning districts or abutting existing residential uses. Such screening shall be sufficient if it prevents visibility of such storage are by persons traveling on public rights-of-way or standing at grade level on the side or rear lot lines of such property. Such screening shall comply with the standard for an opaque screen Type C as described in paragraph 4(C) above.

165.27 SURFACING REQUIREMENTS. In order to maintain character, continuity, enhance physical appearance, and recognize the importance of the City's image and future development, the following standards shall apply to all property within the corporate limits of the City. In the event that any of the standards below conflict with other standards, regulations or requirements of federal, State, County laws or regulations, or as outlined elsewhere within this Code, the more restrictive regulation shall apply.

1. Surfacing Requirements. For all Zoning Districts: All driveways, right-of -ways, parking lots, off-street parking, loading areas, and access roadways shall have a durable and dustless surface paved with asphaltic or Portland cement concrete pavement. All driveway approaches with the right-of -way of the public street shall be paved with Portland concrete cement and be constructed to SUDAS Design Standards. Off- street parking for the following shall be on asphaltic or Portland cement concrete pavement: automobiles, vans, campers, trucks, trailers, tractors, recreational vehicles, boats, construction equipment, and any other motor vehicle equipped for street and highway travel in the front yard between the building and public (or private) street right-of -way. Track or heavy equipment parking shall be approved by the Building Official and screening may be required. Driveways shall be asphaltic concrete or Portland cement concrete, and shall connect to the public (or private) street.
2. Residential Districts Driveways or Parking. At least two hard surface paved parking stalls shall be provided for all residential uses. All residential driveway or parking uses shall maintain a minimum of three feet separation from property lines.

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EDITOR'S NOTE			
The following ordinances have been adopted amending the Official Zoning Map described in Section 165.05 of this chapter and have not been included as a part of this Code of Ordinances but have been specifically saved from repeal and are in full force and effect.			
ORDINANCE NO.	DATE ADOPTED		
2002-1	September 9, 2002		
2005-2	November 7, 2005		
2005-3	November 7, 2005		
2014-05	September 15, 2014		
2014-06	September 15, 2014		
2014-07	September 15, 2014		
2014-08	August 18, 2014		
2014-10	February 16, 2015		
2016-01	February 15, 2016		
2016-05	June 20, 2016		

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CHAPTER 170

SUBDIVISION REGULATIONS

170.01 Purpose	170.12 Preliminary Plat Requirements
170.02 Jurisdiction	170.13 Final Plat and Accompanying Material Requirements
170.03 Definitions	170.14 Water and Sewer Fees
170.04 Procedure	170.15 Review and Inspection Fees
170.05 Subdivision Design Standards	170.16 Performance and Maintenance Bonds
170.06 Street Design Standards	170.17 Public Parkland Dedication
170.07 Block Design Standards	170.18 Variations and Exceptions
170.08 Lot Design Standards	170.19 Enforcement
170.09 Storm Drainage Facilities	170.20 Changes and Amendments
170.10 Required Improvements	170.21 Boundary Establishment or Retracement Surveys
170.11 Approval of Final Plat; and Final Acceptance of Improvements	170.22 City Staff Determination of Non-Applicability

170.01 PURPOSE. It is deemed essential to establish minimum standards for the design and development of all new subdivisions so that existing developments will be protected and so that adequate provisions are made for public utilities and other public requirements and to improve the health, safety, and general welfare.

170.02 JURISDICTION. In accordance with the provisions of Sections 354.8 and 354.9 of the *Code of Iowa*, and all amendatory acts thereto, these regulations are adopted by the City governing the subdivision of land located within the corporate limits of the City and the unincorporated area of Polk County within two miles distance from the City's boundaries. The standards and conditions applied by the City for review and approval of a subdivision plat or plat of survey outside the corporate limits shall be the same standards and conditions used for review and approval of subdivisions within the City limits, or shall be the standards and conditions for review and approval established by any agreement of the City and Polk County pursuant to Chapter 28E of the *Code of Iowa*. The Council may, by resolution, waive its right to review a subdivision outside the corporate limits or waive the requirements of any of its standards or conditions for approval of subdivisions, and certify the resolution which shall be recorded with the plat.

170.03 DEFINITIONS. The following definitions apply to the interpretation of this chapter.

1. "Access street" means a street that is parallel to and adjacent to a major thoroughfare or highway; and which provides access to abutting properties and protection from through traffic.
2. "Block" means an area of land within a subdivision that is entirely bounded by streets, highways, or ways, except alleys; and the exterior boundary or boundaries of the subdivision.
3. "Building lines" shall be shown on all lots intended for residential use of any character, and on commercial and industrial lots when required by regulations. Such building lines, including yard depths, shall adhere to the requirements of each zoning district.
4. "City Engineer" means the City Engineer of the City, or a person who is hired and designated by the Council to administer and enforce the provisions of this chapter.

5. "Commission" means the Planning and Zoning Commission of the City.
6. "Collector streets" are those streets which carry traffic from minor streets to the major system of arterial streets and highways, including the principal entrance streets of a residential development and streets for circulation within such a development.
7. "Cul-de-sac" means a short, minor street having one end open to motor traffic, the other end being permanently terminated by a vehicular turn-around.
8. "Easement" means a grant by the property owner of the use for a specific purpose, of a strip of land by the general public, a corporation, or a certain person or persons, and within the limits of which the owner of the fee shall not erect any permanent structures but shall have the right to make any other use of the land subject to such easement which is not inconsistent with the rights of the grantee. Public utilities shall have the right to trim or remove trees which interfere with the use of such easements.
9. "Engineer" is a registered engineer authorized to practice civil engineering, as defined by the Registration Act of the State of Iowa.
10. "Half street" means a one-half width street right-of-way on the boundary of a subdivision dedication by the subdivider to the City, for future development when another subdivision is platted along the side of the half street. Half streets are not permitted.
11. "Lot" means a portion of a subdivision or other parcel of land intended for the purpose, whether immediate or future, of transfer of ownership or for building development.
12. "Major thoroughfare" means a street used primarily for fast, large-volume traffic.
13. "Minor street" means a street used primarily for access to the abutting properties.
14. "Performance bond" means a surety bond or cash deposit made to the City in an amount equal to the full cost of the improvements required by this chapter, such cost being estimated by the City Engineer, and the surety bond or cash deposit being legally sufficient to secure to the City that the improvements will be constructed in accordance with this chapter.
15. "Plat" means a map, drawing, or chart on which the subdivider's plan of the subdivision is presented and which is submitted for approval and intended to be in final form to record.
16. "Roadway" means that portion of the street available for vehicular traffic, and where curbs are laid, the portion from back to back of curbs.
17. "Subdivision" means the division of land into two or more lots for the purpose, whether immediate or future, of transfer of ownership. A division of land that creates a new street right-of-way or modification of existing street right-of-way shall be considered a division of property for the transfer of ownership or building development under the provisions of this definition. A division of property for the purpose of adjusting boundaries which does not create a new and independent parcel capable of building development shall not be considered a division of land into two or more lots for purpose of this definition. The term "subdivision," when appropriate to

the context, relates to the process of subdividing, or to the land subdivided, or the resubdivision of land heretofore divided or platted into lots, or any other division of land. The creation of easements which do not affect the taxable status of land shall not be considered a division of land. The creation of easements which affect the taxable status of land shall be considered a division of land.

18. "Lot" means the creation of any separate parcel or a change of tax status of a portion of an existing lot or parcel and is not limited to the creation of the traditional "lot" as designated on a plat.

19. "Subdivider" means the owner of any land dividing or proposing to divide the land so as to constitute a subdivision as defined herein, and includes any agent of the subdivider.

20. "Surveyor" means a registered surveyor authorized to practice surveying, as defined by the Registration Act of the State of Iowa.

170.04 PROCEDURE. Subdivision approval procedure is as follows:

1. Submission. Whenever the owner of any tract or parcel of land within the jurisdiction of this chapter wishes to subdivide or plat the same, said person shall cause to be submitted to the Clerk 14 copies of the preliminary plat and other information and data as is outlined in Section 170.12.

2. Referral. The Clerk shall immediately refer copies of the preliminary plat to the Commission and to the City Engineer. The City Engineer shall carefully examine the plat as to its compliance with this chapter, the regulations of the City, the existing street system, and good engineering practices and shall, as soon as possible, submit a report and findings to the Commission.

3. Commission Review and Recommendation. After receiving the City Engineer's report, the Commission shall study the preliminary plat and other material for conformity to this chapter. The Commission may confer with the subdivider on changes deemed advisable and the kind and extent of such improvements to be made. Before approving a preliminary plat, the Commission may, at its discretion, hold a public hearing on the proposed plat, notice of which shall be given by publication in a newspaper of general distribution. It shall also send notices to affected property owners by mail. The notice shall be given seven days prior to the public hearing. The Commission shall file with the Council recommendations for approval or rejection of such preliminary plat within 45 days after the date of submission of the plat to the Commission; and the Council shall thereafter consider them. If there is no action by the Commission, the subdivider can request of Council a onetime extension of 60 days. Failure to do so on the part of the subdivider shall result in the need to re-submit.

4. Effective Period of Preliminary Plat Approval. The approval of the preliminary plat by the Council shall be null and void unless the final plat is presented to the Council within one year after date of the preliminary plat approval, except as provided in subsection 5 below.

5. Phased Preliminary Plat. A "phased preliminary plat" is a preliminary plat that, due to its size and magnitude, is not likely to be developed in a single phase and for which the developer has expressed intent to develop the project in a phased implementation. In the case of such larger developments, the Council encourages

developers to include in a preliminary plat the entire parcel to be developed. Such a procedure enables the City to review and comment on the overall development.

6. Procedure for Designating a Phased Preliminary Plat. A developer must file with the Commission a written request that a project be designated as a phased preliminary plat. The request shall include an outline of the developer's plan for phased implementation of the development. Following review by the City Engineer, the Commission shall either grant or deny such request within 45 days of its submission. The Commission may, however, on its own motion, determine that a project will be designated as a phased preliminary plat. Thereafter, the review and approval process shall be the same as for all other preliminary plats.

7. Effective Period of Phased Preliminary Plat Approval. The approval of a phased preliminary plat by the Council shall be null and void unless the final plat is (or final plats are) presented to the Council within two years after the date of the phased preliminary plat approval. However, the filing of a final plat constituting more than five percent of the area of the phased preliminary plat extends the validity of the phased preliminary plat by two additional years.

8. Approval of Final Plat. Upon review by the Commission, approval of the final plat and final acceptance of improvements shall be given by resolution of the Council, which shall direct the Mayor and Clerk to certify the resolution which shall be affixed to the final plat. The procedure for approval of the final plat is outlined in Section 170.11 of this chapter.

9. Minor Plat Approval. The Commission and Council may, on a case by case basis and in their sole discretion, approve the final plat and determine the approval of the final plat constitutes approval of the preliminary plat.

170.05 SUBDIVISION DESIGN STANDARDS. The standards and details of design herein contained are intended only as minimum requirements so that the general arrangement and layout of a subdivision may be adjusted to a wide variety of circumstances. However, in the design and development of a plat, the subdivider shall use standards consistent with the site conditions so as to assure an economical, pleasant, and durable neighborhood.

170.06 STREET DESIGN STANDARDS. Street design standards are as follows:

1. Comprehensive Plan. All proposed plats and subdivisions shall conform to the comprehensive plan. All proposed plats and subdivisions shall also conform to additional proposed street plans as set out by the City.

2. Continuation of Existing Streets or Planned Streets. Proposed streets shall provide for continuation or completion of any existing streets (constructed or recorded) or any streets which are part of an approved preliminary subdivision plan, in adjoining property, at equal or greater width, but not less than 60 feet in width, and in similar alignment, unless variations are recommended by the Commission.

3. Circulation. The street pattern shall provide ease of circulation within the subdivision as well as convenient access to adjoining streets, thoroughfares, or unsubdivided land as may be required by the Commission. In a case where a street will eventually be extended beyond the plat, but is temporarily dead ended, an interim turnaround may be required.

4. Street Intersections. Street intersections shall be as nearly at right angles as possible.

5. Cul-de-Sac. Whenever a cul-de-sac is permitted, such street shall be no longer than 600 feet and shall be provided at the closed end with a turnaround having a street property line diameter of at least 130 feet in the case of residential subdivisions. The right-of-way width of the street leading to the turnaround shall be a minimum of 50 feet. The property lines at the intersection of the turnaround and the lead-in portion of the street shall be rounded at a radius of not less than 150 feet; or equal straight approach lines. A turnaround diameter greater than 130 feet may be required by the Commission in the case of commercial or industrial subdivisions if it is deemed necessary.
6. Street Names. All newly platted streets shall be named and in a manner conforming to the prevailing street naming system. A proposed street that is obviously in alignment with other existing streets, or with a street that may logically be extended although the various portions be at a considerable distance from each other, shall bear the same name. Names of new streets shall be subject to the approval of the Commission in order to avoid duplication or close similarity of names.
7. Physical and Cultural Features. In general, streets shall be platted with appropriate regard for topography, creeks, wooded areas, and other natural features which would lend themselves to attractive treatment.
8. Half Streets. Dedication of half streets will not be permitted. Where there exists a dedicated or platted half street or alley adjacent to the tract to be subdivided, the other half shall be platted if deemed necessary by the Commission.
9. Easements. Easements for utilities shall be provided along rear or side lot lines or along alleys, if needed and shall be at least 10 feet wide.
10. Neighborhood Plan. If any overall plan has been made by the Commission for the neighborhood in which the proposed subdivision is located, the street system of the latter shall conform in general thereto.
11. Land Not Platted. Where the plat to be submitted includes only part of the tract owned by the subdivider, the Commission may require topography and a sketch of a tentative future street system of the unsubdivided portion.
12. Major Thoroughfares. Where a new subdivision, except where justified by limiting conditions, involves frontage on a heavy trafficway, the street layout shall provide motor access to such frontage by one of the following means:
 - A. A parallel street, supplying frontage for lots backing onto the trafficway;
 - B. A series of cul-de-sacs or short loops entered from and planned at right angles to such a parallel street, with their terminal lots backing onto the highway;
 - C. An access drive separated by a planting strip from the highway to which a motor access from the drive is provided at points suitably spaced; or
 - D. A service drive or alley at the rear of the lots.

Where any one of the above-mentioned arrangements is used, deed covenants or other means should prevent any private residential driveways from having direct access to the trafficway.

13. Dedication. A deed to the City shall be given for all streets before the same will be accepted for City maintenance.

14. Railroads. If a railroad is involved, the subdivision plan should:
 - A. Be so arranged as to permit, where necessary, future grade separations at highway crossings of the railroad; and
 - B. Border the railroad with a parallel street at a sufficient distance from it to permit deep lots to go back onto the railroad; or form a buffer strip for park, commercial or industrial use.
15. Street Widths. All streets shall have a right-of-way width of 60 feet and a pavement width of 31. However, in residential districts, the Council may approve, after recommendation by the Commission, streets having a minimum pavement width of 26 feet, and minimum right-of-way of 50 feet.
16. Street Grades. Streets and alleys shall be completed to grades which have been officially determined or approved by the City Engineer. All streets shall be graded to the full width of the right-of-way and adjacent side slopes graded to blend with the natural ground level. All streets must have a minimum grade of one-half of one percent. The maximum grade shall not exceed six percent for main and secondary thoroughfares, or 10 percent for minor or local service streets. All vertical curves must be approved by the City Engineer. The grade alignment and resultant visibility, especially at intersections, must meet the approval of the City Engineer.
17. Power Lines, Telephone Lines and Cable Television Lines. All power lines, telephone lines and cable television lines shall be underground construction. All leads to light poles shall be underground. The subdivider shall submit his or her proposed plan directly to the utility company so proper planning can be made for this construction. The subdivider should refer to "Standard Specifications for Public Works" for utility locations.

170.07 BLOCK DESIGN STANDARDS. Block design standards are as follows:

1. Length. No block shall be longer than 660 feet. This distance may be reduced by the City if it is considered to be excessive in its particular application.
2. Block Corner Radius. At street intersections, block corners shall be rounded with a radius of not less than 25 feet; unless the City Engineer recommends minimum 30 foot radius to meet generally accepted design standards; except at any intersection with an existing curve radius of less than 25 feet, the existing radius shall be used as standard.

170.08 LOT DESIGN STANDARDS. Lot design standards are as follows:

1. Corner Lots; Widths. Corner lots shall have a minimum width of 80 feet in order to permit adequate building setbacks on both front and side streets.
2. Double Frontage Lots Prohibited. Double frontage lots, other than corner lots, shall be prohibited except where such lots back on to a major street or highway or except in the case of large commercial or industrial lots.
3. Side Lot Lines. Side lot lines shall be approximately at right angles to the street or radial to curved streets.
4. Lot Size; Public Sewer Not Available. For the purpose of complying with minimum health standards, lots which cannot be reasonably served by an existing public sanitary sewer system shall have a minimum width of 100 feet, measured at the building line, and an area of not less than 20,000 square feet.

170.09 STORM DRAINAGE FACILITIES. The subdivider shall submit plans with the preliminary plat for storm drainage facilities prepared by a Civil Engineer registered in the State of Iowa. Such facilities shall be designed to convey drainage through the proposed subdivision equivalent to the 100-year storm in a developed state. The storm water facilities must include intakes and storm sewer along all street corridors capable of conveying a five-year storm. In sump areas the City can require the intake and storm sewer capacity for a 100-year storm. On-site drainage facilities shall be designed to provide sufficient detention facilities to reduce the release rate to the equivalent of a five-year recurrence interval storm when the property was in a undeveloped state. The storm drainage facilities shall be extended as far as necessary to accommodate footing drain water discharge and to serve adjacent tributary properties. Upon request by the subdivider, and on a case-by-case basis, the City Engineer may, either before or following formal submission, waive the requirement to submit a Storm Water Management Plan in the event the City Engineer determines the proposed development has no adverse impact on storm water drainage.

170.10 REQUIRED IMPROVEMENTS. Required improvements are as follows:

1. General. The subdivider shall install and construct all improvements required by this chapter. The subdivider shall submit three sets of the plans and specifications for all public improvements to be reviewed by the City Engineer and approved by the Council prior to start of construction. All required improvements shall be installed and constructed in accordance with the current edition of the *Statewide Urban Standard Specifications for Public Improvements*, unless otherwise approved by the City Engineer. Inspection shall be provided by the City at the subdivider's expense as deemed necessary to assure the quality workmanship on all portions of the construction to be dedicated to the City. Said inspections costs which are a part of the review and inspection costs provided for in Section 170.15 shall be paid for by the subdivider before final approval will be given. The subdivider shall provide a minimum of 24 hours' notice to the City prior to commencement of construction work so the City can make arrangements for an inspector. At the completion of construction, all improvements required by these regulations shall be reviewed and approved by the Council.
2. Grades. All streets, alleys and sidewalks within the platted area which are dedicated for public use shall be brought to the grade approved by the Council after receiving the report and recommendations of the City Engineer.
3. Paving. Concrete paving with curbs shall be installed on all roadways in the plat being dedicated for public use and shall be constructed of Portland cement concrete in accordance with the construction plans for the improvements as approved by the City prior to construction.
4. Sidewalks. Sidewalks shall be constructed on both sides of all streets being dedicated for public use. Sidewalks shall be a minimum of four feet in width and shall be constructed of Portland cement concrete in accordance with construction plans for the improvements as approved by the City prior to construction.
5. Water and Sewers. Water mains, sanitary sewer lines, and storm sewers and their appurtenances shall be constructed and installed in accordance with construction plans for the improvements as approved by the City prior to construction. Water and sewer lines shall be made accessible to each lot.
6. Storm Sewer. A suitable storm sewer for sump pump drainage shall be available to all lots within a subdivision.

7. Extension of Services to Property Line. The subdivider shall extend services for water, sewer, and sump pump discharge to the lot lines for each lot within a subdivision. The locations of the services must be clearly marked and a record of the service locations provided to the City by the subdivider.

8. Existing Drainageways. Whenever any stream or important surface water course is located in an area that is being subdivided, the subdivider shall, at the subdivider's own expense, make adequate provision for straightening or widening the channel so that it will properly carry the surface water.

170.11 APPROVAL OF FINAL PLAT; FINAL ACCEPTANCE OF IMPROVEMENTS.

Provisions for the final approval and acceptance of the final plat and improvements are as follows:

1. Construction of Improvement or Posting of Bond. Before the Council approves the final plat, all of the improvements required in Section 170.10 shall be constructed and accepted by formal resolution of the Council. Before passage of a resolution of acceptance, the City Engineer shall report that the improvements meet all City specifications and ordinances or other requirements, and all agreements between the subdivider and the City; and the City Engineer shall report that the subdivider has filed in proper form a maintenance bond (or bonds) to cover all construction being dedicated to the City. Maintenance bonds shall be in effect from the passage of the resolution of acceptance by the Council, then for the following numbers of years:

- A. Concrete paving – four years;
- B. Storm sewers and appurtenances – four years;
- C. Sanitary sewers and appurtenances – four years;
- D. Water mains and appurtenances – four years;
- E. Sidewalks – four years.

2. Waiver. The requirements for the construction of all improvements may be waived if the subdivider will post a performance bond with the Council guaranteeing that the improvements will be constructed within a period of one year from final acceptance of the plat. However, if a performance bond is posted, final acceptance of the plat will not constitute final acceptance by the City of any improvements to be constructed. Improvements will be accepted only after all construction has been completed, all in accordance with the requirements of this chapter. No maintenance work will be done by the City and no public funds will be expended in the subdivision until such improvements have been completed and accepted by the City.

3. Resubdivisions. The Council may waive the requirements for the construction and installation of some or all of the improvements required in Section 170.10 in cases of resubdivisions where only the size, shape and arrangement of the lots are being changed and no new streets are required and in case of dedications of land or rights-of-way to public use where such dedication is in excess of the needs of the subdivision and is desired by a public agency in lieu of a purchase or condemnation proceeding.

170.12 PRELIMINARY PLAT REQUIREMENTS. The preliminary plat of a subdivision is not intended to serve as a recorded plat. Its purpose is to show on a map all facts needed to enable the Commission to determine whether the proposed layout of the land in question is satisfactory from the standpoint of the public interest. The subdivider or his or

her representative may call at the City offices in advance of submitting the preliminary plat in order to discuss the proposed subdivision and in order to obtain information as to the requirements necessary for approval of the plat.

1. Number of Copies and Scale. Fourteen copies of the preliminary plat shall be submitted as prescribed for review. The scale of the map shall be one inch equals 50 feet on small subdivisions and one inch equals one hundred feet on large subdivisions, unless otherwise approved by the Commission.
2. Contents of Preliminary Plat. Preliminary plat contents are as follows:
 - A. Name of subdivision, date, point of compass, scale, and official description of the property being platted.
 - B. Name and address of recorded owner and of developer.
 - C. Name and address of engineer and/or land surveyor.
 - D. Existing buildings, railroads, underground utilities and other rights-of-way.
 - E. Location, names and widths of all existing and proposed roads, alleys, streets and highways in or adjoining the area being subdivided.
 - F. Location and names of adjoining subdivisions, and the names of the owners of adjoining subdivisions, and the names of the owners of adjoining acreage parcels.
 - G. Proposed lot lines with approximate dimensions and the square foot area of non-rectangular lots.
 - H. Areas dedicated for public use, such as schools, parks and playgrounds.
 - I. Contour lines at intervals of not more than five feet.
 - J. Building setbacks outlined in Section 170.03.
 - K. Boundaries of the proposed subdivision shall be indicated by a heavy line.
 - L. Zoning classification of the area.
 - M. Proposed utility service:
 - (1) Source of water supply.
 - (2) Provision for sewage disposal.
 - (3) Provision for storm water drainage.
 - N. A vicinity sketch at a legible scale showing the relationship of the plat to its general surroundings.
 - O. Lot numbers.
 - P. Proposed street widths.
 - Q. Location of all proposed utilities including water main, sanitary sewer, storm sewer and sump pump drain lines.
 - R. Location of all existing easements including type of easement.

- S. Location of all proposed easements.
- 3. Accompanying Material. Any plat that cannot reasonably be served by public sewer shall show results of soil percolation tests made by the engineer preparing the plat. Such test shall be made in accordance with specifications approved by the City Engineer.

170.13 FINAL PLAT AND ACCOMPANYING MATERIAL REQUIREMENTS.

Final plat requirements are as follows:

- 1. Number of Copies and Scale. Within the timeframe provided in Section 170.04, the subdivider shall submit eight copies of the final plat for review by the Commission. The scale of the map shall be one inch equals 50 feet on small subdivisions and one inch equals one hundred feet on large subdivisions, unless otherwise approved by the Commission.
- 2. Monumentation. Prior to the offering of the plat of any subdivision for record, the following procedures shall be followed:
 - A. The surveyor shall confirm the prior establishment of control monuments at each controlling corner of the boundaries of the parcel or tract of land being surveyed. If no control monuments exist, the surveyor shall place the monuments. Control monuments shall be constructed of reasonably permanent material, solidly embedded in the ground and capable of being detected by commonly used magnetic or electronic equipment. The surveyor shall affix a cap of reasonably inert material bearing an embossed or stencil cut marking of the Iowa registration number of the surveyor to the top of each monument which the surveyor places.
 - B. Control monuments shall be placed at the following locations:
 - (1) Each corner and angle point of each lot, block or parcel of land surveyed.
 - (2) Each point of intersection of the outer boundary of the survey with an existing or created right-of-way line of a street, railroad or other way.
 - (3) Each point of curve, tangency, reversed curve or compounded curve on each right-of-way line established.
 - C. If the placement of a monument required by this section at the prescribed location is impractical, a reference monument shall be established near the prescribed location. If a point requiring monumentation has been previously monumented, the existence of the monument shall be confirmed by the surveyor.
 - D. At least a minimum number of two survey control monuments are required to be placed before the recording of a subdivision provided the surveyor includes in a surveyor's statement a declaration that additional monuments shall be placed before a date specified in the statement or within one year from the date the subdivision is recorded, whichever is earlier.
- 3. Contents of Final Plat. Every plat of a subdivision offered for record shall conform to all of the following provisions where applicable:

- A. The plat shall be a permanent copy or a photographic print made on a stable plastic film. Exact copies of the plat to be recorded shall be provided to and filed by the County Recorder, Assessor and Auditor. The original plat drawing shall remain the property of the registered land surveyor.
- B. The size of each sheet showing any portion of the subdivided lands shall not be greater than 18 inches by 24 inches or less than eight and one-half inches by 11 inches.
- C. Whenever more than one sheet is used to accurately portray the lands subdivided, each sheet shall display both the numbers of the sheet and the total number of sheets included in the plat, as well as clearly labeled match lines indicating where the other sheets adjoin. An index sheet shall be provided to show the relationship between the sheets.
- D. A maximum scale of 100 feet to one inch shall be used unless permission to use a different scale is obtained in writing from the Commission. The scale used shall be clearly stated and graphically illustrated by a bar scale drawn on every sheet showing any portion of the lands subdivided.
- E. Subdivisions shall be designated, by name or as otherwise prescribed, in bold letters inside the margin at the top of each sheet included in the plat.
- F. An arrow indicating the northern direction shall be drawn in a prominent place on each sheet included in the plat.
- G. All monuments to be of record shall be adequately described and clearly identified on the plat. When additional monuments are to be established subsequent to the recording of the plat, the location of the additional monuments shall be shown on the plat.
- H. Sufficient survey data shall be shown to positively describe the bounds of every lot, block, street, easement or other areas shown on the plat, as well as the outer boundaries of the subdivided lands.
- I. All distances shall be shown in feet to the nearest one-hundredth of a foot, and in accordance with the definition of a foot adopted by the United States Bureau of Standards. All measurements shall refer to the horizontal plane.
- J. The course of every boundary line shown on the plat shall be indicated by a direct bearing reference or by an angle between the boundary line and an intersecting line having a shown bearing, except when the boundary line has an irregular or constantly changing course, as along a body of water, or when a description of the boundary line is better achieved by measurements shown at points or intervals along a meander line having a shown course. All bearings and angles shown shall be given to at least the nearest minute of arc.
- K. Curve data shall be stated in terms of radius, central angle and tangent, or length of curve and unless otherwise specified by this chapter curve data for streets of uniform width may be shown only with reference to the centerline, and lots fronting on such curves may show only the chord bearing and distance of such portion of the curve as is included in their

boundary. In all other cases, the curve data must be shown for the line affected.

L. The minimum unadjusted acceptable error of closure for all subdivision boundaries shall be 1.10,000 and shall be 1.5,000 for any individual lot.

M. When any lot or portion of the subdivision is bounded by an irregular line, the major portion of that lot or subdivision shall be enclosed by a meander line showing complete data with distances along all lines extending beyond the enclosure to the irregular boundary shown with as much certainty as can be determined or as "more or less," if variable. In all cases, the true boundary shall be clearly indicated on the plat.

N. All interior excepted parcels shall be clearly indicated and labeled "not a part of this plat."

O. All adjoining properties shall be identified, and where such adjoining properties are a part of a recorded subdivision, the name of the subdivision shall be shown. If the subdivision platted is a resubdivision of a part or the whole of a previously recorded subdivision, sufficient ties shall be shown to permit an overlay to be made. Resubdivisions shall be labeled as such in a subtitle following the name of the subdivision wherever the name appears on the plat.

P. The purpose of any easement shown on the plat shall be clearly stated and shall be confined to only those easements pertaining to public utilities including gas, power, telephone, cable television, water, sewer and such drainage easements as are deemed necessary for the orderly development of the land encompassed within the plat. All such easements relative to their usage and maintenance shall be approved by the Council prior to the recording of the plat.

Q. A strip of land shall not be reserved by the subdivider unless the land is of sufficient size and shape to be of some practical use or service as determine by the governing body.

R. The purpose of all areas dedicated to the public must be clearly indicated on the plat.

S. Notwithstanding the requirements of this section, the plat must also conform to all current requirements of the *Code of Iowa*, and to the extent of any inconsistency in requirements, the *Code of Iowa* shall govern.

T. The street address number for each lot shall be shown.

4. Accompanying Material. The following material shall accompany the final plat:

A. The subdivider shall submit three copies of the plan drawings for all improvements required under these regulations showing the as-constructed locations of all streets, alleys, conduits, sewers and pipelines to be placed within public right-of-way, on public easements or dedicated to the City. The plans and specifications shall show the plan and profile of all such improvements.

B. Any protective covenants or restrictions to be imposed upon the plat shall be submitted for approval.

C. A deed to the City, properly executed, for all streets intended as public streets, and for any other property intended for public use.

D. The following certificates or statements:

(1) A statement by the proprietors and their spouses, if any, that the plat is prepared with their free consent and in accordance with their desire, signed and acknowledged before an officer authorized to take the acknowledgments of deeds.

(2) A statement from the mortgage holders or lienholders, if any, that the plat is prepared with their free consent and in accordance with their desire, signed and acknowledged before an officer authorized to take the acknowledgment of deeds. An affidavit and bond as provided for in Section 354.12 of the *Code of Iowa* may be recorded in lieu of the consent of the mortgage or lienholder. When a mortgage or lienholder consents to the subdivision, a release of mortgage or lien shall be recorded for any areas conveyed to the City or dedicated to the public.

(3) An opinion by an attorney-at-law who has examined the abstract of title of the land being platted. The opinion shall state the names of the proprietors and holders of mortgages, liens or other encumbrances on the land being platted and shall note the encumbrances, along with any bonds securing the encumbrances.

(4) A certificate of the County Treasurer that the land is free from certified taxes and certified special assessments or that the land is free from certified taxes and that the certified special assessments are secured by bond in compliance with Section 354.12 of the *Code of Iowa*.

A subdivision plat which includes no land set apart for streets, alleys, parks, open areas, school property or public use other than utility easements shall be accompanied by the documents listed in subsections (1), (2) and (3) and a certificate of the County Treasurer that the land is free from certified taxes other than certified special assessments.

G. A resolution and certificate for approval by the Council and for signatures of the Mayor and Clerk.

H. A statement by the Auditor approving the name or title on the subdivision plat.

I. Performance bond, if any.

J. Maintenance bond, if any.

170.14 WATER AND SEWER FEES. The subdivider shall pay a water fee of \$250.00 and a sewer fee of \$250.00 for each lot in the final plat upon which a residential dwelling or commercial building may be constructed. This fee shall be paid to the Clerk prior to the Council's approval of the final plat. These fees may be waived upon approval of a petition to the City Council by the developer. In such instances, these fees will be applied to new construction permits within the plat.

170.15 REVIEW AND INSPECTION FEES. Before a preliminary plat may be considered by the Commission, the subdivider or his or her agent shall pay \$50.00 to the Clerk to cover the cost of the Commission's initial review of the preliminary plat. All costs incurred by the City in the review of the preliminary and final plats and in any inspections required by this chapter shall be paid and reimbursed by the subdivider to the City before final approval is given to the plat.

170.16 PERFORMANCE AND MAINTENANCE BONDS. The subdivider is required to provide performance and maintenance bond using generally accepted bond forms as approved by the City. The subdivider shall submit the performance bond for all improvements in the entire subdivision prior to the approval of construction plans for the subdivision improvement. Maintenance bonds shall be provided for all elements of work including concrete paving, storm sewer, sanitary sewer, water main and sidewalks. Maintenance bonds are required prior to acceptance of the improvements by the City. Maintenance bonds shall be provided by the subdivider to cover all improvements. The City may approve maintenance bonds provided by individual contractors for portions of the work if the City determines bonds provided by contractors in aggregate provide a complete maintenance bond equivalent to the bond required be provided by the subdivider.

170.17 PUBLIC PARKLAND DEDICATION. The purpose of this section is to regulate the use and development of land so as to assure that new developments provide for the health, safety, and welfare of future residents by providing land for public parks within the City and within areas being newly developed or redeveloped for residential purposes.

1. Definitions.
 - A. "Dedication" means the transfer of land to the City to be used exclusively by the City for a park site and improvements.
 - B. "Developer" means any person, individual, firm, partnership, association, corporation, estate, trust or other entity acting or proposing to subdivide land for the construction of any of the residential development and/or buildings.
 - C. "Pond" means any still body of standing water.
 - D. "Waterway" means a channel through which water runs.
2. Requirement of Dedication of Public Parkland.
 - A. Any developer who, after the effective date of this section, seeks to develop land for residential purposes within the City shall be required to dedicate public parkland.
 - B. No new plats or site plans for residential development shall be approved unless and until the provisions of this section are complied with, including a depiction of the parkland on the plat in compliance with this section.
3. Computation of the Amount of Public Parkland Required. This subsection shall prescribe the minimum amount of space to be provided in a proposed development for use as a public park. Such space shall be required to be provided for by a developer who, after the effective date of this section, seeks to develop land within the City by submitting a plat or site plan for approval.

- A. The amount of public parkland required to be dedicated in a proposed development shall be five percent of the acres in the residential development. The minimum of area of the parkland required shall be no less than 20,000 square feet.
 - B. If a plat or site plan is requested for mixed uses, then paragraph A of this subsection shall apply only to those areas of the plat or site plan devoted to residential uses.
 - C. The dedicated public parkland may include waterways and ponds, provided the area of such waterways and ponds is not used to satisfy the amount of public parkland required in paragraph A of this subsection.
 - D. The dedicated public parkland shall not be utilized for water runoff, above-ground water discharge, or storm water drainage which flows overland. This restriction is intended to reduce the restriction on usability of the parkland.
 - E. In the case of change of use, redevelopment, or expansion or modification of an existing use which requires the approval of an amended plat or site plan, the above space requirements for public parkland shall be based upon the new lots or new units being proposed for development.
 - F. Where proposed subdivisions abut undeveloped lands, the dedicated public parkland shall be located adjacent to the subdivision boundaries with the undeveloped land, at the discretion of the City Council, to allow the public parkland to be increased in size when the adjacent property develops.
4. Requirement of Dedication and Installation of Land or Easements for Trails. Where bike/pedestrian or recreational trails are indicated in the Comprehensive Plan the developer shall be required to dedicate land or trail easements at least 10 feet in width. Furthermore, the developer is required to install the trails to the width and specifications as required by the City Engineer. This land or easements, if approved by the City Council, may serve to satisfy parkland dedication requirements.
5. Alternative to Dedication of Public Parkland Required. If a developer does not desire to dedicate public parkland required in this section, the developer may make a request to the City Council that the developer be allowed to meet the requirements of this section through other arrangements agreeable to the City Council and the Developer as long as such agreement provides equal value to the City. Such arrangements shall be made between the City Council and the developer in the form of a development agreement.
6. Exemptions. The following shall be exempted from the requirements of subsections 2, 3, and 4:
- A. Alterations or expansion of an existing building where no additional residential units are created and where the use is not changed.
 - B. The construction of accessory buildings or structures.

- C. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use.
- D. The installation of a replacement mobile home.
- E. The construction of any nonresidential building or structure or the installation of a nonresidential mobile home.

Any claim of exemption shall be made no later than the time of application for a preliminary plat approval. Any claim not so made shall be deemed waived.

7. **Penalty Provision.** A violation of this section shall be prosecuted in the same manner as a misdemeanor is prosecuted and upon conviction the violator shall be punished according to law; however, in addition to or in lieu of any criminal prosecution, the City shall have the power to issue a civil infraction for any violation of this chapter and shall be entitled to any fines, injunctive relief and other remedies allowed the City under the civil infraction provisions of the *Code of Iowa*. It is specifically declared that the failure of a developer to comply with the above provisions of this section shall be a nuisance subject to all fines and remedies provided in this Code of Ordinances.

170.18 VARIATIONS AND EXCEPTIONS. Whenever the tract proposed to be subdivided is of such unusual topography, size or shape, or is surrounded by such development or unusual conditions that the strict application of the requirements contained in this chapter would result in substantial hardships or injustices, the Council, upon recommendation of the Commission, may vary or modify such requirements so that the subdivider is allowed to develop the property in a reasonable manner; but so, at the same time, the public welfare and interest of the City and surrounding area are protected and the general intent and spirit of these regulations are preserved.

170.19 ENFORCEMENT. No plat or subdivision shall be recorded in the County Recorder's office or have any validity until it has been approved in the manner prescribed herein. The Council shall not permit any public improvements over which it has control to be made from City funds, or any City money expended for improvements or maintenance on any street in any area that has been subdivided unless such subdivision and streets have been approved in accordance with the provisions contained in this chapter, and accepted by the Council as a public street.

170.20 CHANGES AND AMENDMENTS. Any provision of this chapter may be changed and amended from time to time by the Council; provided, however, such changes and amendments shall not become effective until after study and report by the Commission and until after a public hearing has been held, public notice of which shall be given in a newspaper of general circulation at least seven days prior to the hearing.

170.21 BOUNDARY ESTABLISHMENT OR RETRACEMENT SURVEYS. Any plat or plat of survey of property either within or outside the corporate limits which establishes existing boundaries or is a retracement of a prior plat or plat of survey is not subject to the review and approval provisions of this chapter.

170.22 CITY STAFF DETERMINATION OF NON-APPLICABILITY. In connection with the review of a plat or plat of survey, the City Engineer is authorized to make a determination that such plat or plat of survey is not subject to the review and approval requirements of this chapter. The City Engineer will notify the City Attorney of such a

determination, and the City Attorney is authorized to notify the appropriate officials of Polk County accordingly.

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CHAPTER 180

SITE PLAN REQUIREMENTS

180.01 Title	180.07 Multiple Family Dwelling and Townhome Standards
180.02 Purpose	180.08 Amendments to Approved Site Plans
180.03 Application of Chapter	180.09 Additional Requirements
180.04 Design Standards	180.10 Expiration of Approval
180.05 Submittal and Review Procedure	180.11 Fee for Site Plan Review
180.06 Site Plan Information	

180.01 TITLE. This chapter shall be known and may be cited as “The City of Elkhart, Iowa, Site Plan Requirements.”

180.02 PURPOSE. The purpose of this chapter is to provide a procedure which will enable the City to review certain proposed improvements to and development of property to assure that the design and location will be in conformance with this Code of Ordinances. The Site Plan shall be designed to reflect consideration for: (i) impacts to existing and proposed developments surrounding the site and the City; (ii) impact on public rights-of-way, utilities, facilities, and services; and (iii) impact to existing on-site conditions.

180.03 APPLICATION OF CHAPTER. Site plans are required whenever any person undertakes new construction, re-construction, expands an existing building by 20 percent or more of the area of the existing building, or remodels an existing building with a building permit value of \$25,000.00 or more (collectively “improvements” or “development”) within the City, except for the construction of single-family or two-family homes on existing platted lots. Site Plans are required for multiple-family dwellings and townhomes.

180.04 DESIGN STANDARDS. Site Plans shall reflect the following standards of design which are necessary to insure the orderly and harmonious development of property in such manner as will safeguard property values and the public's health, safety, and general welfare.

1. The design of the proposed improvements shall make adequate provisions for surface and subsurface drainage, for connections to water and sanitary sewer lines, each so designed as to neither overload existing public utility lines or increase the danger of erosion, flooding, landslide, or other endangerment of adjoining or surrounding property.
2. The proposed development shall be designed with a proper regard to topography, surface drainage, natural drains and streams, wooded area, and other natural features which will lend themselves to proper, harmonious and attractive development of the site.
3. The proposed improvements shall be designed and located within the property in such manner as not to unduly diminish or impair the use and enjoyment of adjoining property, and to this end shall minimize the adverse effects on such adjoining property from automobile headlights, illumination of required perimeter yards, refuse containers, and impairment of light and air. Lighting, and its impact on adjacent property, shall be shown on the Site Plan. For the purpose of this section, the term “use and enjoyment of adjoining property” means the use and enjoyment presently being made of such adjoining property, unless such property is vacant. If

vacant, the term “use and enjoyment of adjoining property” means those uses permitted under the zoning districts in which such adjoining property is located.

4. The proposed development shall have such entrances and exits upon adjacent streets and such internal traffic circulation pattern and will not unduly increase congestion on adjacent or surrounding public streets. Public streets are required in all multiple-family and townhouse developments. Any proposed development which will include a loading dock or truck entrance facing an exterior street must, as a part of the Site Plan approval process, conform to any and all requirements which may be established by the City with respect to the location of such loading dock or truck entrance.

5. The proposed development shall have such buffers, screen fences, and landscaping and shall be designed, and the buildings and improvements located, in such a manner as to not unduly diminish or impair the use and enjoyment of adjoining or surrounding property.

6. The proposed development shall not unduly increase the public danger of fire or diminish the public safety, and shall be designed to adequately safeguard the health, safety, and general welfare of the public and of persons residing and working in the development and in the adjoining or surrounding property.

7. The proposed development shall utilize storm water management to limit the release from any site to no more than a five-year undeveloped release rate.

8. The proposed development shall conform to all applicable provisions of the *Code of Iowa*, as amended, and all applicable provisions of the Code of Ordinances, as amended.

180.05 SUBMITTAL AND REVIEW PROCEDURE. Site Plans shall be submitted to the City for review and approval.

1. Fourteen copies of the Site Plan shall be submitted to the City Clerk, who shall refer the Site Plan to the Planning and Zoning Commission and the City Engineer for comment and recommendation prior to action by the City Council. A Site Plan must be submitted no later than 15 days prior to a meeting of the Planning and Zoning Commission. Prior to an official submittal of the Site Plan for review by the Planning and Zoning Commission, an applicant may submit a concept and Site Plan for initial review by the City Engineer for comment.

2. The Clerk may refer the Site Plan to appropriate City departments and officials for their review and comment regarding the Site Plan’s compliance with this Code of Ordinances, and its effects upon the City’s municipal utilities and public street system. Any comments by any department or official will be forwarded to the Planning and Zoning Commission.

3. The Planning and Zoning Commission shall, after receiving a report from the City Engineer, review the Site Plan for conformity with the regulations and design and architectural standards of this chapter, and may confer with the applicant on changes deemed advisable in the Site Plan. Persons or agents submitting a Site Plan shall personally appear before the Planning and Zoning Commission upon notice from the Commission when the Site Plan is to be considered by it.

4. The Planning and Zoning Commission shall forward its recommendation to the City Council for approval, modification, or disapproval of the Site Plan within 45 days of the date of the submission of the Site Plan.

5. The Planning and Zoning Commission may, in its discretion, hold a public hearing on the Site Plan and prescribe the notice thereof and to whom such notice shall be given.
6. Upon receipt of the recommendations of the Planning and Zoning Commission, or if no recommendations are received within 45 days of the referral to the Commission, the Council shall proceed with its action on the Site Plan. The Council may approve the Site Plan, approve the Site Plan with modifications, or disapprove the Site Plan. Persons or agents submitting the Site Plan shall personally appear before the Council upon notice from the Council when said Site Plan is scheduled for action by the Council. If said owner, developer, or agent fails to appear as scheduled, the Council may take no action on said Site Plan.
7. No building permit for any structure for which a Site Plan is required shall be issued until the Site Plan has been approved by the Council.

180.06 SITE PLAN INFORMATION. The purpose of the Site Plan is to show all information needed to enable the City Engineer, City staff, the Planning and Zoning Commission, and the Council to determine if the proposed development meets the requirements of this chapter and other provisions of this Code of Ordinances. The City Engineer, City staff, the Planning and Zoning Commission, or the Council may waive certain required information at their discretion.

1. Information Required. The Site Plan shall include the following information concerning the proposed development:
 - A. Names of all persons having an interest in the property, legal description of property, point of compass, scale, and date.
 - B. Applicant's name, address, project location, proposed land use and present zoning, location and names of adjoining subdivisions, the numbers of the adjoining lots therein, and the names and addresses of adjoining landowners.
 - C. If the applicant is other than the legal owner, the applicant's interest shall be stated.
 - D. Name and address of persons who prepared the Site Plan.
2. Required Illustrations. The Site Plan shall clearly set forth the following information concerning the proposed development.
 - A. Property boundary lines, dimensions, and total area of the proposed development.
 - B. Existing and proposed contour lines of the proposed development and 50 feet beyond the boundaries of the proposed development at intervals of not more than two feet. If substantial topographic change is proposed, the existing topography of the development and of the surrounding area shall be illustrated on a separate map, and the proposed finished topography shown on the Site Plan.
 - C. The availability, location, size, and capacity of existing utilities, and of proposed utilities.
 - D. The proposed use of building materials, location, size, height, shape, use, elevation, building sign type, and illustration of all buildings or structures

in the proposed development. Samples of building materials may be required for review at the Planning and Zoning meeting.

E. The total square footage of building floor areas, both individually and collectively in the proposed development.

F. Existing buildings, rights-of-way, public sidewalks, street improvements, utility easements, drainage courses, streams and wooded areas.

G. The number of dwelling units, offices, etc., planned for the site.

H. A vicinity sketch showing adjacent existing land uses within 500 feet of the property.

I. Location number, dimensions and design of off-street parking in the proposed development, including:

- Driveways, islands and planters.
- Striping and curbs.
- Loading facilities.
- Type and location of lighting.
- Surface treatment.

J. Open spaces, recreational areas, public sidewalks, walkways and driveways, outside lighting, walls, fences, monuments, statues, and other manmade features to be used in the landscape of the proposed development.

K. Facilities for the collection and disposal of garbage and trash, and screening structures.

L. Walls, fences, or other artificial screens to be used as buffers shall be shown in elevation and perspective with proposed height and structural material indicated.

M. A Site Lighting Plan shall be provided, indicating the location, type, fixture height, power rating, and shielding method of all existing and proposed lighting. A photometric plan shall be provided that details the horizontal illumination of the site and the vertical light trespass along the perimeter of the site.

N. Storm Water Management Plan shall be provided which shall include calculations of detention sizing and release rate control facilities.

O. Traffic considerations or utility capacities and all other considerations pertinent to the proposed use may be requested for illustration or statistical purposes.

P. Free standing identification signs; location, setback, dimensions, height and illustrations.

Q. Location and type of all plants, trees, ground cover to be used in the landscape. Landscaping to be used for screening purposes shall be illustrated with the size and exact names of plants, shrubs or trees to be planted clearly indicated. The planting location shall not adversely affect utility easements or service lines.

R. Such additional information, drawings, or other materials necessary to describe a proposed project as may be requested by the City Engineer or Planning and Zoning Commission.

180.07 MULTIPLE-FAMILY DWELLING AND TOWNHOME STANDARDS.

Multiple-family and townhome projects shall be designed in compliance with certain standards which shall be set forth in the presentation of the Site Plan.

1. The Site Plan shall provide the required parking stalls for each dwelling unit located in driveways and dedicated parking lot area, exclusive of parking provided in garages. The parking stall requirement shall be satisfied with no on-street parking.
2. The Site Plan must provide a distance of at least 23 feet from the property side of any sidewalk to any residence or garage face.
3. Sidewalks shall be required along both sides of all streets unless an alternate pedestrian access plan is approved that provides access to all residential dwelling units.

180.08 AMENDMENTS TO APPROVED SITE PLANS. An approved Site Plan may be amended when there is any change in location, size, design, conformity or character of buildings and other improvements, provided that the amended Site Plan conforms to the provisions of this chapter and other provisions of this Code of Ordinances. An amended Site Plan shall be submitted to the City and reviewed by the Planning and Zoning Commission and approved by the City Council in the same manner as an original Site Plan.

180.09 ADDITIONAL REQUIREMENTS. As part of the Site Plan approval process, the developer may be required by the Council to install public utilities, including (but not limited to) water lines, storm sewer, sanitary sewer, fire hydrants, and such other utilities as applicable to properly serve the proposed plan. The developer may also be required by the Council to construct street paving and sidewalks as applicable to properly serve the proposed plan. Where required as part of a Site Plan approval, utilities, streets, and sidewalks shall be constructed in accord with the City's construction standards for those portions within the public right-of-way and to be dedicated to the City. Under all conditions, the utilities, including (but not limited to) water and sanitary sewer, will conform to the City's standards. Streets and sidewalks may also be required to be constructed to the same specifications for those undedicated portions where such utilities and improvements may have a direct effect on the future safety, proper functioning, and maintenance of those portions to be dedicated.

180.10 EXPIRATION OF APPROVAL. All Site Plan approvals shall expire and terminate 365 days after the date of Council approval unless a building permit has been issued for the construction provided for in the Site Plan. The Council may, upon written request by the developer, extend the time for the issuance of a building permit for 60 additional days. In the event the building permit for construction provided for in a Site Plan expires or is cancelled, then such Site Plan approval shall thereupon terminate.

180.11 FEE FOR SITE PLAN REVIEW. Before any action shall be taken as provided in this section, the person filing a Site Plan shall pay to the City Clerk a filing fee of \$250.00 plus reimbursement to the City by the person submitting the Site Plan and any amended Site Plan for all costs incurred by the City, including (but not limited to) Engineers' and/or Attorneys' fees and costs.

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CHAPTER 181

SIGN CODE

181.01 Purpose	181.18 Addresses
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181.06 Monument Signs	181.23 Temporary Signs
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181.13 Electric Changeable Copy	181.30 Abandoned Signs
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181.15 Neon Lights; Murals	181.32 Plans
181.16 Home Occupations	181.33 Enforcement and Remedies
181.17 Garage Sales	181.34 Fee Schedule

181.01 PURPOSE. The purpose of this chapter is to permit such signs as will not, by reason of their size, location, construction, or manner of display, endanger life and limb, confuse or mislead traffic, obstruct vision necessary for traffic safety, or otherwise endanger the public morals, health and safety; and further, to regulate such permitted signs in a way to promote development that is not detrimental to the property values and aesthetics of the City. No sign shall be erected or maintained in the City's jurisdiction, except those specifically allowed by this chapter. Signs allowed by this chapter may be erected and maintained only as on-premises signs. All signs as permitted by the applicable zoning district regulations in all zoning districts in the City shall comply with the regulations of this chapter.

181.02 JURISDICTION. The lawful use of a sign existing at the time of the enactment of the Zoning Ordinance may be continued, although such use may not conform to the regulations herein. For those signs permitted before the adoption of these regulations, such signs shall be classified as "permitted nonconforming" structures. No sign permit shall be issued for any lot, tenant, or development after the effective date of and not in substantial conformity with the provisions of these regulations. Nor shall any sign, except as hereinafter specified, be erected, substantially improved, converted, enlarged, moved, or structurally altered without conforming to the provisions of these regulations.

181.03 DEFINITIONS AND INTERPRETATIONS. Words and phrases used in this chapter have the meanings set forth in this section. Words and phrases not defined in this section but defined in the Zoning Code shall have the meanings set forth in the Zoning Code. Principles for computing sign area and sign height are contained in Section 181.22. All other words and phrases shall have their common, ordinary meanings unless the context clearly requires otherwise. Section headings or captions are for reference purposes only and shall not be used in the interpretation of this chapter.

1. "Animation" means rotation or any other movement or appearance thereof, or change of lighting to depict action or create a special effect or scene, whether by atmospheric movement, mechanical, or electrical means, or any combination thereof.

2. “Banner” means any sign of lightweight fabric or similar material that is permanently mounted to a pole or a building by a permanent frame at one or more edges. National flags, State or municipal flags or the official flags of any institution or business are not considered banners.
3. “Building” means any structure having a roof supported by walls or by columns intended for enclosure, shelter or housing of persons, animals or chattel. When any portion thereof is entirely separated by walls in which there are no connecting doors or windows or any similar opening, each portion so separated shall be deemed a separate building, except for townhouses, duplexes, and condominiums wherein two or more dwelling units shall constitute a separate building. “Building” does not include signs or billboards.
4. “Building, accessory” means a building subordinate to the principal use of a building on the lot and serving a purpose customarily incidental to the use of the principal building. Among other things, the following are considered to be accessory buildings: shed, gazebo, and garage.
5. “Building frontage” means that wall or side of a building containing the main entry that is adjacent and most nearly parallel to a street.
6. “Building Official” means the City employee or the Building Inspector designated to enforce the City’s Building and Zoning Ordinances.
7. “Canopy” means a permanent covering providing shelter to persons from elements of weather.
8. “Changeable copy” means the graphical content, in letter or alphabetical form, or a sign, which can be changed or altered.
9. “Church” means any building, premises, or site whose primary use is public religious worship.
10. “Copy” means words, letters, logos, figures, symbols, statutes, illustrations, patterns, decorative panels or inserts that form a message or otherwise call attention to a business, product, service, or activity, or to the sign itself. Lighting and similar features adding to the architecture element of the building are not considered as signage but shall be regulated by the site plan.
11. “Convenience store” means an establishment for retail sale of petroleum products and other supplies for motor vehicles, as well as for the retail sale of a variety of other items typically sold in grocery stores, not including the repair or sale of vehicles.
12. “Demising wall” means a wall used to provide separation between individual tenants located within a multiple tenant building.
13. “District” means a section or sections of the City within which the regulations governing the use of buildings and premises or the height and area of buildings and premises are uniform.
14. “Erect” means to build, construct, attach, hang, place, suspend, or affix, and includes the painting of wall signs.
15. “Flag” means any fabric, banner or bunting containing distinctive colors, lettering, patterns or symbols, used as a symbol of a government, political subdivision or other entity.

16. "Frontage" means the dimension of a front lot line as measured along the public street (see "lot lines, front").
17. "Home occupation" means any occupation or profession conducted solely by resident occupants in their place of abode, involving primarily service and not the sale of commodities upon the premises.
18. "Institutional use" means a public use, such as a church or school.
19. "Lot" means any parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on a dedicated or private street and may consist of:
 - A. A single lot of record;
 - B. A portion of a lot of record;
 - C. A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portion of lots of record;
 - D. A parcel of land described by metes and bounds; provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this chapter.
20. "Multiple tenant building, horizontal" means a single story building designed for the collocation of two or more tenants located side by side, with each tenant separated by demising walls.
21. "Multiple tenant building, vertical" means a multiple story building designed for the collocation of two or more tenants located side by side and/or on separate floors of the building.
22. "Neon, exposed" means any neon type lighting used as or in a sign, not encased in a solid colored light diffusing lens, so as to limit the visible appearance of the illuminated light source.
23. "Pennant" and/or "streamer" means a long, narrow ribbon-like flag or tapering flag used individually or attached to a rope or structure of any length in a series.
24. "Principal building" means the building situated or to be placed nearest the front property line and the use of which conforms to the primary use permitted by the zoning classification in which it is located.
25. "Right-of-way" means a strip of land acquired by reservation, dedication, prescription, or condemnation and intended to be occupied by a road, trail, water line, sanitary sewer and/or public uses.
26. "Setback" means the minimum horizontal distance between the front, rear or side lines of the lot and the front, rear or side lines of the building, or structure respectively.
27. "Sign" means every sign or advertisement as defined herein, including any announcement, declaration, demonstration, display, illustration, or insignia used to advertise, promote, or draw attention to the interests of any person or firm when the same is placed out-of-doors in view of the general public. For the purpose of determining the number of signs, a sign is considered to be a single display surface or displaying device containing elements organized, related, and composed to form a

unit. Where matter is displayed in a random manner without organized relationship of elements, each element is considered a single sign.

28. “Sign, abandoned” means any sign face remaining in place for a period of 30 days or more which no longer advertises an activity, business, product, or service available on the premises on which the sign is located.

29. “Sign area” means the area of a sign as determined by the Community Development Director in accordance with Section 181.21 of this chapter.

30. “Sign, association identification” means a sign identifying the name of a complex, or neighborhood development included on a landscape feature including planter beds, fountains, decorative walls, or fences.

31. “Sign, awning” means any structure made of cloth, metal, or similar material supported entirely from the exterior wall of a building. Said structure may be illuminated.

32. “Sign, bag” means a temporary cover made of a cloth or canvas material, used to alter the message of an obsolete sign until such time as it is replaced with a new sign.

33. “Sign, banner” means a temporary sign composed of lightweight material either enclosed in a rigid frame or not enclosed, secured or mounted to a structure or post on two or more edges. A national, state or municipal flag, or the official flag of any institution or business is not considered a banner.

34. “Sign, billboard” means an off-premises sign, displayed out-of-doors or visible from a public way.

35. “Sign, building” means any sign attached to or erected against the wall or painted on the surface of the wall of a building, with the exposed face of the sign in a plane parallel with a plane of said wall. This definition includes fascia signs.

36. “Sign, building directory” means an identification sign not intended to attract people off public streets, but intended to provide direction to the public once they are within a building. Such signs contain a listing of the businesses, or professionals occupying the building in which the sign is placed.

37. “Sign, building panel” means a building sign consisting of a frame which may be covered by a translucent material, which may be internally illuminated. The placement of individual letters at least one inch thick on a metal, stone, or Dryvit surface is not considered a panel sign.

38. “Sign, directional” means a sign, other than warning and regulatory signs, which is located on private property for the purposes of controlling all modes of traffic. Signs shall not display company names, logos, or any other form of advertisement, except where allowed elsewhere in this chapter.

39. “Sign face or surface” means the copy area, background area, and the peripheral encasement, structural elements, or trim, which forms the outer perimeter of the sign.

40. “Sign, garage sale” means a temporary sign advertising a private sale on personal property.

41. “Sign height” means the vertical distance from the average finished road grade at the sign location to the highest point of the sign.

42. “Sign, home occupation” means a two-square-foot sign containing only the name and occupation of a permitted home occupation.
43. “Sign, interstate” means a sign on a property abutting an interstate right-of-way that is oriented to the interstate.
44. “Sign, memorial” means memorial signs or tablets, names of buildings and date of erection when engraved into any masonry surface or when constructed of bronze or other incombustible materials. Memorial signs shall be limited to five square feet in area.
45. “Sign, monument” means a ground sign that does not have any exposed pole or pylon, and is attached to a single columnar base for at least 60 percent of the entire width of the sign. Monument signs shall be constructed with materials chosen for their consistency with the principal building, as well as their durability and strength, in addition to the aesthetic values.
46. “Sign, multiple tenant” means a sign intended to provide identification to a multiple tenant commercial development of more than 50,000 square feet of gross building area in which more than three tenants occupy individual space within a development under common ownership, management or control.
47. “Sign, nameplate” means a non-electric sign identifying only the name and occupation or the profession of the occupant of the premises on which the sign is located.
48. “Sign, nonconforming” means a sign that does not conform to the regulations provided herein.
49. “Sign, off-site” means any sign advertising any interest of any person or firm, products, accommodations, services or activities not provided on the premises in which the sign is placed.
50. “Sign, panel” means a sign consisting of a frame which may be covered by a translucent material, which may be internally illuminated. The placement of individual letters at least one inch thick on a metal, stone, or Dryvit surface is not considered a panel sign.
51. “Sign, pole” means a sign which is erected upon one or more posts or pylons directly in or upon the ground and not attached to, or braced by, any other structure.
52. “Sign, political” means a temporary sign not larger than 32 square feet in surface area, erected for the purpose of soliciting votes or support for or in opposition to any candidate or any political party under whose designation any candidate is seeking nomination or election or any public question on the ballot in an election held under the laws of the State of Iowa.
53. “Sign, portable” means any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including but not limited to the following: signs designed to be transported by the means of wheels, trailers, or chassis, whether or not the wheels are presently attached; signs constructed as or converted to A- or T- frames; menu and sandwich board signs; balloons or other hot-air or gas filled figures; and signs attached to or painted on vehicles parked and visible from the public right-of-way and not being used in the normal day-to-day operations of the business excluding storage.

54. “Sign, project identification” means a temporary, non-illuminated sign placed on a site during construction or remodeling, which identifies the development, contractor, builder, developer and/or financial institution for the development and may include a plat map and real estate information.
55. “Sign, real estate” means any sign, not exceeding six square feet in area, pertaining to the sale, lease or rental of real estate or buildings.
56. “Sign, real estate board” means a sign not exceeding 32 square feet in area advertising the sale, lease, or rent of real estate or buildings intended for the use by a commercial or residential developer or broker.
57. “Sign, roof” means a sign erected on or above the roof of a building.
58. “Sign, service” means a sign identifying parking and handicapped parking, restrooms, public telephone facilities, first aid stations, fallout shelters and other similar public service facilities.
59. “Sign, temporary” means any sign, not permanently attached to a building, post, or ground, such as banners, sandwich boards or similar erected for a limited duration, not to be continued after the expiration of the allowed time period.
60. “Sign, vehicle” means any sign, logo, or advertisement placed, painted, attached, or displayed on a vehicle advertising a company, store or service.
61. “Sign, window” means a sign installed inside or adhered to the interior portion of an individual glazed surface panel for purposes of viewing from a public street.
62. “Street” means any thoroughfare or public space that has been dedicated or deeded to the public for public use, primarily to provide principal means of access to abutting property.
63. “Tenant frontage” means, in the case of determining permitted sign area, the dimension between the tenant separation walls along the side of the building containing the main business entry.
64. “Vision clearance” means an open, unoccupied triangular space at the street corner or a corner lot, the space being defined as a setback line extending across the corner between points established 25 feet along the right-of-way lines by measurement from the corner.
65. “Zone” means any one of the classes of districts established by this chapter.
66. “Zone lot” means a parcel of land in single ownership that is of sufficient size to meet minimum zoning requirements for area, coverage and use, and that can provide such yards and other open spaces as required by the Zoning Code.
67. “Zoning Administrator” means the Zoning Administrator of the City.

181.04 PROHIBITED SIGNS AND CONDITIONS. The City has determined that the preservation and promotion of the public health, safety, and general welfare, the maintenance and enhancement of the visual environment, the improvement of pedestrian and traffic safety, and the minimization of possible adverse effects the following signs may have on nearby public and private property, are the express purpose of this section. The City has determined that the appropriate way to further these interests is to prohibit the installation, construction, placement, or erection of the following enumerated signs. This section, through the exercise of the City’s police powers, is intended to curtail the adverse effects of such signage while

promoting the purpose and intent of this chapter. The following signs shall not be permitted, erected, or maintained on any property within the City:

1. Banners, pennants, spinners, streamers, except as permitted elsewhere in this chapter.
2. Billboards.
3. Neon lights or signs, not intended to add to the overall architectural theme of the site.
4. Hazardous signs, any sign or sign structure which is structurally unsafe, is not kept in good repair, or is capable of causing electrical shock to persons likely to come in contact.
5. Signs which incorporate in any manner any flashing or moving lights unless expressly permitted by City Council.
6. Signs which include visible moving parts, changeable copy or description by electrical or non-electrical means, or by action of wind currents; except as permitted in this chapter.
7. Spotlights or strobe lights, whether stationary or moving, intended to draw attention to a location of a property and not primarily intended to accent the signage or building form, except as expressly permitted by City Council.
8. Pole signs.
9. Portable or temporary signs, except as permitted elsewhere in this chapter.
10. String lights or other displays used in connection with commercial premises for commercial purposes, other than holiday decorations used on a temporary basis between October 15 and January 15.
11. Any sign unlawfully installed, erected, or maintained in violation of this chapter.
12. Any sign displaying any obscene, indecent or immoral matter, as defined by this Code of Ordinances.
13. Roof signs.
14. Any vehicle sign not normally used in the day to day operations of a business parked in such a way to draw attention or people from a public place or street.
15. Any sign, except permitted nonconforming signs, not specifically permitted in this chapter.

181.05 DESIGN STANDARDS.

1. Extension of Sign. No sign face shall extend horizontally beyond the supporting structure a distance greater than 12 inches.
2. Electric Signs. All electric signs shall be manufactured to meet UL specifications and be approved by the Building Official in accordance with the City Electrical Code. An alternate equivalent may be accepted as approved by Building Official.
 - A. Electric signs shall be watertight, with service holes to provide access to each compartment with fitted waterproof covers.

- B. Any electrical equipment or apparatus of a sign, which causes interference with radio or television reception, shall not be allowed.
3. Wind Pressure and Dead Load Requirements. All signs and sign structures shall be designed and constructed to withstand a wind pressure as regulated by the Building Code of the City, and shall be constructed to receive dead loads as required in the Building Code and/or other ordinances of the City. Temporary signs shall be excluded from dead load requirements as required above.
4. Clearance from Electric Lines. A clearance of not less than eight feet horizontally and 12 feet vertically shall be maintained between any sign and any overhead electrical transmission line.
5. Number of Faces. No sign shall have more than two faces. Sign faces shall be parallel, unless otherwise permitted.
6. Lighting of Signs. Signs must be lit by internal fixtures unless an alternate method is approved by the Zoning Administrator. A constant level of light must be maintained, provided that this shall not be construed to prohibit use of an automatic dimmer to reduce garish effects at night. Lighting shall not flash or move unless approved by City Council.
7. Emissions Prohibited. No sign shall emit audible sound, noticeable odor, or smoke or other visible matter.
8. Obstruction of Fire Exits, Light or Ventilation. No sign shall be permitted to obstruct or interfere in any way with free use of any door, window, fire escape, or to obstruct or impair operation of any opening required for light or ventilation.
9. Traffic Hazards. It is illegal for any sign to interfere with, obstruct the view of, or be of such design which may be confused with any authorized traffic sign, signal, or device; no sign shall imitate an official traffic sign or include the words "STOP," "LOOK," "CAUTION," or any other word, phrase, symbol, or character in such a manner as to interfere with, mislead, or confuse motorists.
10. Vision Clearance. In addition to the setback requirements in this chapter, signs shall be located such that there is at every street intersection or entranceway a triangle of unoccupied space, being defined as the corner of the intersection and points on the curb 25 feet from the intersection or entranceway.

181.06 MONUMENT SIGNS. All letters, figures, characters, or representations in cut-out or irregular form maintained in conjunction with, attached to, or superimposed on a monument sign shall be safely and securely built to or attached to the sign structure and shall comply with all requirements of the "Design" and "Maintenance" sections of this chapter. The copy area shall be limited to a single geometric shape unless it emulates the building form or feature.

1. Sign Bases. All sign bases shall be designed and constructed of materials of permanency and strength (e.g., brick, stone, masonry, etc.), and shall be compatible with other structures and signs in the development. Metal skirting around a supporting pole shall not be considered an acceptable sign base material. Signs five feet tall and shorter must have at least a one-foot sign base. Signs between five feet and 10 feet must have at least a two-foot sign base, and signs greater than 10 feet must have at least a two and one-half-foot sign base. Signs are also encouraged to be entirely or partially surrounded by brick or stone.

2. Number of Signs. One sign shall be permitted on each lot of record; provided however, if the frontage of such lot measured in a straight line along such street exceeds 500 feet, then two such signs shall be permitted. A minimum distance of 250 feet shall separate the two permitted monument signs. Businesses that have frontage on more than one street will be permitted the use of a second sign provided it measures less than one-third of the total dimension of the monument sign.
3. Setback Requirement. The minimum setback required for monument signs shall be five feet. All signs shall have a side setback not less than the height of the sign.
4. Sign Area. The total area of a sign shall be the actual square footage of one sign face. Double-face signs may be permitted with the maximum square footage permitted on each side. The maximum sign area (not including sign base) of a monument sign shall not exceed 25 square feet; provided, however, the maximum sign area may be increased one square foot for each additional one foot of setback over the minimum required setback to a maximum sign area of 40 square feet.
5. Dimensions. The maximum height of a monument sign (including sign and base) shall be five feet; provided, however, the maximum height may be increased one foot for each additional three feet of setback over the minimum required setback to a maximum sign height of 10 feet. See Section 181.22, Sign Regulation Table, for more information. Where the street is substantially higher or lower than the proposed sign location, the City Council may provide variations on the height requirement as described in this section. "Substantially" is defined, in this case, as a change in vertical distance greater than five feet. The maximum width of a monument sign (including sign and any stone/brick border) is 12 feet. The vertical distance between the sign face and the base shall not be greater than six inches.
6. Profile. Monument signs shall have a monolithic or columnar line that maintains essentially the same profile from grade to top. The width of the sign base shall be a minimum of 60 percent of the entire width of the sign.
7. Zoning Districts. The conditions outlined in this section shall apply to all residential zoning districts (institutional uses only), all commercial (including Core Business) zoning districts, and all industrial (including Light Industrial) zoning districts

181.07 MULTIPLE TENANT MONUMENT SIGNAGE. Monument signage in planned commercial developments with at least three tenants, and over 50,000 square feet of gross building square footage is intended to provide primary development identification within a planned commercial unit. Additionally, such signage may provide advertisement to tenants of the development. In lieu of any other permitted monument sign, a multiple tenant sign shall be allowed on lots or tracts under single ownership, management or control, provided the following conditions are met:

1. Sign Bases. All sign bases shall be designed and constructed of materials permanency and strength (e.g., brick, stone, masonry, etc.), and shall be compatible with other structures and signs in the development. Metal skirting around a supporting pole shall not be considered an acceptable sign base material. Signs five feet tall and shorter must have at least a one-foot sign base. Signs between five feet and 10 feet must have at least a two-foot sign base, and signs greater than 10 feet must have at least a two and one-half-foot sign base. Signs are also encouraged to be entirely or partially surrounded by brick or stone.

2. Number of Signs. One sign shall be permitted per street frontage; provided however, if the frontage measured in a straight line along such street exceeds 500 feet, then two such signs shall be permitted. A minimum distance of 250 feet shall separate the two permitted monument signs. In no case shall a development be permitted more than three such signs. All signage shall be consistent in design, color and materials used in the construction of the signage.
3. Sign Area. The total area of a sign shall be actual square footage of one sign face. Double face signs may be permitted with the maximum square footage permitted on each side. The maximum sign area of a monument sign shall not exceed 100 square feet.
4. Dimensions. The maximum height of a sign (including sign and base) shall be 15 feet. Where the street is substantially higher or lower than the proposed sign location, the City Council may provide variations on the height requirement as described in this section. "Substantially" is defined, in this case, as a change in vertical distance greater than five feet. The maximum width (including sign and any brick/stone border) shall be 12 feet.
5. Face. The sign face shall be no further than six inches from the sign base.
6. Setback. The minimum sign setback shall be 10 feet. All signs shall have a side setback not less than the height of the sign.
7. Profile. Monument signs shall have a monolithic or columnar line that maintains essentially the same profile from grade to top. The width of the sign base shall be a minimum of 60 percent of the entire width of the sign.

181.08 BUILDING SIGNS.

1. Sign Area Allowed. One square foot of sign area may be erected for every lineal foot of building frontage to a maximum of 100 square feet. In the case that a building frontage exceeds 200 feet and has a setback of greater than 250 feet, two square feet of sign area may be erected per lineal foot of building frontage to a maximum sign area of 200 square feet.
2. Number of Signs. A maximum of two signs will be allowed per business with a maximum of one sign per wall. Sign size will be limited by the regulations stated above.
3. Letters, Symbols and Logos. Under no circumstances will a letter, symbol, or logo dimension greater than six feet be allowed.
4. Convenience Stores. One sign on a canopy in a convenience store or gasoline pump use may be permitted in exchange for a building sign. Said sign shall be one square foot per linear foot of frontage of the canopy to a maximum sign area of 50 square feet. Said sign shall be confined to the actual dimensions of the canopy. In no case shall more than a combination of two building or canopy signs be permitted within the site.
5. Zoning Districts. The conditions outlined in this section shall apply to all residential zoning districts (institutional uses only), all commercial (including Core Business) zoning districts, and all industrial (including Light Industrial) zoning districts.

181.09 MULTIPLE TENANT BUILDING SIGNAGE.

1. **Sign Area.** For horizontal multiple tenant buildings, one square foot of sign area may be erected for every lineal foot of tenant frontage measured from demising wall to demising wall to a maximum of 100 square feet per business. (See Figure 181-1). In the case that a tenant is not oriented toward a building frontage and desires to place a sign on the elevation that faces a building frontage, the maximum allowable signage shall be one square foot of sign area per lineal foot of building frontage for all tenant signage on the building frontage. (See Figure 181- 2). In no case shall the allowable square footage of all tenant signage be greater than 100 square feet per building frontage.

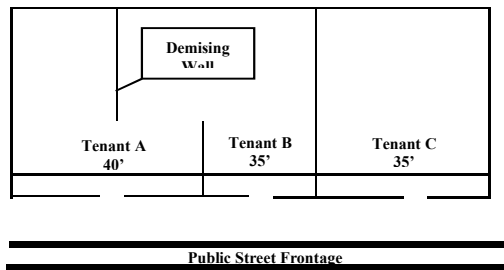


Figure 181-1: Horizontal multiple tenant building oriented towards street frontage – Tenant B would be permitted a 25 square foot sign, regardless of overall interior square footage of the tenant space.

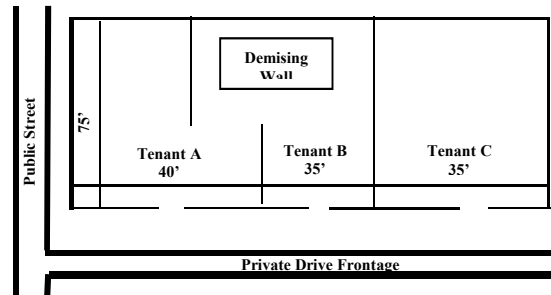


Figure 181-2: Horizontal multiple tenant building not oriented toward street frontage - Tenant A, B and C would be permitted to place a sign on the elevation that faces the public street provided that the total square footage of all three signs does not exceed 75 square feet

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he case that a horizontal multiple tenant building frontage exceeds 200 feet and has a setback of greater than 251 feet, two square feet of sign area may be erected per lineal foot of tenant frontage.

2. For vertical multiple tenant buildings, the maximum square footage for all tenant signs shall be one square foot of sign area for every lineal foot of building frontage (See Figure 181-3). In the case that a vertical multiple tenant building frontage exceeds 200 feet and has a setback of greater than 251 feet, two square feet of sign area may be erected per lineal foot of tenant frontage.

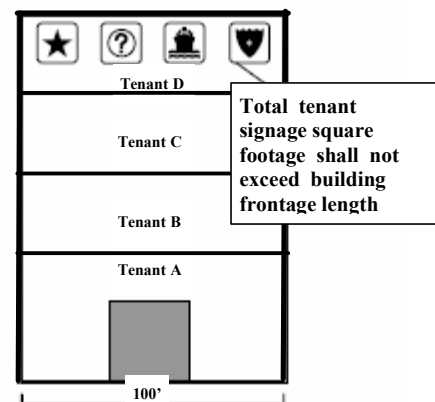


Figure 181-3:
Vertical Multiple Tenant Signage

3. **Number of Signs.** One building sign shall be permitted per tenant. In the case of a tenant located on a corner of a building that faces two public streets, one building sign per street frontage may be permitted. In no case shall a tenant within a multiple tenant building display more than two building signs.

4. **Letters, Symbols and Logos.** Under no circumstances will a letter, symbol, or logo dimension greater than six feet be allowed.

5. All signage within a multi-tenant building shall be consistent in design and construction.
6. Zoning Districts. The conditions outlined in this section shall apply to all residential zoning districts (institutional uses only), all commercial (including Core Business) zoning districts, and all industrial (including Light Industrial) zoning districts.

181.10 INTERSTATE SIGNS. In addition to monument and ground signs as permitted under this chapter, one interstate monument sign shall be allowed on lots or tracts under single ownership, management or control, provided the following conditions are met:

1. Interstate signs shall have a monolithic or columnar line that maintains essentially the same profile from grade to top. The sign face shall be no further than six inches away from the base.
2. The total area of a sign shall be actual square footage of one sign face. Double face signs may be permitted with the maximum square footage permitted on each side. The maximum sign area of an interstate sign shall be 100 square feet.
3. The tract must have frontage abutting the Interstate right-of-way.
4. The maximum height of an interstate sign shall be 30 feet above the interstate road grade. The maximum width of an interstate sign shall be 15 feet.
5. An interstate monument sign must be located within 50 feet of the interstate or interstate ramp right-of-way.
6. Minimum interstate sign setback shall be 15 feet.
7. An interstate monument sign must be at least 100 feet from any other such interstate monument sign, or other monument sign.
8. All applicable permits shall be obtained from the Iowa Department of Transportation.
9. The sign must have a brick or stone base that measures at least 15 percent of the total height with a one foot minimum. The sign can be entirely or partially surrounded by brick or stone with the minimum of one foot coverage on three sides. The sign portion must not exceed 70 percent of the total area.
10. All relevant permits must be obtained from the Iowa Department of Transportation.

181.11 DIRECTIONAL SIGNS.

1. Ground directional signs shall be restricted to eight square feet in sign area.
2. Building directional signs shall be restricted to four square feet in sign area.
3. No logos or names of businesses shall be permitted on directional signs.

181.12 ASSOCIATION IDENTIFICATION SIGNS. Association identification signs shall be permitted for the purpose of establishing a common neighborhood or complex identification when there exists an owner's association that provides for the maintenance of the sign or structures. Such signs shall be extensively landscaped with trees, plantings, and natural features. Such signs may incorporate fountains, fences, or similar features. Association identification sign dimensions shall be regulated in accordance with the sign

regulations table as provided herein; however, the maximum area shall be 32 square feet. The minimum setback required of association identification signs is five feet. All signs shall have a side setback not less than the height of the sign.

181.13 ELECTRIC CHANGEABLE COPY. Electric changeable copy shall be allowed on monument signs for events centers, convenience stores, schools, churches, and other public uses. A maximum of 32 square feet or 50 percent of the maximum sign area, whichever is less, may be dedicated to electric changeable copy, provided the following conditions are met:

1. Electric changeable message copy may change no more than seven times in a 24-hour period and shall not include any flashing, flowing, alternating or blinking lights.
2. Electric changeable message copy shall be integral to and a part of an approved monument sign.
3. Electric changeable message copy shall be limited to one color.
4. Sign copy shall not include any use of logos or symbols and message shall be limited to advertisement of events.
5. In the case of convenience stores, electric changeable message copy shall be limited only to advertise the price of automotive fuels.

181.14 RELIGIOUS SYMBOLS. All religious symbols which convey a commercial use shall be permitted, subsequent to Planning and Zoning and City Council approval prior to erection.

181.15 NEON LIGHTS; MURALS. Neon light, murals, or similar architecture details, subsequent to Planning and Zoning and City Council approval, may be permitted as part of the theme of the site if it is determined that the architecture detail proposed is intended to create an identifiable theme and will not be detrimental with the surrounding environment.

181.16 HOME OCCUPATIONS. Home occupation signs and property address identification shall be permitted provided such signs shall not be larger than two square feet in sign area.

181.17 GARAGE SALES. Garage sale signs shall be limited to six square feet in area. Such signs shall be removed within 24 hours of the event of which it advertises. No sign shall be placed on public property.

181.18 ADDRESSES. Address letters on commercial and manufacturing developments shall not have a dimension greater than 12 inches.

181.19 FLAGS. Flags of the United States, the State, the City, foreign nations having diplomatic relations with the United States, and other flags adopted or sanctioned by an elected legislative body of competent jurisdiction, must be flown in accordance with protocol established by the Congress of the United States for the Stars and Stripes. Notwithstanding the above, the following flags shall not be prohibited by this section:

1. Any flag of the United States, the State of Iowa, or any political subdivision thereof provided the following:
 - A. The size of the flag is not greater than six feet by 10 feet.

- B. The flag shall be displayed on separate flagpoles and in no event higher than 35 feet. Minimum setback from property line shall be the height of the flagpole.
2. A flag identifying a corporate, business, commercial enterprise, educational institution, or any other entity or organization that satisfies the following requirements must comply with the general provisions for flags and first obtain administrative approval.
- A. The size is not greater than three feet by five feet.
- B. The flag shall be flown horizontally, in conjunction with and at the same time as a flag of the United States and the State of Iowa is flown on the premises,
- C. The flag shall be displayed on a separate flagpole located in close proximity to and no higher than the flagpoles of the Stars and Stripes and the State of Iowa and in no event higher than 30 feet. One commercial flag shall be allowed in connection with any lot of record. Minimum setback from property line shall be the height of the flagpole.
3. No flag of a commercial nature may be flown in a residential zone, except an apartment complex may have one flag in addition to the Stars and Stripes and the State of Iowa flag. A flag not meeting any one of the regulations established in this section shall be considered a banner sign and regulated as such.
4. Flags shall be displayed on flagpoles only. Flags displayed on light poles, utility poles, etc, except for City sponsored events, are prohibited.

181.20 AUTHORITY OF ZONING ADMINISTRATOR TO CLASSIFY. The Zoning Administrator has the authority to classify a proposed sign as incompatible to the already existing environment.

181.21 SIGN AREA FORMULA. The area of a sign is determined by the Zoning Administrator using actual dimensions where practical, or approximate dimensions when irregularity of a sign shape warrants. The sign area shall be the sum of the area of not more than two contiguous rectangles or squares that enclose the extreme points or edges of all copy, logos, and symbols of said sign. In the case of a horizontal multiple tenant building or a vertical multiple tenant building, the sign area shall not include any blank space located between two individual tenant signs.

181.22 SIGN REGULATION TABLE.

Setback	Height	Area
5 feet	5 feet	25 square feet
6 feet	5 feet	26 square feet
7 feet	5 feet	27 square feet
8 feet	6 feet	28 square feet
9 feet	6 feet	29 square feet
10 feet	6 feet	30 square feet
11 feet	7 feet	31 square feet
12 feet	7 feet	32 square feet
13 feet	7 feet	33 square feet
14 feet	8 feet	34 square feet

15 feet	8 feet	35 square feet
16 feet	8 feet	36 square feet
17 feet	9 feet	37 square feet
18 feet	9 feet	38 square feet
19 feet	9 feet	39 square feet
20 feet	10 feet	40 square feet

181.23 TEMPORARY SIGNS. Signs in this section shall be permitted in all districts and require a temporary sign permit. Two options are available for temporary signs: a 30-day temporary sign permit, and a one-year temporary sign permit. Thirty-day permitted signs shall be limited to two events per year for any one business. In conjunction with a temporary site plan, the City Council may permit the display of temporary signs for a greater period of time. Temporary signs shall be no larger than 32 square feet in area. The minimum sign setback of temporary signs shall be five feet from property line. Under no circumstances shall any temporary sign be located on public property.

1. Real Estate/Project Identification Boards, provided such sign shall not exceed 32 square feet.
 - A. Such real estate board shall be limited to two boards for each plat listed in any residential district. Such real estate board shall be limited to one board for each lot listed in any commercial or industrial district.
 - B. Real estate boards placed in public property or on public right-of-way will be removed at the expense of the sign owner.
 - C. The minimum setback required of a real estate board is five feet.
 - D. Such signs shall be removed before issuance of a certificate of occupancy.
2. Bag signs, provided such signs shall be permitted to be displayed for a period no longer than 45 days.

181.24 SIGNS ON PUBLIC PROPERTY. It is unlawful for any person to paint, print, or in any way affix any picture, bill, sign, signboard, poster, or advertising material on any post, utility pole, fire escape, hydrant, curb, sidewalk, tree, lamp post or other structure of any kind on, or as to overhang or protrude over any property owned by the City or any easement of the City. No sign shall be located on or allowed to extend over public property except by permission of the City Council. The Zoning Administrator is hereby authorized and empowered to remove any such sign at the expense of the parties responsible for erection of such signs.

181.25 PERMIT. It is unlawful for any person to erect, alter or relocate within the City any sign without first obtaining a permit from the City and paying the fee required herein unless provided elsewhere. The Zoning Administrator may require persons failing to hold such permit to pay double the permit fee. No person shall erect, construct, or maintain any sign upon any property or building without the consent of the owner or person entitled to possession of the property or building. Application for permits shall be made upon forms provided by the City.

181.26 PERMIT FEES. Every applicant before being granted a permit hereunder shall pay to the City a permit fee in an amount determined by resolution of the City Council from time to time. See Section 181.34.

181.27 SIGNS NOT NEEDING A PERMIT. The following signs do not require a permit:

1. Real estate sign, provided such sign shall not exceed six square feet.
 - A. Such real estate signs shall be limited to one sign for each parcel listed.
 - B. Real estate signs are not permitted on City property or within City right-of-way.
 - C. Real estate signs shall be permitted on lots for sale, lease, or rent in all zoning districts. Said signs shall be removed within seven days following the sale, lease, or rental of said property.
 - D. The minimum setback required of a real estate sign is five feet.
2. Political Signs. Political signs are not permitted on City property or within City right-of-way. Said signs must be removed within seven days following an election.
3. Professional nameplates, not exceeding two square feet in area.
4. Home occupation signs, provided such sign shall not exceed two square feet in total sign area.
5. Signs located within the confines of a building.
6. Memorial signs.
7. Garage and yard sale signs.
8. Traffic or other municipal signs, civic or service organizations, legal notices, railroad crossing signs, danger, and such temporary, emergency or non-advertising signs as may be approved by the City Council.
9. Project identification signs only during the time work is actually being performed on said premises. Such signs shall not be located on public property.

181.28 INSPECTIONS. All construction work for which a permit is required shall be subject to inspection by the Building Official. All such construction or work including footings and foundations (structural and location), electrical connections, etc. shall remain accessible and exposed for inspection until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this Code of Ordinances. Inspections presuming to give authority to violate or cancel the provisions of this Code of Ordinances shall not be valid. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes and to schedule, and be present for the required inspections. Neither the Building Official nor the City shall be liable for expense entailed in the removal of any material required to allow inspection.

181.29 MAINTENANCE. All signs and parts thereof, including but not limited to electrical wiring and fixtures, supports, faces, lighting, and braces shall be kept in good repair at all times, and shall be kept neatly painted or otherwise treated to prevent rust and similar unsightly deterioration and weathering. The Zoning Administrator after 30 days' written notice to the sign owner may order the removal of any sign that is not maintained in accordance with the provisions of this section and the cost assessed against the property where said sign is located. However, in the case a sign structure becomes a safety hazard as defined in the *International Building Code*, the Building Official shall require owner of said sign

structure to immediately abate safety hazard as provided in the *International Building Code*. The Zoning Administrator may cause to be inspected from time to time as he deems necessary, any sign regulated by this section for the purpose of ascertaining whether the same is secure, and whether it is in need of removal or repair to be in compliance with this section.

181.30 ABANDONED SIGNS. Any abandoned sign now or hereafter existing shall be taken down and removed by the owner, agent or person having beneficial use of the building or land upon which sign may be found within 30 days after written notification from the Zoning Administrator and, upon failure to comply with such notice within the time specified in such order, the Zoning Administrator is hereby authorized to cause removal of such sign, and any expense thereto shall be paid by the owner of the building or structure to which the sign is attached.

181.31 NONCONFORMING SIGNS. Where a sign exists at the effective date of adoption or amendment of the ordinance codified in this chapter that could not be built under the terms of said ordinance by reason of restrictions on area, use, height, setback, or other characteristics of the sign or its location on the lot, such sign may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such sign may be enlarged or altered in a way that increases its nonconformity; however, reasonable repairs and alterations may be permitted.
2. Should such sign be destroyed or altered by any means to an extent of 50 percent or more of its replacement cost at time of destruction/alteration, it shall not be reconstructed or altered except in conformity with the provisions of this chapter.

181.32 PLANS. A copy of plans and specifications shall be submitted to the Zoning Administrator for each sign regulated by this ordinance. Such plans shall show sufficient detail about the size of the sign, location on the site to a discernable scale, materials to be used, and such other data as may be required for the Zoning Administrator to determine compliance with this chapter.

181.33 ENFORCEMENT AND REMEDIES. Any violation or attempted violation of this chapter or of any condition or requirement adopted pursuant hereto may be restrained, corrected, or abated, as the case may be, by injunction or other appropriate proceeding pursuant to State law. A violation of this chapter is considered a violation of the Zoning Code of the City. The remedies of the City include the following:

1. Issuing a stop-work order for any and all work on any signs on the same zone lot.
2. Seeking an injunction or other order of restraint or abatement that requires the removal of the signs or the correction of the nonconformity.
3. Imposing any penalties that can be imposed directly by the City under the Zoning Code.
4. Seeking in court the imposition of any penalties that can be imposed by such court under the Zoning Code.
5. In the case of a sign that poses an immediate danger to the public health or safety, taking such measures as are available to the City under the applicable provision of the Zoning Code and Building Code for such circumstances.

The City shall have such other remedies as are and as may from time to time be provided for or allowed by State law for the violation of the Zoning Code. All remedies provided herein shall be cumulative. To the extent that State law may limit the availability of a particular remedy set forth herein for certain violation or part thereof, such remedy shall remain available for other violations or other parts of the same violation.

181.34 FEE SCHEDULE. (See also Section 181.26.)

- 1. Sign Permit – Permanent Sign\$ 75.00
- 2. Sign Permit – Temporary Sign:
 - A. 30-day\$ 10.00
 - B. One year\$ 50.00
 - C. 30-day or one year period, for not-for-profit organizations, schools, and/or school organizations and City/County and/or City/County organizations.....\$ 00.00

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APPENDIX TO CODE OF ORDINANCES

USE AND MAINTENANCE OF THE CODE OF ORDINANCES

The following information is provided to assist in the use and proper maintenance of this Code of Ordinances.

DISTRIBUTION OF COPIES

1. **OFFICIAL COPY.** The “OFFICIAL COPY” of the Code of Ordinances must be kept by the City Clerk and should be identified as the “OFFICIAL COPY.”

2. **DISTRIBUTION.** Other copies of the Code of Ordinances should be made available to all persons having a relatively frequent and continuing need to have access to ordinances which are in effect in the City as well as reference centers such as the City Library, County Law Library, and perhaps the schools.

3. **SALE.** The sale or distribution of copies in a general fashion is not recommended as experience indicates that indiscriminate distribution tends to result in outdated codes being used or misused.

4. **RECORD OF DISTRIBUTION.** The City Clerk should be responsible for maintaining an accurate and current record of persons having a copy of the Code of Ordinances. Each official, elected or appointed, should return to the City, upon leaving office, all documents, records and other materials pertaining to the office, including this Code of Ordinances.

(Code of Iowa, Sec. 372.13[4])

NUMBERING OF ORDINANCES AMENDING THE CODE OF ORDINANCES

It is recommended that a simple numerical sequence be used in assigning ordinance numbers to ordinances as they are passed. For example, if the ordinance adopting the Code of Ordinances is No. 163, we would suggest that the first ordinance passed changing, adding to, or deleting from the Code be assigned the number 164, the next ordinance be assigned the number 165, and so on. We advise against using the Code of Ordinances numbering system for the numbering of ordinances.

RETENTION OF AMENDING ORDINANCES

Please note that two books should be maintained: (1) the Code of Ordinances, and (2) an ordinance book. We will assist in the maintenance of the Code of Ordinances book, per the Supplement Agreement, by revising and returning appropriate pages for the Code of Ordinances book as required to accommodate ordinances amending the Code. The City Clerk is responsible for maintaining the ordinance book and must be sure that an original copy of each ordinance adopted, bearing the signatures of the Mayor and Clerk, is inserted in the ordinance book and preserved in a safe place.

SUPPLEMENT RECORD

A record of all supplements prepared for the Code of Ordinances is provided in the front of the Code. This record will indicate the number and date of the ordinances adopting the original Code and of each subsequently adopted ordinance which has been incorporated in the Code. For each supplemented ordinance, the Supplement Record will list the ordinance number, date, topic, and chapter or section number of the Code affected by the amending ordinance. A periodic review of the Supplement Record and ordinances passed will assure that all ordinances amending the Code have been incorporated therein.

DISTRIBUTION OF SUPPLEMENTS

Supplements containing revised pages for insertion in each Code will be sent to the Clerk. It is the responsibility of the Clerk to see that each person having a Code of Ordinances receives each supplement so that each Code may be properly updated to reflect action of the Council in amending the Code.

AMENDING THE CODE OF ORDINANCES

The Code of Ordinances contains most of the laws of the City as of the date of its adoption and is continually subject to amendment to reflect changing policies of the Council, mandates of the State, or decisions of the Courts. Amendments to the Code of Ordinances can only be accomplished by the adoption of an ordinance.

(Code of Iowa, Sec. 380.2)

The following forms of ordinances are recommended for making amendments to the Code of Ordinances:

ADDITION OF NEW PROVISIONS

New material may require the addition of a new SUBSECTION, SECTION or CHAPTER, as follows:

ORDINANCE NO. ____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ELKHART, IOWA, BY ADDING A NEW SECTION LIMITING PARKING TO THIRTY MINUTES ON A PORTION OF SOUTH BOONE STREET

BE IT ENACTED by the City Council of the City of Elkhart, Iowa:

SECTION 1. NEW SECTION. The Code of Ordinances of the City of Elkhart, Iowa, is amended by adding a new Section 69.16, entitled PARKING LIMITED TO THIRTY MINUTES, which is hereby adopted to read as follows:

69.16 PARKING LIMITED TO THIRTY MINUTES. It is unlawful to park any vehicle for a continuous period of more than thirty (30) minutes between the hours of 8:00 a.m. and 8:00 p.m. on each day upon the following designated streets:

- 1. South Boone Street, on the west side, from Forest Avenue to Mason Drive.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

Passed by the Council the ____ day of _____, 20____, and approved this ____ day of _____, 20____.

Mayor

ATTEST:

City Clerk

First Reading: _____

Second Reading: _____

Third Reading: _____

I certify that the foregoing was published as Ordinance No. ____ on the ____ day of _____, 20____.

City Clerk

DELETION OF EXISTING PROVISIONS

Provisions may be removed from the Code of Ordinances by deleting SUBSECTIONS, SECTIONS or CHAPTERS as follows:

ORDINANCE NO. ____**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ELKHART, IOWA, BY REPEALING SECTION 65.02, SUBSECTION 5, PERTAINING TO THE SPECIAL STOP REQUIRED ON LAKE BOULEVARD**

BE IT ENACTED by the City Council of the City of Elkhart, Iowa:

SECTION 1. SUBSECTION REPEALED. The Code of Ordinances of the City of Elkhart, Iowa, is hereby amended by repealing Section 65.02, Subsection 5, which required vehicles traveling south on Lake Boulevard to stop at Second Place North.

SECTION 2. SEVERABILITY CLAUSE. If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

SECTION 3. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

Passed by the Council the ____ day of _____, 20____, and approved this ____ day of _____, 20____.

Mayor

ATTEST:

City Clerk

First Reading: _____

Second Reading: _____

Third Reading: _____

I certify that the foregoing was published as Ordinance No.____ on the ____ day of _____, 20____.

City Clerk

MODIFICATION OR CHANGE OF EXISTING PROVISION

Existing provisions may be added to, partially deleted, or changed as follows:

ORDINANCE NO. ____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ELKHART, IOWA, BY AMENDING PROVISIONS PERTAINING TO SEWER SERVICE CHARGES

BE IT ENACTED by the City Council of the City of Elkhart, Iowa:

SECTION 1. SECTION MODIFIED. Section 99.02 of the Code of Ordinances of the City of Elkhart, Iowa, is repealed and the following adopted in lieu thereof:

99.02 RATE. Each customer shall pay sewer service charges in the amount of 100 percent (100%) of the bill for water and water service attributable to the customer for the property served, but in no event less than ten dollars (\$10.00) per month.

SECTION 2. SEVERABILITY CLAUSE. If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

SECTION 3. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

Passed by the Council the ____ day of _____, 20____, and approved this ____ day of _____, 20____.

Mayor

ATTEST:

City Clerk

First Reading: _____

Second Reading: _____

Third Reading: _____

I certify that the foregoing was published as Ordinance No. ____ on the ____ day of _____, 20____.

City Clerk

**ORDINANCES NOT CONTAINED IN THE
CODE OF ORDINANCES**

There are certain types of ordinances which the City will be adopting which do not have to be incorporated in the Code of Ordinances. These include ordinances: (1) establishing grades of streets or sidewalks. (2) vacating streets or alleys. (3) authorizing the issuance of bonds. and (4) amending the zoning map.

(Code of Iowa, Sec. 380.8)

ORDINANCE NO. ____**AN ORDINANCE VACATING THE ALLEY LYING IN BLOCK TWO
(2) RAILROAD ADDITION TO ELKHART, IOWA**

Be It Enacted by the City Council of the City of Elkhart, Iowa:

SECTION 1. The alley lying in Block Two (2), Railroad Addition to Elkhart, Iowa, is hereby vacated and closed from public use.

SECTION 2. The Council may by resolution convey the alley described above to abutting property owners in a manner directed by the City Council.

SECTION 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

SECTION 5. This ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

Passed by the Council the ____ day of _____, 20____, and approved this ____ day of _____, 20____.

Mayor

ATTEST:

City Clerk

First Reading: _____

Second Reading: _____

Third Reading: _____

I certify that the foregoing was published as Ordinance No. ____ on the ____ day of _____, 20____.

City Clerk

These ordinances should be numbered in the same numerical sequence as any other amending ordinance and placed in their proper sequence in the ordinance book.

SUGGESTED FORMS

FIRST NOTICE – DANGEROUS BUILDING

TO: (Name and address of owner, agent, or occupant of the property on which nuisance is located or the person causing or maintaining the nuisance).

You are hereby notified to abate the nuisance existing at (name location of nuisance) within ____ days from service of this notice or file written request for a Council hearing with the undersigned officer within said time limit.

The nuisance consists of (describe the nuisance and cite the law or ordinance) and shall be abated by (state action necessary to abate the particular nuisance).

In the event you fail to abate or cause to be abated the above nuisance, as directed, or file written request for hearing within the time prescribed herein, the City will take such steps as are necessary to abate or cause to be abated the nuisance and the cost will be assessed against you as provided by law.

Date of Notice: _____

City of Elkhart, Iowa

By: _____
(enforcement officer)

NOTICE OF HEARING ON DANGEROUS BUILDING

TO: (Name and address of the owner, agent, or occupant of the property on which nuisance is located or the person causing or maintaining the nuisance).

You are hereby notified that the City Council of Elkhart, Iowa, will meet on the ____ day of _____, 20____, at _____ p.m., in the Council Chambers of the City Hall, at (address of City Hall) for the purpose of considering whether or not the alleged nuisance consisting of (describe the nuisance) on your property, locally known as _____, constitutes a nuisance pursuant to Chapter _____ of the Code of Ordinances of Elkhart, Iowa, and should be abated by (state action necessary to abate the particular nuisance).

You are further notified that at such time and place you may appear and show cause why the said alleged nuisance should not be abated.

You are further notified to govern yourselves accordingly.

Date of Notice: _____

City of Elkhart, Iowa

By: _____
(enforcement officer)

**RESOLUTION AND ORDER
REGARDING DANGEROUS BUILDING**

BE IT RESOLVED, by the City Council of the City of Elkhart, Iowa:

WHEREAS, notice has heretofore been served on the ____ day of _____, 20____, on (property owner's name), through (agent's name or "none"), agent, to abate the nuisance existing at (legal description and address) within ____ days from service of said notice upon the said (name of owner or agent). and

(EITHER)

WHEREAS, a hearing was requested by the said (name of property owner or agent) and the same was held at this meeting and evidence produced and considered by the City Council.

(OR, ALTERNATE TO PRECEDING PARAGRAPH)

WHEREAS, the said owner (agent) named above has failed to abate or cause to be abated the above nuisance as directed within the time set, and after evidence was duly produced and considered at this meeting, and said owner has failed to file a written request for hearing, as provided, after being properly served by a notice to abate.

NOW THEREFORE, BE IT RESOLVED that the owner of said property, or said owner's agent (name of owner or agent) is hereby directed and ordered to abate the nuisance consisting of (describe the nuisance) by (state action necessary to abate) within ____ days after the service of this Order upon said owner or agent. and

BE IT FURTHER RESOLVED that the enforcement officer be and is hereby directed to serve a copy of this Order upon the said property owner or agent named above. and

BE IT FURTHER RESOLVED that in the event the owner, or agent (name the owner or agent) fails to abate the said nuisance within the time prescribed above, then and in that event the City will abate the said nuisance and the cost will be assessed against the property and/or owner (owner's name) at (address), as the law shall provide.

Moved by _____ to adopt.

Adopted this ____ day of _____, 20____.

Mayor

ATTEST:

City Clerk

Note: It is suggested by the blank space in the resolution that additional time be allowed the owner to abate the nuisance after the passage of the resolution before any action is taken on the part of the City to abate the same. In some instances, for the sake of public safety, the time element could be stricken from the resolution and immediate action be taken to abate the nuisance after the order is given.

NOTICE TO ABATE NUISANCE

TO: (Name and address of owner, agent, or occupant of the property on which the nuisance is located or the person causing or maintaining the nuisance).

You are hereby notified to abate the nuisance existing at (name location of nuisance) or file written request for a hearing with the undersigned officer within (hours or days) from service of this notice.

The nuisance consists of: (describe the nuisance) and shall be abated by: (state action necessary to abate the particular nuisance).

In the event you fail to abate or cause to be abated the above nuisance as directed, the City will take such steps as are necessary to abate or cause to be abated the nuisance and the costs will be assessed against you as provided by law.

Date of Notice: _____

City of Elkhart, Iowa

By: _____
(designate officer initiating notice)

REQUIRED SEWER CONNECTION

TO: _____
(Name)

(Street Address)
_____, Iowa

Description of Property

By: _____, _____
(Name) (Title)

RESOLUTION AND ORDER
REQUIRED SEWER CONNECTION

BE IT RESOLVED, by the City Council of the City of Elkhart, Iowa:

WHEREAS, notice has heretofore been served on the ____ day of _____, 20____, on

(Name of Property Owner)
through _____, Agent,
(Agent’s Name or “None”)

to make connection of the property described as

to the public sanitary sewer located _____
within _____ (_____) days from service of notice upon said owner or agent. and

(EITHER)

WHEREAS, a hearing was requested by the said owner or agent and the same was held at this meeting and evidence produced and considered by the City Council.

(OR AS ALTERNATE TO THE PRECEDING PARAGRAPH)

WHEREAS, the said owner or agent named above has failed to make such required connection within the time set, and after evidence was duly produced and considered at this meeting, and said owner or agent has failed to file a written request for hearing after being properly served by a notice to make such connection or request a hearing thereon.

NOW, THEREFORE, BE IT RESOLVED that the owner of said property, or said owner’s agent, _____
(Name of Owner or Agent)

is hereby directed and ordered to make such required connection within _____ days after the service of this ORDER upon said owner or agent. and

BE IT FURTHER RESOLVED that the City Clerk be and the same is hereby directed to serve a copy of this ORDER upon said property owner or agent named above. and

BE IT FURTHER RESOLVED, that in the event the owner, or agent,

_____,
(Name of Owner or Agent)

fails to make such connection within the time prescribed above, then and in that event the City will make such connection and the cost thereof will be assessed against the property and/or owner

(Owner's Name)

_____, as provided by law.
(Address)

Moved by _____ to adopt.

Seconded by _____.

AYES: _____,
_____, _____.

NAYS: _____,
_____, _____.

Resolution approved this ____ day of _____, 20__.

Mayor

ATTEST:

City Clerk

