

## SUB-ANALYSIS

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7. One single-family dwelling for caretakers shall be allowed where said facility is located in the C-3 District. The Planning Commission shall reserve the right to control the type of such construction in order to insure compatibility with surrounding uses.

**SEC. 11.60. FLOOD PLAIN MANAGEMENT.**

**Subd. 1. Statutory Authorization, Findings of Fact and Purpose.**

**A. Statutory Authorization.** The Legislature of the State of Minnesota, has, in Minnesota Statutes Chapter 103F and Chapter 462, delegated the responsibility to local government units to adopt regulations designed to minimize flood losses.

**B. Findings of Fact.**

1. The flood hazard areas of the City are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

2. **Methods Used to Analyze Flood Hazards.** This Section is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.

**C. Statement of Purpose.** It is the purpose of this Section to promote the public health, safety, and general welfare and to minimize those losses described in this Subdivision by provisions contained herein.

**Subd. 2. General Provisions.**

**A. Land to Which Section Applies.** This Section shall apply to all lands within the jurisdiction of the City shown on the Official Zoning Map as being located within the boundaries of the Floodway, Flood Fringe, or General Flood Plain Districts.

**B. Establishment of Official Zoning Map.** The Official Zoning Map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this Section. The attached materials shall include the Flood Insurance Study for the City of Hibbing prepared by the Federal Insurance Administration dated September 27, 1991, herein. The Official Zoning Map shall be on file in the office of the City Clerk and the Zoning Administrator.

**C. Regulatory Flood Protection Elevation.** The Regulatory Flood Protection Elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

**D. Interpretation.**

1. In their interpretation and application, the provisions of this Section shall be held to be minimum requirements and shall be liberally construed in favor of the Council and shall not be deemed a limitation or repeal of any other powers granted by State statutes.

2. The boundaries of the zoning districts shall be determined by scaling distances on the Official Zoning Map. Where interpretation is needed as to the exact location of the boundaries of a district as shown on the Official Zoning Map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the Zoning Administrator, the Board of Adjustment shall make the necessary interpretation. All decisions will be based on elevations on the regional (100-year) flood profile and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the Board and to submit technical evidence.

**E. Abrogation and Greater Restrictions.** It is not intended by this Section to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Section imposes greater restrictions, the provisions of this Section shall prevail. All other ordinances inconsistent with this Section are hereby repealed to the extent of the inconsistency only.

**F. Warning and Disclaimer of Liability.** This Section does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This Section shall not create liability on the part of the City or any officer or employee thereof for any flood damages that result from reliance on this Section or any administrative decision lawfully made thereunder.

**G. Severability.** If any section, clause, provision, or portion of this Section is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Section shall not be affected thereby.

**Subd. 3. Definitions.** The following terms, as used in this Section, shall have the meanings stated:

1. **"Accessory Use or Structure"** - A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
2. **"Basement"** - Any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.
3. **"Conditional Use"** - A specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that: (1) certain conditions as detailed in this Chapter exist and (2) the structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.
4. **"Equal Degree of Encroachment"** - A method of determining the location of floodway boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.
5. **"Flood"** - A temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.
6. **"Flood Frequency"** - The frequency for which it is expected that a specific flood stage or discharge may be equalled or exceeded.
7. **"Flood Fringe"** - That portion of the flood plain outside of the floodway. Flood Fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study for Hibbing, Minnesota.
8. **"Flood Plain"** - The beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.
9. **"Flood Proofing"** - A combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.



10. **"Floodway"** - The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.
11. **"Obstruction"** - Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood plain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.
12. **"Principal Use or Structure"** - All uses or structures that are not accessory uses or structures.
13. **"Reach"** - A hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.
14. **"Regional Flood"** - A flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in the Flood Insurance Study.
15. **"Regulatory Flood Protection Elevation"** - The Regulatory Flood Protection Elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.
16. **"Structure"** - Anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, travel trailers/vehicles not meeting the exemption criteria specified herein, and other similar items.
17. **"Variance"** - A modification of a specific permitted development standard required in an official control including this Section to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating

a hardship, practical difficulty or unique circumstance as defined and elaborated upon in a community's respective planning and zoning enabling legislation.

**Subd. 4. Establishment of Zoning Districts.**

**A. Districts.**

**1. Floodway District.** The Floodway District shall include those areas designated as floodway on the Flood Insurance Rate Map.

**2. Flood Fringe District.** The Flood Fringe District shall include those areas designated as floodway fringe. The Flood Fringe shall constitute those areas shown on the Flood Insurance Rate Map adopted herein as being within Zone AE but being located outside of the floodway.

**3. General Flood Plain District.** The General Flood Plain District shall include those areas designated as unnumbered A Zones on the Flood Insurance Rate Map adopted herein.

**B. Compliance.** No new structure or land shall hereafter be used and no structure shall be located, extended, converted, or structurally altered without full compliance with the terms of this Section and other applicable regulations which apply to uses within the jurisdiction of this Section. Within the Floodway, Flood Fringe and General Flood Plain Districts, all uses not listed as permitted uses or conditional uses herein, shall be prohibited. In addition, a caution is provided here that:

**1.** New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are subject to the general provisions of this Section and specifically Subdivision 10.

**2.** Modifications, additions, structural alterations or repair after damage to existing non-conforming structures and non-conforming uses of structures or land are regulated by the general provisions of this Section and specifically Subdivision 12.

**3.** As-built elevations for elevated or flood proofed structures must be certified by ground surveys and flood proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this Section and specifically as stated in Subdivision 11.

**Subd. 5. Floodway District (FW).**

**A. Permitted Uses.**

1. General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming and wild crop harvesting.
2. Industrial-Commercial loading areas, parking areas and airport landing strips.
3. Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.
4. Residential lawns, gardens, parking areas and play areas.

**B. Standards for Floodway Permitted Uses.**

1. The use shall have a low flood damage potential.
2. The use shall be permissible in the underlying zoning district if one exists.
3. The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.

**C. Conditional Uses.**

1. Structures accessory to the permitted uses listed above and the conditional uses listed below.
2. Extraction and storage of sand, gravel, and other materials.
3. Marinas, boat rentals, docks, piers, wharves, and water control structures.
4. Railroads, streets, bridges, utility transmission lines, and pipelines.
5. Storage yards for equipment, machinery, or materials.
6. Placement of fill.

7. Travel trailers and travel vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provisions of this Section.

8. Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures and levees or dikes where the intent is to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.

**D. Standards for Floodway Conditional Uses.**

1. **All Uses.** No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage of materials, or equipment, or other uses may be allowed as a conditional use that will cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected.

2. All floodway conditional uses shall be subject to the procedures and standards contained herein.

3. The conditional use shall be permissible in the underlying zoning district if one exists.

**4. Fill.**

(a) Fill, dredge spoil and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.

(b) Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long-term site development plan is submitted which includes an erosion/ sedimentation prevention element to the plan.

(c) As an alternative, and consistent with Subsection (b) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the Council has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The Conditional Use Permit must be title registered with the property in the office of the County Recorder.

**5. Accessory Structures.**

(a) Accessory structures shall not be designed for human habitation.

(b) Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters. (1) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow, and, (2) So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.

(c) Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards, as appropriate:

(1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls; and,

(2) Any mechanical and utility equipment in a structure must be elevated to or above the Regulatory Flood Protection Elevation or properly flood proofed.

**6. Storage of Materials and Equipment.**

(a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.

(b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Council.

7. Structural works for flood control that will change the course, current or cross-section of protected wetlands or public waters shall be subject to the provisions of Minnesota Statutes, Chapter 105. Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.

8. A levee, dike or floodwall constructed in the floodway shall not cause an increase in the 100-year or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.

**Subd. 6. Flood Fringe District (FF).**

**A. Permitted Uses.** Permitted uses shall be those uses of land or structures listed as Permitted Uses in the underlying zoning use districts. If no pre-existing underlying zoning use districts exist, then any residential or non-residential structure or use of a structure or land shall be a permitted use in the Flood Fringe provided such use does not constitute a public nuisance. All permitted uses shall comply with the standards for Flood Fringe "Permitted Uses" and the "Standards for all Flood Fringe Uses".

**B. Standards for Flood Fringe Permitted Uses.**

1. All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the Regulatory Flood Protection Elevation. The finished fill elevation for structures shall be no lower than one (1) foot below the Regulatory Flood Protection Elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.

2. As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 500 square feet for the outside dimension at ground level may be internally flood proofed in accordance with Subdivision 5, Subparagraph D, Item 5(c).

3. The cumulative placement of fill where at any one time in excess of 1,000 cubic yards of fill is located on the parcel shall be allowable only as a conditional use, unless said fill is specifically intended to elevate a structure in accordance with Item 1, above.

4. The storage of any materials or equipment shall be elevated on fill to the Regulatory Flood Protection Elevation.

5. The provisions of Subparagraph E, below, shall apply.

**C. Conditional Uses.** Any structure that is not elevated on fill or flood proofed in accordance with Subparagraph B, Items 1 and 2, above, or any use of land that does not comply with the standards in Items 3 and 4, above, shall only be allowable as a conditional use. An application for a conditional use shall be subject to the standards and criteria and evaluation procedures specified in Subparagraph D, below, and Subdivision 11, Subparagraph D.

**D. Standards for Flood Fringe Conditional Uses.**

1. Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the Regulatory Flood Protection Elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: (a) if the enclosed area is above-grade on at least one side of the structure; (b) it is designed to internally flood and is constructed with flood resistant materials; and (c) it is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:

**(a) Design and Certification.** The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the Regulatory Flood Protection Elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.

**(b) Specific Standards for Above-Grade, Enclosed Areas.** Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:

(1) The minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. When openings are placed in a structure's walls to provide for entry of flood waters to equalize pressures, the bottom of all openings shall be no higher than one-foot above grade. Openings may be

equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

(2) That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.

2. Basements, as defined herein, shall be subject to the following:

(a) Residential basement construction shall not be allowed below the Regulatory Flood Protection Elevation.

(b) Non-residential basements may be allowed below the Regulatory Flood Protection Elevation provided the basement is structurally dry flood proofed in accordance with Item 3, below.

3. All areas of non-residential structures including basements to be placed below the Regulatory Flood Protection Elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State Building Code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 or FP-4 classification shall not be permitted.

4. When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the City is enforcing a State approved shoreland management ordinance. In the absence of a State approved shoreland ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the Council. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.



**5. Storage of Materials and Equipment.**

(a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.

(b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Council.

(c) The provisions of Subparagraph E, below, shall also apply.

**E. Standards for All Flood Fringe Uses.**

1. All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the Regulatory Flood Protection Elevation. If a variance to this requirement is granted, the Board of Adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.

2. **Commercial Uses.** Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the Regulatory Flood Protection Elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth greater than two feet or be subject to flood velocities greater than four feet per second upon occurrence of the regional flood.

3. **Manufacturing and Industrial Uses.** Measures shall be taken to minimize interference with normal plant operations especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in Item 2, above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.

4. Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation

- FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

5. Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.

6. Standards for travel trailers and travel vehicles are contained in Subdivision 10, Subparagraph C.

7. All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State or local anchoring requirements for resisting wind forces.

**Subd. 7. General Flood Plain District.**

**A. Permitted Uses.**

1. The uses listed in Subdivision 5, Subparagraph A shall be permitted uses.

2. All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to Subparagraph B, below. Subdivision 5 shall apply if the proposed use is in the Floodway District and Subdivision 6 shall apply if the proposed use is in the Flood Fringe District.

**B. Procedures for Floodway and Flood Fringe Determinations Within the General Flood Plain District.**

1. Upon receipt of an application for a Conditional Use Permit for a use within the General Flood Plain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator for the determination of the Regulatory Flood Protection Elevation and whether the proposed use is within the Floodway or Flood Fringe District.

(a) A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.

(b) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage elevations; size, location, and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets; photographs showing existing land uses and vegetation upstream and downstream; and soil type.

(c) Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.

2. The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the Floodway or Flood Fringe District and to determine the Regulatory Flood Protection Elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources' Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:

(a) Estimate the peak discharge of the regional flood.

(b) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.

(c) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 feet. A lesser stage increase than .5' shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.

3. The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the Council. The Council must formally accept the technical evaluation and the recommended Floodway and/or

Flood Fringe District boundary or deny the permit application. The Council, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency, the Department of Natural Resources or the Planning Commission for review and comment. Once the Floodway and Flood Fringe boundaries have been determined, the Council shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of Subdivisions 5 and 6 herein.

**Subd. 8. Subdivisions.**

**A. Review Criteria.** No land shall be subdivided which is held unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall contain a building site at or above the Regulatory Flood Protection Elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this Section and have road access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation. For all subdivisions in the flood plain, the Floodway and Flood Fringe boundaries, the Regulatory Flood Protection Elevation and the required elevation of all access roads shall be clearly labelled on all required subdivision drawings and platting documents.

**B. Floodway/Flood Fringe Determinations in the General Flood Plain District.** In the General Flood Plain District, applicants shall provide the information required in Subdivision 7, Subparagraph B, to determine the 100-year flood elevation, the Floodway and Flood Fringe District boundaries and the Regulatory Flood Protection Elevation for the subdivision site.

**C. Removal of Special Flood Hazard Area Designation.** The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

**NOTE:** This Section is not intended as a substitute for a comprehensive City or County subdivision ordinance. It can, however, be used as an interim control until the comprehensive subdivision ordinance can be amended to include necessary flood plain management provisions.

**Subd. 9. Public Utilities, Railroads, Roads, and Bridges.**

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

**B. Public Transportation Facilities.** Railroad tracks, roads, and bridges to be located within the flood plain shall comply with this Section. Elevation to the Regulatory Flood Protection Elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

**C. On-Site Sewage Treatment and Water Supply Systems.** Where public utilities are not provided: (1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and (2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current Statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.

**Subd. 10. Manufactured Homes and Manufactured Home Parks and Placement of Travel Trailers and Travel Vehicles.**

**A.** New manufactured home parks and expansions to existing manufactured home parks shall be subject to the provisions placed on subdivisions by Subdivision 8.

**B.** The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record that are located in flood plain districts will be treated as a new structure and may be placed only if elevated in compliance with Subdivision 6. If vehicular road access for

pre-existing manufactured home parks is not provided in accordance with Subdivision 6, Subparagraph A, then replacement manufactured homes will not be allowed until the property owner develops a flood warning emergency plan acceptable to the Council.

1. All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State or local anchoring requirements for resisting wind forces.

C. Travel trailers and travel vehicles that do not meet the exemption criteria specified in Item 1 below, shall be subject to the provisions of this Section and as specifically spelled out in Items 3 and 4, below.

1. **Exemption.** Travel trailers and travel vehicles are exempt from the provisions of this Section if they are placed in any of the areas listed in Item 2 below, and further they meet the following criteria:

(a) Have current licenses required for highway use.

(b) Are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and trailer parks and the travel trailer/travel vehicle has no permanent structural type additions attached to it.

(c) The travel trailer or travel vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.

2. **Areas Exempted for Placement of Travel/Recreational Vehicles.**

(a) Individual lots or parcels of record.

(b) Existing commercial recreational vehicle parks or campgrounds.

(c) Existing condominium type associations.

3. Travel trailers and travel vehicles exempted herein lose this exemption when development occurs on the parcel exceeding \$500.00 for a structural addition to the travel

trailer/travel vehicle or an accessory structure such as a garage or storage building. The travel trailer/travel vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/flood proofing requirements and the use of land restrictions specified herein.

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

(a) Any new or replacement travel trailer or travel vehicle will be allowed in the Floodway or Flood Fringe Districts provided said trailer or vehicle and its contents are placed on fill above the Regulatory Flood Protection Elevation and proper elevated road access to the site exists in accordance with this Section. No fill placed in the floodway to meet the requirements of this Section shall increase flood stages of the 100-year or regional flood.

(b) All new or replacement travel trailers or travel vehicles not meeting the criteria of Subsection (a) above, may, as an alternative, be allowed as a conditional use if in accordance with the following provisions and the provisions of Subdivision 11, Subparagraph D. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100-year flood. Said plan shall be prepared by a registered engineer or other qualified individual and shall demonstrate that adequate time and personnel exist to carry out the evacuation. All attendant sewage and water facilities for new or replacement travel trailers or other recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with this Section.

#### **Subd. 11. Administration.**

**A. Zoning Administrator.** A Zoning Administrator or other official designated by the Council shall administer and enforce this Section. If the Zoning Administrator finds a violation of the provisions of this Section, the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in this Section.

**B. Permit Requirements.**

**1. Permit Required.** A permit issued by the Zoning Administrator in conformity with the provisions of this Section shall be secured prior to the erection, addition, or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the change or extension of a non-conforming use; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.

**2. Application for Permit.** Application for a permit shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable: plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.

**3. State and Federal Permits.** Prior to granting a permit or processing an application for a conditional use permit or variance, the Zoning Administrator shall determine that the applicant has obtained all necessary State and Federal permits.

**4. Certificate of Zoning Compliance for a New, Altered, or Non-Conforming Use.** It is unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a Certificate of Zoning Compliance shall have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this Section.

**5. Construction and Use to be as Provided on Applications, Plans, Permits, Variances and Certificates of Zoning Compliance.** Permits, conditional use permits, or Certificates of Zoning Compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized is unlawful.

**6. Certification.** The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in



compliance with the provisions of this Section. Flood proofing measures shall be certified by a registered professional engineer or registered architect.

**7. Record of First Floor Elevation.** The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the flood plain. The Zoning Administrator shall also maintain a record of the elevation to which structures and alterations or additions to structures are flood proofed.

**C. Board of Adjustment.**

**1. Rules.** The Board of Adjustment shall adopt rules for the conduct of business and may exercise all of the powers conferred on such Boards by State law.

**2. Administrative Review.** The Board shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this Section.

**3. Variances.** The Board may authorize upon appeal in specific cases such relief or variance from the terms of this Section as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in the respective enabling legislation which justified the granting of the variance. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area, or permit standards lower than those required by State law.

**4. Hearings.** Upon filing with the Board of Adjustment of an appeal from a decision of the Zoning Administrator, or an application for a variance, the Board shall fix a reasonable time for a hearing and give due notice to the parties in interest as specified by law. The Board shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variance sufficiently in advance so

that the Commissioner will receive at least ten days notice of the hearing.

**5. Decisions.** The Board shall arrive at a decision on such appeal or variance within ten (10) days. In passing upon an appeal, the Board may, so long as such action is in conformity with the provisions of this Section, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Administrator or other public official. It shall make its decision in writing setting forth the findings of fact and the reasons for its decisions. In granting a variance the Board may prescribe appropriate conditions and safeguards such as those specified in Subparagraph D, Item 6 of this Subdivision, which are in conformity with the purposes of this Section. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Section. A copy of all decisions granting variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

**6. Appeals.** Appeals from any decision of the Board may be made, and as specified in the official controls and also in Minnesota Statutes.

**7. Flood Insurance Notice and Record Keeping.** The Zoning Administrator shall notify the applicant for a variance that: (1) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. The City shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

**D. Conditional Uses.** The Planning Commission shall hear and decide applications for conditional uses permissible under this Section. Applications shall be submitted to the Zoning Administrator who shall forward the application to the Planning Commission for consideration.

**1. Hearings.** Upon filing with the Zoning Administrator an application for a conditional use permit, the Zoning Administrator shall submit by mail to the Commissioner of

Natural Resources a copy of the application for proposed conditional use sufficiently in advance so that the Commissioner will receive at least ten (10) days notice of the hearing.

**2. Decisions.** The Planning Commission shall arrive at a decision on a conditional use within ten (10) days. In granting a conditional use permit the Planning Commission shall prescribe appropriate conditions and safeguards, in addition to those specified in Item 6 of this Subparagraph D, which are in conformity with the purposes of this Section. Violations of such conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be deemed a violation of this Section. A copy of all decisions granting conditional use permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

**3. Procedures to be Followed by the Planning Commission in Passing on Conditional Use Permit Applications Within All Flood Plain Districts.**

(a) Require the applicant to furnish such of the following information and additional information as deemed necessary by the Planning Commission for determining the suitability of the particular site for the proposed use:

(1) Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the stream channel.

(2) Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.

(b) Transmit one copy of the information described in Subsection (a) above, to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.

(c) Based upon the technical evaluation of the designated engineer or expert, the Planning Commission shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.

**4. Factors Upon Which the Decision of the Planning Commission Shall be Based.** In passing upon conditional use applications, the Planning Commission shall consider all relevant factors specified in other provisions of this Section, and:

(a) The danger to life and property due to increased flood heights or velocities caused by encroachments.

(b) The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.

(c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

(d) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(e) The importance of the services provided by the proposed facility to the community.

(f) The requirements of the facility for a waterfront location.

(g) The availability of alternative locations not subject to flooding for the proposed use.

(h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

(i) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

(j) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(k) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

(1) Such other factors which are relevant to the purposes of this Section.

**5. Time for Acting on Application.** The Council shall act on an application in the manner described above within ten (10) days from receiving the application, except that where additional information is required pursuant to Item 4, above, the Council shall render a written decision within thirty (30) days from the receipt of such additional information.

**6. Conditions Attached to Conditional Use Permits.** Upon consideration of the factors listed above and the purpose of this Section, the Council shall attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this Section. Such conditions may include, but are not limited to, the following:

(a) Modification of waste disposal and water supply facilities.

(b) Limitations on period of use, occupancy, and operation.

(c) Imposition of operational controls, sureties, and deed restrictions.

(d) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.

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

**Subd. 12. Non-Conforming Uses.** A structure or the use of a structure or premises which was lawful before the effective date of this Section but which is not in conformity with the provisions of this Section may be continued subject to the following conditions:

**A.** No such use shall be expanded, changed, enlarged, or altered in a way which increases its non-conformity.

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

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

D. If any non-conforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this Section. The Assessor shall notify the Zoning Administrator in writing of instances of non-conforming uses which have been discontinued for a period of 12 months.

E. If any non-conforming use or structure is destroyed by any means, including floods, to an extent of 50 percent or more of its market value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Section. The applicable provisions for establishing new uses or new structures will apply depending upon whether the use or structure is in the Floodway, Flood Fringe or General Flood Plain District, respectively.

#### **Subd. 13. Unlawful Acts.**

A. Violation of the provisions of this Section or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) is unlawful.

B. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include but are not limited to:

1. In responding to a suspected City Code violation, the Zoning Administrator and the Council may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The City must act in good faith to enforce these official controls and to correct City Code violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

2. When a City Code violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources' and Federal Emergency Management Agency Regional Office along with the City's plan of action to correct the violation to the degree possible.

3. The Zoning Administrator shall notify the suspected party of the requirements of this Section and all other official controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the City. If the construction or development is already completed, then the Zoning Administrator may either (1) issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls; or (2) notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30 days.

4. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Section and shall be prosecuted accordingly. The Zoning Administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition which existed prior to the violation of this Section.

**Subd. 14. Amendments.**

**A.** The flood plain designation on the Official Zoning Map shall not be removed from flood plain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regional flood and is contiguous to lands outside the flood plain. Special exceptions to this rule may be permitted by the Commissioner of Natural Resources if he/she determines that, through other measures, lands are adequately protected for the intended use.

**B.** All amendments to this Section, including amendments to the Official Zoning Map, shall be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given 10-days written notice of all hearings to consider an amendment to this Section and said notice shall include a draft of the ordinance amendment or technical study under consideration.

Source: Ordinance No. 199, 2nd Series  
Effective Date: 11-28-92

**SEC. 11.61 SPECIAL PROVISION: VETERINARY HOSPITAL/CLINIC AND KENNEL REGULATIONS.**

**Subd. 1. A-R, Agricultural-Rural Residential; R-R, Rural Residential; S-R, Suburban Residential; C-3 Highway Service Commercial Districts and AMU-P, Airport Multiple Use Park District.** Recognizing that veterinary hospital/ clinic and kennel uses may be located near private residences and that said uses have the potential to create health and safety issues for people, and create nuisances including parking, visual, and noise concerns for neighboring properties and residences, the following uses may be permitted only as conditional uses in the above referenced zoning districts:

Source: Ordinance No. 333, 2nd Series  
Effective Date: 4-14-2007

**A. Veterinary Hospital/Clinic And Kennel.** Any principal building designated to be used for the keeping of animals for medical treatment or any out-treatment mobile care unit where said animals are cared for under the supervision of a doctor of veterinary medicine, or any kennel as defined in Section 6.29 of Chapter 6 of the Hibbing City Code of Ordinances. Under no circumstances shall any kennel be permitted in the Urban Area Limits of the City of Hibbing unless it either is operated on the premises of a veterinary hospital/clinic or is an animal shelter of a non-profit Humane Society organization. The submission of an application for conditional use permit regarding the property in question shall include floor plans, preliminary construction plans for any new building, alteration or addition, a



site plan conforming to the following performance standards, and a "Performance Agreement" signed by the applicant and by the owner of said property agreeing to comply with the maintenance and performance standards and with all applicable, federal, state, county and city laws and code requirements, including such conditions that are attached to the conditional use permit:

1. The parcel of land, as well as the conditional use of the property in question shall at all times comply with the minimum lot dimension standards, lot coverage, structural bulk, and setback requirements of the applicable district in which it is located. Where such use of land is located in the S-R, Suburban Residential District, the minimum lot area shall be one (1) acre, and minimum lot width shall be 150 feet.

2. It shall be understood that the principal and accessory buildings for any of the conditional uses listed in this section that may be permitted to be located in said Urban Area Limits shall not be less than 50 feet from the property lines of any eating, drinking, food preparation, or beverage bottling establishment, convenience store, gas station, or any business establishment permitted to operate 24 hours per day.

3. It shall be understood that said veterinary hospital/clinic, or kennel operations shall further comply with Section 11.53, SPECIAL PROVISIONS: PERFORMANCE STANDARDS of this Chapter which regulates acceptable noise levels among other dangerous, noxious or otherwise objectionable elements or hazards.

4. No cremation of any carcass shall take place within the Urban Area Limits of the City of Hibbing.

5. Activities of any veterinary hospital/clinic, or kennel in the A-R, Agricultural-Rural residential; R-R, Rural-Residential; and S-R, Suburban Residential Districts shall also comply with the following requirements 5(a)-(d):

(a) Said activities, including parking lot or area, pens and exercise areas for domesticated household pets as defined in 6.(a) of this section that are not confined within a completely enclosed building shall be completely screened from the view of any adjoining public or private property by a permanently maintained unobtrusively colored 100% opaque fence or wall not less than six (6) feet high but not higher than nine (9) feet.

(b) All pens and exercise areas not confined within a completely enclosed building shall be within a safe and secure fence that at all times prevents any animal from running at large, and further such pens and exercise areas for said domesticated household pets shall be setback from

all side and rear property lines by a distance of not less than 50 feet. Corrals used exclusively for horses and cattle may encroach up to the property lines.

(c) Any parking lot or area, including access drives, shall not encroach upon the applicable district's minimum side yard setback requirements for accessory buildings.

(d) The City of Hibbing may waive up to 100% of the opaque screening requirements for any fence or wall provided the view of any building, parking lot or area, pen and exercise area for domesticated household pets for said activities is all times completely shielded from any adjoining public or private property either by a natural topographical elevation for an undeveloped area on the property in question that is a distance of 50 feet or more from its property lines or where said area is fully maintained with a dense growth of mature trees (preferably conifers) or where both of these elements are combined.

6. Any operation of veterinary hospital/clinic or kennel in the C-3, Highway Service Commercial District shall also comply with the landscaping requirements of Subd. 5.C. of Section 11.31 of this chapter and with the following requirements 6(a) - (e):

(a) Any such operation within the Urban Area Limits shall be limited exclusively to animals commonly accepted as domesticated household pets which, unless otherwise defined, shall include dogs, cats, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-constricting reptiles or amphibians, and other similar pets. Under no circumstances shall the above definition include, at any age, animals commonly associated with a farm or performing work in an agricultural setting, or any non-domesticated animals commonly considered to be naturally wild including, but not limited to, large cats, wild canines, or which are commonly considered to be inherently dangerous to the health, safety and welfare of people.

(b) Any exercise area not within the confines of a building shall be completely screened from any adjoining residence by an unobtrusively colored, 100% opaque, chain-link fence or masonry wall not less than six (6) feet high but not higher than nine (9) feet. Said area shall be setback at least 20 feet from any adjoining residence property line.

(c) Any such operation shall not use a public alley for parking, for vehicle access for the parking lot or for a loading area.

(d) The property in question shall be required to have an off-street parking lot and loading area which, including access drives, shall be completely surfaced with an all-weather dust free surface, with no less than two (2) parking spaces for employees and no less than one (1) parking space per 300 sq. ft. of the ground floor area of the principal building. Said operation shall comply with the "off-street" parking and loading standards as stipulated in Section 11.51, SPECIAL PROVISION: OFF-STREET PARKING AND LOADING FACILITIES of this chapter.

(e) The off-street parking lot/loading area and any part of the property in question not confined within a building shall be completely screened from any adjoining "Residence District Boundary", residence, or public alley by a permanently maintained, unobtrusively colored, 100% opaque, chain-link fence or masonry wall not less than six (6) feet high but not higher than nine (9) feet. Any such fence or wall, parallel with a public alley, may have only one (1) opening that is no wider than four (4) feet to allow for pedestrian passage. Required screening by a fence or wall shall not encroach within 25 feet of a front yard, or along the right-of-way lines of any intersecting street/road of any corner lot.

7. Kennels shall be subject to the applicable annual licensing requirements as stipulated in the Hibbing City Code of Ordinances, Chapter 6, Section 6.29, Kennels.

8. The granted Conditional Use Permit and a "Certificate Of Occupancy or Zoning Compliance" for said use of the property in question shall be officially issued only after the inspections by the City of Hibbing Building Official/ Zoning Administrator and the City of Hibbing Animal Control Official verify that all applicable conditions, performance standards and required improvements have been installed, completed, and are being complied with.

9. Nothing shall prevent the City of Hibbing from attaching additional conditions prior to granting a conditional use permit or from taking action to revoke such conditional use permit for a violation to any requirements, performance standards or conditions attached thereto or upon abandonment of said use.

Source: Ordinance No. 285, 2nd Series  
Effective Date: 06-14-2003

# **SEC. 11.62. SPECIAL PROVISION: BED AND BREAKFAST FACILITIES.**

**Subd. 1.** Bed and Breakfast Facilities, as defined herein, may be permitted as a conditional use only in the R-1, Single Family Residence District, R-2, One To Four Family Residence District, R-3, Multiple Family Residence District, and R-4, Multiple Family Residence

District and only upon the granting of a conditional use permit in compliance with the requirements and procedures established in this chapter for such use, and only upon further compliance with the following standards:

**A.** Bed and Breakfast Facilities are defined as owner managed and occupied residential structures used as lodging establishments where a room or rooms are rented on a nightly basis, and in which a meal or meals are included as part of the basic room rental rate.

**B.** The individual or family who operates a Bed and Breakfast Facility shall occupy the house as their primary residence and only as a single-family dwelling. Said house must have been completed and occupied for at least five (5) years before a Bed and Breakfast Facility is allowed on the premises. The house shall be the principal structure on the property.

**C.** Bed and Breakfast Facilities shall be limited to a maximum of six (6) bedrooms available to rent to guests, with all the guest bedrooms contained within the principal structure.

**D.** There shall be no more than two (2) persons employed by the Bed and Breakfast Facility who are not residents of the dwelling.

**E.** Bed and Breakfast Facilities shall not be located within the lessor of a distance of two blocks (in a platted area) or 500 feet of another Bed and Breakfast Facility.

**F.** Prior to commencing operations of a Bed and Breakfast Facility, the owner of the property shall obtain a conditional use permit pursuant to the provisions of this Section and Section 11.73. "Conditional Uses" of this Chapter. Prior to applying for such conditional use permit it is required that a building permit application be filed with the City Building Official. The City Building Official shall be required to request inspection(s) of the premises by the City Building Official, City Fire Marshal, and County Health Department, and other officials as deemed necessary even if no improvements are proposed. All licenses required by St. Louis County or the State of Minnesota for Bed and Breakfast Facilities shall be issued before the issuance of a conditional use permit.

**G.** Lighting on the premises shall not be directed toward any adjacent property.

**H.** Off-street parking may be a condition required for use as a Bed and Breakfast Facility.

**I.** Only one sign shall be allowed and such sign shall be located on the property in question, and shall identify only the Bed and Breakfast Facility, and shall be one or two-sided with each sign

surface area not to exceed 6 square feet. Such signage shall comply with all applicable requirements in Section 11.57. "Signs" of this Chapter and the Hibbing City Code of Ordinances. Such sign shall be securely anchored to the dwelling, or fence, or posts permanently anchored in the ground.

**J.** No other use may be allowed in conjunction with the operation of the Bed and Breakfast Facility unless such use is permitted in the District where the property in question is situated, or are conditional uses of such a District granted with the original Bed and Breakfast Facility conditional use permit or added by a new conditional use permit.

**Subd. 2. Other Operational Requirements For Property And Uses.**

**A.** Residential structures for Bed and Breakfast Facilities may be remodeled. Such structural alterations may not be made which prevent the structure from being used as a residence in the future. Internal or external changes which will make the dwelling appear less residential in nature or function shall not be allowed. Examples of such alterations include but are not limited to paving of required setbacks, and commercial-type exterior lighting, or signage.

1. All structures, property and uses of the property in question shall comply with the applicable regulations of the Residence District and requirements of this Chapter. Non-conformities to said regulations and requirements such as but not limited to lot area and width; lot coverage; building uses, setbacks, height and bulk that existed up to the time the conditional use permit for the Bed and Breakfast Facility was first requested may continue but shall be subject to Sec. 11.71. Non-Conforming Lots, Land Uses, And Structures of this Chapter.

2. Any changes to expand or add to the conditions that have been approved for a Bed and Breakfast Facility such as but not limited to additional guest rooms shall not be allowed unless approved under a new conditional use permit.

**B.** Where applicable, the septic system shall be up to code and sized for the proposed use and otherwise comply with all current regulations and standards of St. Louis County such as but not limited to adequate space for an alternative approved septic site.

**C.** No guest shall stay in the facility for more than twenty-nine (29) days within any period of thirty (30) consecutive days.

**D.** Dining and other facilities of the Bed and Breakfast Facility shall not be opened to the public but shall be used exclusively by the residents, registered guests of the facility, or guests of a meeting held at said Bed and Breakfast Facility.

(Jun 25, 2005)

**E.** All Bed and Breakfast Facilities must maintain a guest log book that shall include names and home addresses of guests, the guests' vehicle license plate number, dates of stay, and the room number of each guest. The log must be made available for inspection by the City of Hibbing upon request.

**Subd. 3. Approval And Enforcement Authority.** Nothing shall prevent the City of Hibbing from approving additional conditions prior to granting a conditional use permit, or from taking actions to revoke such a conditional use permit for violation to any requirements, performance standards or conditions attached thereto or upon abandonment of said use.

**Subd. 4. Severability.** If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a Court of competent jurisdiction, the findings shall not serve as an invalidation or affect the validity and enforceability of any other section or portion of this ordinance.

Source: Ordinance No. 308, 2nd Series  
Effective Date: 08-18-2004

#### **SEC. 11.63 SPECIAL PROVISION: TOWERS.**

**Subd. 1.** In order to accommodate the communication needs of residents and business while protecting the public health, safety, and general welfare of the community, the City finds that these regulations are necessary in order to: facilitate the provision of wireless telecommunication services to the residents and businesses of the community; minimize adverse visual effects of towers through careful design and siting standards; avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and, maximize the use of existing and approved towers and structures to accommodate new wireless telecommunication antennas in order to reduce the number of towers needed to serve the community. For the purposes of this Chapter the terms communication tower, commercial communication tower, and wireless telecommunication tower will be considered equivalents.

**Subd. 2. Conditional Use.** All communication towers shall be allowed only as conditional uses and only within those districts as noted in this Chapter.

**Subd. 3. Exceptions.** The following towers shall be exempted from these regulations:

**A.** Towers 35 feet or less in height supporting amateur radio antennas and conforming to all applicable provisions of this Chapter shall be allowed only in the rear yard of residentially zoned parcels. In accordance with the Federal Communication Commission's preemptive ruling PRB1, towers erected for the primary purpose of

supporting amateur radio antennas may exceed 35 feet in height provided that a determination is made by the Planning Commission that the proposed tower height is technically necessary to successfully engage in amateur radio communications.

B. Any satellite earth station antenna 6.5 feet in diameter or less that is located in an area zoned industrial or commercial.

C. Any satellite earth station antenna 40 inches in diameter or less regardless of zoning district.

D. Public utility structures, including but not limited to water towers, antennas, lights and signals, power and telephone poles, and poles supporting emergency warning devices.

E. Church sanctuaries, steeples, and bell towers.

**Subd. 4. Co-location requirements.** All commercial wireless telecommunication towers erected, constructed, or located within the city shall comply with the following requirements:

A. A proposal for a new commercial wireless telecommunications service tower shall not be approved unless the Planning Commission finds that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within a 1.5 mile search radius of the proposed tower due to one or more of the following reasons:

(1) The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.

(2) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.

(3) Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.

(4) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.

**B.** Any proposed commercial wireless telecommunications service tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the tower is over 100 feet in height or for at least one additional user if the tower is over 60 but not more than 100 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

**Subd. 5. Tower construction requirements.** All towers erected, constructed, or located within the city, and all wiring therefore, shall comply with the following requirements:

**A.** Communication towers will be outside of significant migratory bird flight paths as determined by the Minnesota Department of Natural Resources or the U.S. Fish and Wildlife Service. It is the responsibility of the applicant to demonstrate that the tower is outside significant migratory bird paths. Towers within significant migratory bird flight paths will consider standards of the United States Fish and Wildlife Service in designing towers.

**B.** All applicable provisions of this Chapter.

**C.** Towers shall be certified by a qualified and licensed professional engineer to conform to the latest structural standards and wind loading requirements of the Uniform Building Code and the Electronics Industry Association.

**D.** With the exception of necessary electric and telephone service and connection lines approved by the Planning Commission, no part of any antenna or tower nor any lines, cable, equipment or wires or braces in connection with either shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk, or property line.

**E.** Towers and associated antennas shall be designed to conform with accepted electrical engineering methods and practices and to comply with the provisions of the National Electric Code.

**F.** All signal and remote control conductors of low energy extending substantially horizontally above the ground between a tower or antenna and a structure, or between towers, shall be at least 8 feet above the ground at all points, unless buried underground.

**G.** Every tower affixed to the ground shall be protected to discourage climbing of the tower by unauthorized persons.

**H.** All towers shall be constructed to conform to the requirements of the Occupational Safety and Health Administration.



I. Metal towers shall be constructed of, or treated with, corrosive resistant material. Wood poles shall be impregnated with rot resistant substances.

J. Auxiliary power sources, if any, must meet all pertinent Federal and State regulations or City standards, as may be required, regarding fuel storage, spills, noise, electrical engineering methods, and similar concerns.

**Subd. 6. Tower and antenna design requirements.** Proposed or modified towers and antennas shall meet the following design requirements.

A. Towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration.

B. Commercial wireless telecommunication service towers shall be of a design that best blends into the surrounding environment.

C. Towers shall not be illuminated by artificial means and shall not display strobe lights unless the Federal Aviation Administration or other federal or state authority specifically requires such lighting for a particular tower. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.

D. The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

E. All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements of the underlying zoning district. Ground mounted equipment shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.

F. Any fences constructed around or upon parcels containing towers, antenna support structures, or telecommunications facilities shall be constructed in accordance with requirements set forth by the Planning Commission unless more stringent fencing requirements are required by Federal Communication Commission regulations.

**G.** All towers must be reasonably posted and secured to protect against trespass.

**H.** All parcels upon which towers are located must provide access during normal business hours and have parking spaces for at least 2 vehicles.

**Subd. 7. Tower height.**

**A.** In all residential districts the maximum height of any tower including all antennas and other attachments shall be 35 feet.

**B.** The maximum height of any tower, including all antenna and other attachments, shall not exceed 1 foot for every 2 feet the tower is setback from the nearest property line up to a maximum height of 150 feet.

**C.** No tower shall be in excess of a height equal to the distance from the base of the antenna and tower to the nearest overhead electrical power line, which serves more than one dwelling, or place of business.

**D.** The height of towers shall be determined by measuring the vertical distance from the tower's point of contact with the ground to the highest point of the tower, including all antennas or other attachments. When towers are mounted upon other structures, the combined height of the structure and tower must meet the height restrictions of this Chapter.

**E.** Towers within 1,000 feet of a classified lake or a residential zone district are restricted to a height of 100 feet and will not be a guyed tower.

**F.** Towers located between 1,000 feet and one half mile of a lake are restricted to less than 200 feet in height.

**G.** Towers located within one-quarter mile of types three, four, or five wetlands, and protected rivers and streams, public parks and recreation areas, or public, private or personal use airstrip, are restricted to less than 200 feet in height.

**Subd. 8. Tower setbacks.** Towers shall conform to each of the following minimum setback requirements.

**A.** Towers shall meet the setbacks of the underlying zoning district, or a distance of twice the height of the tower, or a distance equal to the length of the longest supporting guide wire measured from its point of anchor in the ground, whichever is greatest.

**B.** Towers shall not be located between a principal structure and a public street, with the following exceptions:

1. In industrial zoning districts, towers may be placed within a side yard abutting an internal industrial street.

2. On sites adjacent to public streets on all sides, towers may be placed within a side yard abutting a local street.

**C.** A tower's setback may be reduced or its location on a site varied, at the sole discretion of the Planning Commission, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, power line support device, or similar structure, or upon the receipt of certification from a qualified professional engineer that, in the event of failure, the tower in question will collapse within the confines of the property on which the tower is located.

**D.** Towers exempted under this Chapter shall be setback the height of the tower or the setbacks of the zoning district whichever is greater.

**Subd. 9. Abandoned or unused towers or portions of towers.** Abandoned or unused towers or portions of towers shall be removed as follows:

**A.** All abandoned or unused towers and associated facilities shall be removed within 12 months of the cessation of operations at the site unless the Planning Commission approves a time extension. A copy of the relevant portions of a signed lease, which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site, shall be submitted at the time of application. In the event that a tower is not removed within 12 months of the cessation of operations at a site, the City may remove the tower and associated facilities and the costs of removal assessed against the property.

**B.** Unused portions of towers above a manufactured connection shall be removed within 6 months of the time of antenna relocation. The replacement of portions of a tower previously removed requires the issuance of a new conditional use permit.

**Subd. 10. Antennas mounted on roofs, walls, and existing towers.** The placement of wireless telecommunication antennas on roofs, walls, and existing towers may be approved by the Planning Commission, provided the antennas meet the requirements of this Chapter, after submission of 1) a final site and building plan as specified by this Chapter, and 2) a report prepared by a qualified and licensed professional engineer indicating the existing structure or tower's suitability to accept the antenna, and the proposed method of affixing

the antenna to the structure. Complete details of all fixtures and couplings, and the precise point of attachment shall be indicated.

**Subd. 11. Interference with public safety telecommunications.**

No new or existing telecommunications service shall interfere with public safety telecommunications. All applications for new service shall be accompanied by an intermodulation study that provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Before the introduction of new service or changes in existing service, telecommunication providers shall provide the City at least 10 calendar days in advance of such changes and allow the City to monitor interference levels during the testing process.

**Subd. 12. Additional submission requirements.** In addition to the information required elsewhere in this Chapter, development applications for towers shall include the following supplemental information:

**A.** A report from a qualified and licensed professional engineer which:

1. Describes the tower height and design including cross section and elevation,

2. Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas,

3. Describes the tower's capacity, including the number and type of antennas that it can accommodate,

4. Documents the steps the applicant will take to avoid interference with established public safety telecommunications,

5. Includes an engineer's stamp and registration number, and

6. Includes other information necessary to evaluate the request.

**B.** For all commercial telecommunication service towers, a letter of intent committing the tower owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.

**C.** Before the issuance of a building permit, the following supplemental information shall be submitted:

1. Proof that the proposed tower complies with regulations administered by the Federal Aviation Administration; and

2. A report from a qualified and licensed professional engineer that demonstrates the tower's compliance with the aforementioned structural and electrical standards.

**Subd. 13. Maintenance.**

**A.** Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

**B.** Tower owners shall install and maintain towers, telecommunication facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all Federal Communication Commission, state, and local regulations, and in such manner that will not interfere with the use of other property.

**C.** All towers, telecommunications facilities and antenna support structures shall be at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person.

**D.** Licensed maintenance and construction personnel shall perform all maintenance or construction on a tower, telecommunications facilities, or antenna support structure.

**E.** All towers shall maintain compliance with radio frequency emission standards of the Federal Communication Commission.

**F.** In the event the tower owner discontinues the use of a tower, the tower owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued.

**Subd. 14. Existing towers.**

**A.** Any owner upon whose land a tower is located, which contains additional capacity for installation or co-location of telecommunications facilities, shall allow other persons to install or collocate telecommunications facilities on such a tower subject to reasonable terms and conditions negotiated between the parties.

**B.** An existing tower may be modified to accommodate collocation of additional telecommunications facilities as follows:

1. Application shall be made to the Planning Commission for a Conditional Use Permit.

2. The total height of the modified tower and telecommunications facilities attached thereto shall not exceed the maximum height for towers allowed under the terms of this Chapter.

3. Permission to exceed the existing height may not require additional distance separation from property lines, structures, easements, utility lines and similar items.

4. A tower, which is being rebuilt to accommodate the collocation of additional telecommunications facilities, may be moved on the site subject to the setback requirements of this Chapter.

5. A tower that is relocated on site shall continue to be measured from the original tower location for the purpose of calculating the separation distances between towers as required by this Chapter.

Source: Ordinance No. 338, 2nd Series  
Effective Date: 10-7-2007

**SEC. 11.64. SPECIAL PROVISION: WIND ENERGY CONVERSION SYSTEM (WECS).**

**Subd. 1.** For purposes of accommodating the alternative energy sources needs for residents and businesses while minimizing the adverse visual impacts, and other locational effects such as, but not necessarily limited to, noise and safety concerns regarding Wind Energy Conversion System (WECS) as defined in Section 11.02. 113. of this Chapter, the City finds the following provisions for such uses are reasonable and are in the best interests for protecting the health, safety and general welfare of the community.

**Subd. 2. Conditional Use.** Unless otherwise specifically listed as exempt in this Section, any WECS shall be listed as a conditional use only in those districts shown in the land use table in Section 11.05 of this Chapter, and therefore, as such, shall require a petition for Conditional Use Permit (CUP) approval in accordance with the provisions and procedures as stipulated for Conditional Use Permits in Section 11.73 of this Chapter. Nothing shall prevent the City of Hibbing from attaching additional conditions to any CUP as a contingency for approval.

**Subd. 3. Prohibited Uses.** A WECS, including any listed as exempt in this Section, shall be considered as a prohibited use as follows:

**A.** A WECS not in conformance with any applicable provision of the Hibbing City Code.

**B.** A WECS not in conformance with any applicable Federal or Minnesota State law, or applicable regulation of any Federal or Minnesota State agency or department.

C. A WECS proposed or found to be located on any site that is found to be a wetland under the laws, regulations and standards of the United States Army Corps of Engineers (U.S.A.C.O.E.) or the Minnesota Wetland Conservation Act (WCA).

**Subd. 4. Building, Zoning, and MNDOT Permits, Including Federal Aviation Administration (FAA) Application for WECS.** Information including, but not necessarily limited to, ownership of the property in question, its complete legal description, a site plan, construction plans, specifications of the WECS support system, any building, or improvement associated with, or incidental to the WECS shall be attached to WECS permit applications. NOTE: A permit from MNDOT Aeronautics and Aviation for tall towers and structures may be required. A FAA application is required for any tower which is 10,000 feet or less from the end of airport runways - see Executive Director of Airport Authority for such applications. Attach copies of MNDOT permits and/or FAA approvals of applications and Airport Authority authorization to building/zoning permit application. A building permit application shall be attached to any applicable CUP petition. WECS permit applications require the following:

A. A building permit application for all exempt WECS, including all WECS which have a Conditional Use Permit approved by the City of Hibbing.

B. A zoning permit application for purposes of verifying and recording zoning conformance for all exempt WECS. A zoning permit application only shall be required for all meteorological towers which are used exclusively for the purpose of conducting wind resource assessments relevant to siting WECS (with the exception of such devices used by airports, Minnesota Department of Transportation, or other applications to monitor weather conditions). All such meteorological towers shall be temporary and shall be removed within one year of installation unless an agreed upon time limit extension is granted by the Zoning Administrator. [NOTE: such meteorological towers shall only be permitted in districts where WECS are listed as a Conditional Use and shall conform to the applicable provisions of this Section for such WECS (i.e. but not necessarily limited to height limits and setbacks).]

**Subd. 5. Commercial And Non-Commercial WECS.**

A. For purposes of this Section a Commercial WECS shall be any WECS equal to or greater than 100kw total name plate generating capacity.

B. For purposes of this Section a Non-Commercial WECS shall be any WECS less than 100kw total name plate generating capacity. Though such Non-Commercial WECS shall be for personal use by the occupants of a dwelling or business and located on their property, such WECS may also be connected to the electrical grid with proper executed interconnect agreements with the electrical utility serving the property.

**Subd. 6. Overall Height Of WECS (OHOW).** For purposes of this Section the overall height of a WECS (OHOW) shall be determined by vertically measuring the WECS from the finished grade elevation of the site location to the top of said WECS, or to the fullest vertical extension of the rotor blades or airfoils whichever height is greater. Where applicable to any proposed siting of a WECS which appears to be aligned within the extended Airport Safety Zones A, B, and C the sea level elevation of the finished grade elevation of any given WECS site shall be the determining factor in limiting the OHOW of a WECS. Federal Aviation Administration (FAA) height limit and locational regulations shall apply to all WECS (including exempt) in any district wherever such regulations are stricter than the provisions of this Section. The abbreviation 'OHOW' shall also be the terminology used herein to describe the height limitation provision of any given WECS.

**Subd. 7. OHOW Limit Provisions Applicable To Commercial WECS.** The height provisions for a WECS located in districts requiring a Conditional Use Permit shall apply as follows:

**A.** The OHOW for a WECS located within 1,000 feet of any S-R, R-1, R-2, R-3, R-4 District, or Planned Residential Development District shall not exceed 100 feet, and shall not be a guyed tower.

**B.** The OHOW for a WECS located within one half mile of any W-1, W-2, or W-3 Shoreland District shall not exceed 200 feet.

**C.** The OHOW for a WECS located within one quarter mile of protected rivers and streams, or public parks shall not exceed 200 feet.

**D.** There is no OHOW limitation at any other location; however, all other applicable provisions shall be followed and the City of Hibbing shall have the authority to limit the height of such WECS.

**Subd. 8. Exempt WECS.** A WECS which conforms to this Subdivision shall be exempt from the requirement for filing a petition for a CUP, provided said WECS shall further conform to the provisions limiting height, bottom clearance, and setbacks from property lines as follows:

**A.** One (1) Non-Commercial WECS per parcel in F-A, A-1, A-R, and R-R Districts with an OHOW not to exceed 60 feet, provided the property is located outside the Urban Area Boundaries of the City of Hibbing, which property shall be required to have a dwelling or principal building. The lowest bottom clearance of such rotor blades or airfoils shall not be less than 12 feet above ground level. The minimum setback of such WECS from all property lines shall be 1.1 times the OHOW.

**B.** One (1) Non-Commercial WECS per parcel in the S-R District with an OHOW not to exceed 35 feet, provided the property is located outside the Urban Area Boundaries of the City of Hibbing, which property shall be required to have a dwelling. The lowest bottom clearance of such rotor blades or airfoils shall not be less than 12 feet above ground level. The minimum setback of such WECS from all property lines shall be 1.1 times the OHOW.



**C.** One (1) Non-Commercial WECS per parcel in the I- 1 and I-2 Districts with an OHOW not to exceed 60 feet, provided such WECS shall be located more than 100 feet from any R-1, R-2, R-3, R-4 District, and Planned Residential Development District, or more than 200 feet from any neighboring dwelling whichever distance is greater. This provision shall be reciprocal in that no dwelling shall be constructed less than 200 feet from the WECS. The property shall be required to have a principal building. The lowest bottom clearance of such rotor blades or airfoils shall not be less than 12 feet above ground level. The minimum setback of such WECS from all property lines shall be 1.1 times the OHOW.

**D.** One (1) windmill per parcel which is exclusively intended and used as for decorative purposes only. Such decorative windmill shall not exceed a height of 15 feet in districts within the Urban Area of the City of Hibbing or 35 feet in Rural Area thereof. Said windmill shall be an accessory use to the principal use or building on the property and shall maintain a minimum setback from all property lines 1.1 times its height.

**Subd. 9. WECS Requiring A Conditional Use Permit (CUP).** In addition to conforming to all other applicable provisions of this Section, a WECS shall require a Conditional Use Permit as follows:

**A.** Commercial WECS in F-A, A-1, A-R, R-R, I-2, and O Districts. The minimum setback of such WECS from all property lines shall be 1.25 times its OHOW. The lowest bottom clearance of such rotor blades or airfoils shall not be less than 12 feet above ground level. Such WECS shall maintain a minimum distance of 750 feet from any neighboring dwelling. This provision shall be reciprocal in that no dwelling shall be constructed within 750 feet of such WECS. Upon issuance of a CUP, all Commercial WECS shall notify the Environmental Quality Board Power Plant Siting Act Program Staff of the project location and details on the survey form specified by the Environmental Quality Board.

**B.** One (1) Non-Commercial WECS per parcel in the C-3 District, with an OHOW not to exceed 60 feet, provided such WECS shall be located more than 100 feet from any R-1, R-2, R-3, R-4 District, and Planned Residential Development District, or more than 200 feet from any neighboring dwelling whichever distance is greater. This provision shall be reciprocal in that no dwelling shall be constructed within 200 feet of such WECS. The property shall be required to have a principal building. The lowest bottom clearance of such rotor blades or airfoils shall not be less than 12 feet above ground level. The minimum setback of such WECS from all property lines shall be 1.1 times its OHOW.

**C.** One (1) Non-Commercial WECS per parcel in the C-2a and C-2b Divisions of the C-2 District. The WECS shall be a roof installation on the principal building and the OHOW shall not exceed 15 feet above the highest point of roof elevation of the building proposed for the installation or 15 feet above the applicable limiting height provision of the district for such buildings whichever height elevation is less. The location of the WECS from any abutting property line shall not be less than 1.1 times the height of the support structure/ tower including the fullest vertical extension of the rotor blades or airfoils of such

WECS. Adequate safety measures shall be required to prevent accidental contact with moving rotor blades or airfoils.

D. One (1) Non-Commercial WECS per principal building on the property for any government, or public education building or facility, religious institution/church and related educational facility in any district where such uses are allowed, provided said property has a minimum lot width of 120 feet, lot depth of 120 feet, and a minimum total lot area of 20,000 square feet. The OHOW shall not exceed 60 feet. The lowest bottom clearance of such rotor blades or airfoils shall not be less than 12 feet above ground level. The minimum setback of such WECS from all property lines shall not be less than 1.1 times the OHOW.

**Subd. 10. Buildings And Improvements Associated With Or Incidental To WECS.**

A. All buildings shall conform to the applicable zoning provisions of the district in which they are located, unless a WECS is attached to any such building, which WECS shall be required to conform to the provisions in this Section applicable to such WECS.

B. Improvements associated with or incidental to a WECS including, but not limited to landscaping, off-street parking, signage, and fencing (for screening or security purposes), shall be in conformance with the applicable provisions for the district in which such improvements are located. When applicable, said improvements shall be installed with the initial construction prior to issuance of a Certificate of Zoning Compliance or Occupancy.

**Subd. 11. Performance Standards Applicable To WECS.** Provisions regarding replacement, maintenance, restoration and operational safety of a WECS are as follows:

A. The replacement of an existing WECS or any part thereof, for any reason, shall be in conformance with the applicable provisions of this Section.

B. Replacement of any part, switched out for maintenance purposes only, for a WECS that requires a CUP may not require a new CUP where such replacement is comparable with the original WECS; however, replacement to up-grade any Non-Commercial WECS or relocation of a Commercial or Non-Commercial WECS, shall invalidate the approved CUP and said WECS may not be replaced or relocated unless in conformance with the applicable provisions of this Section.

C. Guyed support structures/towers for WECS. All guyed WECS shall be required to have visible and reflective objects, such as plastic sleeves, reflectors or tape installed on the guy wire anchor points up to a height of 8 feet above ground level. Visible fencing shall be installed around anchor points of guy wire and such anchoring and fencing shall not encroach upon abutting property or public rights-of-way. A Commercial WECS shall also have a sign or signs posted on its tower, transformer and substation warning of high voltage and signs with

emergency contact information posted on the turbine or other suitable point.

**D.** The color of a Commercial WECS shall be white, grey or other non-obtrusive color. Blades may be black to facilitate deicing. The finish shall be matt or non-reflective. A WECS not requiring safety lighting shall maintain similar non-obtrusive colors and matt or non-reflective finish. Non-obtrusive colors shall be limited to shades of white, grey, blue, black, tan or brown so that said colors do not contrast with the natural background color of sky and earth during daylight hours.

**E.** Visibility and lighting of a WECS for safety purposes shall be in conformance with the requirements established by Federal Aviation Administration (FAA) permits and regulations and, if applicable, may override the provisions in item D. above.

**F.** A WECS shall conform to Minnesota Rules 7030 governing noise, the National Electrical Safety Code (and other applicable standards), FAA standards and the International Building Code as adopted by the State of Minnesota.

**G.** Dangerous, hazardous, and non-conforming WECS. The City Building Official or Zoning Administrator may determine a WECS to be dangerous or hazardous and order that the WECS be repaired or restored to a safe and fully operational condition or restored to conformance where such WECS has become non-conforming to the applicable provisions and/or to the approved CUP as the case may be. After expiration of a reasonable time if such repair or restoration has not taken place, said Official or Administrator may order the removal of said WECS so determined to be dangerous, hazardous, or non-conforming. The City of Hibbing may act to revoke the CUP for any such WECS.

#### **Subd. 12. Discontinuation of and Decommissioning a WECS.**

**A.** A WECS shall be considered a discontinued use after one (1) year without energy production unless a plan is developed and submitted to the City Zoning Administrator outlining the steps and schedule for returning the WECS to service. A WECS and accessory facilities shall be removed to ground level within 80 days of the discontinuation use and removal of foundations up to a four (4) foot depth may be required. Upon a planned permanent discontinuation, the owner of a WECS which is limited to one (1) per parcel is encouraged to request the City of Hibbing to revoke any applicable CUP; however, nothing shall prevent the City of Hibbing from acting on its own to revoke the CUP.

**B.** Each Commercial WECS shall have a Decommissioning Plan outlining the anticipated means and cost of removing the WECS at the end of its serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a competent party such as a Professional Engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning. The plan shall

also identify the financial resources that will be available to pay for the decommissioning and removal of the WECS and accessory facilities.

Source: Ordinance No. 370, 2nd Series  
Effective Date: 03-28-2010

**Section 11.65. SPECIAL PROVISION: Demolition Landfill Facility.** The following may be permitted as a conditional use in the I-2 General Industry District and O Open Space District:

**Demolition landfill facility, including related structures:** Subject to submission of plans to the city zoning administrator which includes but not necessarily limited to a building permit for any structure, a technical report including site plans and cross sections for the facility as drafted and signed by a professional engineer currently registered with the State of Minnesota, and a conditional use permit application which is subject to the approval authority of the City of Hibbing per procedures and standards as stipulated in this chapter for such permits, and of which shall be further subject to demolition landfill permit as approved by the Minnesota Pollution Control Agency and of which said same shall remain in good standing, and/or is updated accordingly, and conforming to the following standards:

1. The parcel of land for said facility shall not be less than 40 acres in total lot area, with a minimum of 1000 feet as its shortest linear dimension.

2. Said facility may be conducted in conjunction with a sanitation transfer station that is approved by the City of Hibbing, and shall have hours and days clearly posted for times for receiving demolition, including current rates and fees charged for dumping such demolition.

3. All landfill activities and structures for said facility shall not be allowed to encroach within 1000 feet of any rural dwelling used as for a primary residence, or any S-R, R-1, R-2, R-3, R-4 residential zone, any protected water (i.e. lake, tributary or forested river or stream), or 500 feet of any commercial zone; however that, above encroachment restrictions shall not apply to attendant office structure, accessory structures, including any approved single family dwelling for owner or caretaker on the premises of any approved demolition landfill facility.

4. The entrance of any access road for said facility shall be controlled by a securely constructed non-cable type gate which shall be closed and locked during all hours and/or days the facility is not open for receiving demolition, and that all such access roads shall have an ongoing dust control program, and that where such access road is located within a distance of at least 500 feet of any dwelling or other such principle structure on property adjoining said facility said same road shall be paved with a hard, durable, and dust-free surface such as but not limited to asphalt or concrete as approved by the City Engineer.

5. Property owner or holder of a conditional use permit for an approved demolition landfill facility shall provide City of Hibbing or city zoning administrator with all updates to technical report as needed.

6. Any expansion to such an approved facility, new class or reclassification of demolition to be accepted, or any change to conditions of original permit shall require a new hearing for a conditional use permit.

7. Nothing shall prevent the City of Hibbing from attaching additional conditions prior to granting a conditional use permit in order ensure conformance with these and all regulations applicable to such demolition landfill facilities.

Source: Ordinance No. 399, 2nd Series  
Effective Date: 10-27-2011

(Sections 11.66 through 11.69, inclusive, reserved for future expansion.)

**SEC. 11.70. ADDITIONAL STANDARDS APPLICABLE TO ALL DISTRICTS AND USES.**

**Subd. 1.** The classification of roads conforms to Federal, State, County, and City Highway Department classifications and terminology. Classifications of roads or sections of roads are subject to change from time to time as the result of changes in traffic patterns. The classification system applicable to this Chapter is available for inspection in the Planning and Development offices.

**Subd. 2.** The minimum lot width, lot area, and setback requirements established herein shall be maintained for the placement of all structures. Greater lot area per unit may be required if necessary to provide for proper sewage disposal. Any addition attached to a dwelling, or primary structure, shall comply with all minimum setback requirements of the zone district for a dwelling, or primary structure, and the fee charged shall be the same as the fee for a dwelling or primary structure. Any structure in any zone district may have an extended roof line which encroaches upon the minimum side and rear yard setbacks, provided such encroachment shall not extend more than three (3) feet into the required setback distance.

**Subd. 3.** In no case of subdivision shall any lot or parcel be created which does not meet the requirements of the District in which the land lies.

**Subd. 4.** Each lot on which a structure is to be erected, altered in the exterior dimensions, or moved, shall have frontage on and access to an improved public road, except as follows:

Source: Ordinance No. 148, 2nd Series  
Effective Date: 8-9-1986

**A.** Such lots to be used for Dwelling - Recreational may have alternative means of access, which shall be either a private road, easement of record, which easement must be at least 33 feet in width, or by public water.

Source: Ordinance No. 338, 2nd Series  
Effective Date: 10-7-2007

**B.** Such lots to be used for other single family residential structures may have permits issued for such use only after lot owner has met the following criteria:

Source: Ordinance No. 148, 2nd Series  
Effective Date: 8-9-1986

**1.** The lot owner shall provide to the City a copy of an easement of record, which easement must be at least 33 feet in width across all lands between the lot in question and an improved public road, which easement shall be in perpetuity and transferable to the successors, heirs and assigns of the lot owner, and which easement shall provide to the lot owner the right of ingress and egress between the lot in question and an improved public road.

Source: Ordinance No. 338, 2nd Series  
Effective Date: 10-7-2007

2. The lot owner shall sign before a notary public an affidavit, to be supplied by the City, agreeing to the following:

(a) The lot owner shall agree to maintain a private access to the lot, within the easement, at his or her own expense.

(b) The lot owner shall agree to not demand or require any governmental unit to provide a public road or cartway to the lot, nor to have the private access maintained at government expense.

**Subd. 5.** For any use, whether permitted or conditional, where an Environmental Assessment, Environmental Assessment Worksheet, or Environmental Impact Statement is required and where the City is designated as lead agency the proposer shall be required to supply all information requested by the City to complete said documents.

**Subd. 6.** Solid waste collection stations and public utility structures necessary for the distribution of local utilities, such as small distribution and repeater stations and other equipment buildings which are normally uninhabited, shall be permitted in all zone districts on lots as small as 1/2 acre provided:

A. That all setbacks normally required for principal structures in the zone district can be met.

B. That there be created on the lot one 10' x 18' parking space for accommodation of service vehicles.

**Subd. 7.** Temporary housing of up to one year in duration may be allowed under a conditional use permit as an accessory use to forestry or agriculture or other temporary permitted land uses in any zoning district.

## **SEC. 11.71. NON-CONFORMING LOTS, LAND USES, AND STRUCTURES.**

### **Subd. 1. Intent.**

A. Within the districts established by this Chapter or amendments that may later be adopted, there exist lots, structures and uses of land and structures which were lawful before this Chapter was passed or amended, but which would be prohibited under the terms of this Chapter or future amendment.

B. It is the intent of this Chapter to permit these non-conformities to continue until they are removed, but not to encourage their survival. Such uses are declared by this Chapter to be incompatible with permitted or conditional uses

in the districts involved. It is further the intent of this Chapter that non-conformities shall not be enlarged upon, expanded or extended, or to be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

C. A non-conforming use of a structure, a non-conforming use of land, or a non-conforming use of a structure and land shall not be extended or enlarged after the effective date of this Chapter by attachment of additional signs to a building, or the placement of additional signs or display devices on the land outside the building, or by the addition of other uses, if such additions are of a nature which would be prohibited generally in the district involved.

D. To avoid undue hardship, nothing in this Chapter shall be deemed to require a change in the plans, construction, or designated use of any building on which the actual construction was lawfully begun prior to the effective date of this Chapter and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner, and demolition, elimination and removal of an existing structure in connection with such structure, provided that actual construction work shall be diligently carried on until the completion of the building involved.

**Subd. 2. Non-Conforming Lots of Record.**

A. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Chapter, a single-family dwelling and customary buildings may be erected on any undeveloped single lot of record provided that:

1. The lot was a lot of record before October 1, 1977;
2. The lot is in separate ownership from abutting lands;
3. All applicable setbacks and yard requirements are satisfied or modified by the Zoning Board of Appeals and Adjustments.

B. If two or more lots or combinations of lots and portions of lots with continuous frontage in a single ownership are of record at the time of the effective date of this Section, and if all or part of the lots do not meet the requirements for lot width and area as established for this Chapter, the lands involved shall be considered to be an undivided parcel for the purposes of this Chapter, and no portion of said parcel shall



be used or sold which does not meet lot width and area requirements established by this Chapter, nor shall any division of the parcel be made which leaves remaining any lot with and/or area below the requirements stated in this Chapter.

**Subd. 3. Non-Conforming Uses of Land.** Where, at the effective date of this Chapter, lawful use of land exists that is no longer permissible under the terms of this Chapter as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

**A.** No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of this Section.

**B.** No such non-conforming use shall be moved in whole or part to any other portion of the lot or parcel occupied by such use after the effective date of this Section.

**C.** If any such non-conforming use of land ceases for any reason for a period of more than ninety (90) days, any subsequent use of such land shall conform to the regulations specified by this Chapter for the district in which such land is located.

**Subd. 4. Non-Conforming Structures.** If a lawful use of a structure, or of structure and premises in combination, exists at the effective date of this Section that would not be allowed in the district under the terms of this Chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

**A.** No such structure may be enlarged, extended, converted, reconstructed or structurally altered unless the use of the structure is changed to one permitted within the district in which the building is located. The non-conforming use shall not thereafter be resumed.

**B.** Should such structure be destroyed by any means to an extent of more than fifty percent (50%) of its appraised market value at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Chapter. An exception may be considered in order to use existing slabs for reconstruction, or to rehabilitate a damaged structure when insurance will cover such rehabilitation, but not total replacement costs, subject to approval of a variance by the Board of Adjustments and Appeals.

C. Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is moved.

D. When a non-conforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three-year period, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located.

E. When a non-conforming use status is applied to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land.

F. Notwithstanding any provision of this Subdivision to the contrary, any principal or accessory structure, existing on the effective date of this provision, and which is non-conforming only by reason of placement on a lot of insufficient size, and which would otherwise be permitted in the zoning district, shall for the purpose of administration of this Chapter, be considered a conforming use. Such principal or accessory structure may be altered, expanded, renovated or improved provided that it does not exceed the dimensional requirements of the zoning district as to lot area, lot coverage and building line setbacks unless these requirements are modified by the Zoning Board of Appeals and Adjustments.

**Subd. 5. Repairs and Maintenance.**

A. On any building devoted in whole or in part to any non-conforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent (10%) of the current appraised market value of the building, provided that the cubical space content of the building as it existed at the time of the effective date of this Chapter shall not be increased.

B. Nothing in this Chapter shall be construed so as to prevent the restoring of a non-conforming structure to a safe condition when said structure is declared to be hazardous or unsafe by authorized City Administrative Officials. Such restoration shall not extend the non-conforming structure in any manner, except as reasonably required to eliminate the hazardous or unsafe condition.

**SEC. 11.72. VARIANCES.**

**Subd. 1. Application.** Any person desiring a variance, may apply therefor and have the matter heard by the Zoning Board of Appeals and Adjustments.

**Subd. 2. Conditions for Variances.**

**A.** Variances from the requirements of this Chapter and/ or Chapters 13 and 16 may be granted only when they are in harmony with the general purposes and intent of those Chapters and when the variances are consistent with the comprehensive plan.

**B.** Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with this Chapter and/or Chapters 13 and 16. "Practical difficulties", as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by this Chapter and/or Chapters 13 and 16; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality.

**C.** Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

**D.** Variances shall be granted for earth sheltered construction as defined in Minnesota Statute Section 216C.06, Subdivision 14, when in harmony with the official controls.

**E.** No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.

**F.** The board of adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

**G.** A variance may be granted for the temporary use of a one-family dwelling as a two-family dwelling.

**H.** No variance permitting the erection or alteration of a building shall be valid for a period longer than six (6) months unless a building permit is issued and construction actually begun within that period, and is thereafter diligently pursued to completion.

Source: Ordinance No. 394, 2nd Series  
Effective Date: 08-17-2011

**CODIFIER'S NOTE:** If a mobile home park is converted to another use requiring a variance or zoning change, the Planning Commission must give notice of hearing to each occupant. See Minnesota Statutes, Section 327C.095.

**SEC. 11.73. CONDITIONAL USES.** Conditional uses may be permitted within the several zoning districts of the City subject to the following:

**Subd. 1. Authority.** The Council may, after review and recommendation by the Planning Commission, grant a conditional use permit authorizing the development of uses listed as conditional uses in each of the zoning districts in this Chapter or as otherwise enumerated in this Section.

**Subd. 2. Standards and Conditions for Conditional Uses.**

**A.** A conditional use permit may be granted for the following uses only:

1. Any use specifically listed as a conditional use in the regulations applicable to the district in which it is to be located;
2. Planned developments in any district; and,
3. Any of the following uses in any residential or commercial district:

Source: Ordinance No. 148, 2nd Series  
Effective Date: 8-9-86

(a) Hospitals, clinics and medical office buildings located on a lot with a front, rear or side lot line within 1320 feet of a lot or tract of land on which a hospital is located when such buildings exceed a maximum gross floor area of 5000 square feet; provided the external appearance of such hospitals, clinics and medical office buildings shall be compatible in character, appearance and design with that of other uses in the area. SPECIAL NOTE: In any case, all hospitals, clinics and medical office buildings that are 5000 square feet or less shall be allowed only in accordance with the applicable zoning district requirements of this chapter.

Source: Ordinance No. 252, 2nd Series  
Effective Date: 12-23-1998

(b) Day care, educational, religious, philanthropic, or  
charitable institutions.

(c) Community recreational buildings and fields.

4. Any of the following uses in any districts:

(a) Public buildings to be used by the City, Township, County, State, or Federal governments.

(b) Buildings, facilities or premises of public service corporations to be used for public utility purposes reasonably necessary to the public convenience or welfare.

5. **Wind Energy Conversion Systems in Districts F-A, A-1, A-R, R-R, S-R, C-2 and I-2.** Wind Energy Conversion Systems shall be permitted, provided that the existing or future uses permitted within adjacent properties are not adversely affected by: noise, radio or television signal interference, or safety conditions. Further provided, that such Wind Energy Conversion Systems be set back from all property lines a distance equal to or greater than the tower height as measured from the base of the tower and in no case shall tower height exceed 200 feet. Further provided, that satisfactory visual screen buffers be provided at the edges of the property in order to mitigate aesthetic impacts upon the neighborhood.

B. A conditional use permit for the uses listed in Subdivision 2-A of this Section shall be granted only if evidence is presented to establish:

1. That the proposed building or use at the particular location requested is necessary or desirable to provide convenience and will contribute to the general welfare of the neighborhood or community;

2. That the proposed building or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, utility facilities, and other matters affecting the public health, safety, and general welfare; and,

3. That the proposed building or use will be designed, arranged, and operated so as to permit development and use of neighboring property in accordance with the applicable district regulations.

C. The Council may impose such conditions upon the premises benefited by a special use as may be necessary to prevent or minimize injurious effects therefrom upon other property in the neighborhood. Violation of such conditions and safeguards shall be a violation of this Chapter.

D. No conditional use permit shall be valid for a period longer than one (1) year unless a building permit is issued and construction actually begun within that period and is thereafter diligently pursued to completion or any zoning compliance permit is obtained and a use commenced within that period; provided, however, that in case of conditional uses granted for planned development, the provisions of any approved development schedule shall control over the provisions of this Subparagraph.

**Subd. 3. Procedure.**

A. Prior to filing a formal application for a conditional use permit as hereinafter provided, a prospective applicant may, by letter to the Chair of the Planning Commission, request a preliminary appearance before the Planning Commission at one of its regular public meetings to generally acquaint the Planning Commission with the proposed request for a conditional use and to obtain the preliminary views of the Commission prior to the expenditure of funds necessary to prepare the complete documentation required for a formal application. At such preliminary appearance, the prospective applicant shall present such information and plans as he/she shall deem necessary to generally acquaint the Planning Commission with his/her proposal. At such preliminary hearing, the members of the Planning Commission may make such inquiries and express such views concerning the proposal as it shall deem appropriate. The Planning Commission may, by written order, excuse the prospective applicant from submitting any specific item or information or document required by Subparagraph B below, which it may find to be unnecessary to the consideration of the application to be filed.

B. Whether or not the procedures specified herein have been utilized, an application for a conditional use permit shall be submitted in triplicate to the Zoning Administrative Officer. A non-refundable application fee, as established from time to time by the Council to cover administrative costs and costs of the hearing, shall accompany each application. Except as specifically excused by a written order of the Planning Commission, a copy of which order shall be attached to the application, the application shall contain the following information and be accompanied by the following submissions, as well as such additional information and submissions as may be prescribed by rule of the Planning Commission:

1. Legal description of the tract of land;

2. Evidence that the applicant has sufficient control over the tract to effectuate the proposed plan, including a statement of all ownership and beneficial interests in the tract of land and the proposed development;

3. Evidence of the financial capability of the applicant to complete the proposed development;

4. Plans drawn to convenient scale, showing the current zoning classification and existing land use of the tract, and those tracts directly adjacent to it, and any significant topographical or physical features of the tract;

5. Three copies of preliminary plans, drawn to a convenient scale, showing the following information:

(a) The location, size, use, and arrangement of proposed buildings and existing buildings which will remain, if any.

(b) The proposed quantity and arrangement of off-street parking and loading spaces.

(c) The location of proposed entrance, exit, and circulation drives.

(d) The location, use, and size of structure and other land uses on adjacent properties.

(e) Proposed lots and blocks, if any.

(f) Areas proposed to be conveyed, dedicated, or reserved for public or common open space, if any, including parks, playgrounds, school sites, and recreational facilities.

(g) Preliminary sketches of proposed structures and landscaping.

(h) The general drainage plan for the developed tract.

(i) A tabulation of use areas, site coverage, parking spaces, residential density, floor area devoted to commercial or industrial uses, and other development data.

6. When the proposed development includes provisions for common open space or recreational facilities, a statement describing the provision that is to be made for the care and maintenance of such open space or recreational facilities.



If it is proposed that such open space be owned and/or maintained by any entity other than a governmental authority, copies of the proposed articles of incorporation and by-laws of such entity shall be submitted;

7. Copies of any restrictive covenants that are to be recorded with respect to property included in the proposed development;

8. When the development is to be constructed in stages or units, a schedule for the development of such stages or units, shall be submitted stating the approximate beginning and completion date for each such stage or unit. No such stage or unit shall have a residential density that exceeds by more than twenty-five percent (25%) the proposed residential density of the entire development. When a development provides for common open space, the total area of common space provided at any stage of development shall, at a minimum, bear the same relationship to the stages or units completed or under development bear to the entire development;

9. When it deems to be necessary, the Planning Commission may require a traffic survey setting out and analyzing the effect that the development will have upon traffic in the streets and thoroughfares adjacent to and in the proposed development;

10. A statement showing the relationship of the proposed development to the comprehensive plan and future land use plan of the City;

11. A statement as to why the proposed development will not cause substantial injury to the value of other property in the neighborhood; and,

12. A statement as to how the proposed development is to be designed, arranged, and operated in order to permit the development and use of neighboring property in accordance with the applicable district regulations.

C. A public hearing shall be set, advertised, and conducted by the Planning Commission in accordance with Section 11.77 of this Chapter.

D. Within thirty (30) days after the conclusion of the public hearing, the Planning Commission shall transmit to the Council a written report containing its recommendations concerning findings of fact specifying the reasons for the recommendation. In any case where a conditional use permit is sought for the

purpose of establishing a planned development district, the report of the Planning Commission shall contain specific findings as to the degree of compliance of the proposed development with the standards made applicable to the planned development and as to the degree which the proposed development advances the purposes for which planned development may be approved.

**E.** Except in the case of an application for a conditional use permit to establish a planned development district, the Council shall, within thirty (30) days of the receipt of the report of the Planning Commission, grant or deny the conditional use or refer the matter back to the Planning Commission for further consideration. The Council shall not grant a conditional use unless it finds that the standards of Subdivision 2 of this Section have been satisfied. Any proposed conditional use (including application for a Planned Development District) which fails to receive the approval of the majority of the members of the Planning Commission voting upon it shall not be passed except by a favorable vote of two-thirds of all of the elected members of the Council.

**F.** A conditional use permit shall be valid for a period of one (1) year, (except when issued specifically for a Planned Development, in which case the period of validity shall extend to eighteen (18) months), after which the same shall be revoked in the event that any proposed construction, alteration, or operation has not been started in accordance with the terms of such permit.

**G.** A conditional use permit, once issued, shall be transferable for a use of the same classification in the event of change of property ownership or control; providing, however, that those conditions attached to the original permit shall be applicable to the responsible agent following such change. It shall be the duty of the original permit holder to advise the party assuming control regarding the conditions of such permit.

**Subd. 4. Duration.** A conditional use permit shall remain in effect as long as the conditions agreed upon are observed, but nothing in this Section shall prevent the City from enacting or amending official controls to change the status of conditional uses.

**Subd. 5. Filing of Permit.** A certified copy of any conditional use permit shall be filed for record with the County Recorder or Registrar of Titles. The conditional use permit shall include the legal description of the property.

**SEC. 11.74. AMENDMENTS.** Any action to amend the provisions of this Chapter shall be governed by the following:

**Subd. 1. Authority.** This Chapter and the Zoning District Map may be amended from time to time by ordinance duly enacted by the Council; provided, however, that no such amendment shall be enacted except in accordance with the procedures of this Section. Amendments to the Zoning District Map are recorded in the Chapter of the City Code entitled "Listing of Uncoded Ordinances in Effect".

**Subd. 2. Initiation.** Proposed changes or amendments may be initiated by the Council, by the Planning Commission, or by any affected property owners of real estate in the City.

**Subd. 3. Procedure.**

**A.** When any proposed change or amendment is initiated by the Council such body shall transmit its proposal to the Planning Commission for a public hearing and report thereon.

**B.** When any proposed change or amendment is initiated by affected property owners, an application for such amendment, addressed to the Council, shall be filed in triplicate with the Zoning Administrator, and referred by him/her to the Planning Commission. A non-refundable application fee, established from time to time by the Council to cover administrative costs, shall accompany the application. Such application shall be filed at least three (3) weeks prior to the requested date of public hearing on the proposed amendment. The application shall be in such form and contain such information as shall be prescribed from time to time by the Planning Commission, but shall in all instances contain the following information:

1. The applicant's name and address;
2. The precise wording of any proposed amendment to the text of this Chapter; and,
3. In the event that the proposed amendment would change the zoning classification of any property:
  - (a) A legal description and street address of the property proposed to be reclassified,
  - (b) The name and address of the owner or owners of said property;
  - (c) The present zoning classification and existing uses of the property proposed to be reclassified,

(d) The area of the property proposed to be reclassified, stated in square feet or acres, or fraction thereof, and,

(e) A map, drawn to scale, clearly showing the property proposed to be reclassified and its present zoning classification and existing uses.

C. A public hearing shall be set, advertised, and conducted by the Planning Commission.

D. Within thirty (30) days following the conclusion of the public hearing, the Planning Commission shall transmit to the Council its recommendation in the form of a written report. Such report shall be accompanied by findings of fact specifying the reasons for the recommendation.

E. Within thirty (30) days of the receipt of the report of the Planning Commission the Council shall refuse, or, by ordinance duly enacted, adopt the proposed amendment.

F. In any case where the Planning Commission has recommended against the adoption of the proposed amendment or where a written protest against the proposed amendment signed by the owners of twenty percent (20%) of the frontage immediately adjacent or across the alley therefrom, or by frontage proposed to be altered, is filed with the City Clerk before adoption of any such amendment, the proposed amendment shall not be passed except by a favorable vote of two-thirds of the Council.

G. In any situation where a written report specifying recommendation and pertinent findings of fact regarding the proposed amendment has not been transmitted to the Council within sixty (60) days from the date of public hearing, the Council may act on such a proposal without report from the Planning Commission.

**SEC. 11.75. ADMINISTRATION AND ENFORCEMENT.** An administrative staff member designated by the City shall be the enforcement officer and shall be responsible for the enforcement of this Chapter. The duties of the Zoning Administrator shall be as follows:

**Subd. 1.** Examine all applications pertaining to the use of land, buildings, or structures; and grant approval of, and issue permits or take other appropriate action on such applications when in conformance with the provisions of this Chapter.

**Subd. 2.** Keep a record of all non-conforming uses within the several districts of the City.

**Subd. 3.** Periodically inspect buildings, structures, and uses of land to determine compliance with the terms of this Chapter.

**Subd. 4.** Notify, in writing, any person responsible for violating a provision of this Chapter, indicating the nature of the violation and ordering the action necessary to correct it.

**Subd. 5.** Order discontinuance of illegal use of land, buildings, or structures; order removal of illegal buildings, structures, additions, or alterations; order discontinuance of illegal work being done; or take any other action authorized by this Chapter to insure compliance with or to prevent violation of its provisions.

**Subd. 6.** Maintain permanent and current records of this Chapter, including all maps, amendments, conditional uses, and variances.

**Subd. 7.** Maintain a current file of all permits, zoning certificates, certificates of zoning compliances, and notices of violation, discontinuance or removal, for such time as necessary to insure a continuous compliance with the provisions of this Chapter and, on request provide information to any person having a proprietary or tenancy interest in any specific property or to any individual seeking an understanding or clarification of the regulations and procedures stipulated in this Chapter.

Source: Ordinance No. 148, 2nd Series  
Effective Date: 8-9-86

**Subd. 8.** Attend all scheduled Planning Commission and Zoning Board of Appeals and Adjustments meetings and hearings in an ex-officio capacity and draft recommendations, resolutions and decisions for the public record.

Source: Ordinance No. 338, 2nd Series  
Effective Date: 10-7-2007

**Subd. 9.** A certified copy of every ordinance, resolution, map or regulation adopted, or variance granted, shall be filed with the County Recorder.

Source: Ordinance No. 148, 2nd Series  
Effective Date: 8-9-86

**Subd. 10.** As to the W-1, W-2 and W-3 Districts, the following shall apply:

**A.** Copies of all notices and any public hearings to consider variances, amendments, conditional uses, and inconsistent plats in shoreland areas must be received by the Commissioner of Natural Resources at least 10 days prior to such hearing.

**B.** Copies of amendments, approved plats and decisions regarding variances and conditional uses must be received by the Commissioner within 10 days of final action.

Source: Ordinance No. 159, 2nd Series  
Effective Date: 6-2-88

**SEC. 11.76. SCHEDULE OF FEES, CHARGES, AND EXPENSES.** The Council, by resolution, shall establish a schedule of fees, charges, and expenses and a collection procedure for Zoning Permits, Certificates of Zoning Compliance, Conditional Use Permits, Appeal Applications, and other matters pertaining to this Chapter. This Schedule of Fees shall be available in the office of the Zoning Administrator and may be altered or amended only by the Council by resolution.

**SEC. 11.77. HEARINGS AND HEARING NOTICES.** The procedures for holding a public hearing whenever such is required under the provisions of this Chapter shall be as follows:

**Subd. 1. Setting of Hearings.** For all requests brought before the Zoning Board of Appeals and Adjustments or the Planning Commission for which a public hearing is required by this Chapter, the body in charge of conducting the hearing shall select a reasonable time and place for the public hearing on the request.

**Subd. 2. Notice of Hearings.**

**A.** Notice of public hearings shall be given not more than thirty (30) days and not less than ten (10) days before the hearing by publication at least once in the official newspaper of the City. Such notice shall include the time and place of the hearing, a description of the contents of the request to be heard, and the address of location of the property to which the request applies.

**B.** In addition to the general notice to the public, separate notice by letter shall be required for all property owners residing within the area, and for a distance of 350 feet from the boundaries of such area, except that the rural service area of Hibbing shall require notification within a distance of 1,320 feet from the boundaries of such area, where a request concerning amendment to the zoning district boundaries for areas of five acres or less will be the subject of the hearing. Such notices shall be sent by the office of the Zoning Administrator, and addresses taken from current City records shall be deemed sufficient for such notification.

C. A copy of the list of the owners and addresses to which the notice was sent shall be attested to by the Zoning Administrator, and shall be made a part of the records of the proceedings, provided a bona fide attempt to comply with this requirement has been made.

**Subd. 3. Conduct of Hearing.** Any person may appear and testify at a public hearing, either in person or by a duly authorized agent or attorney. Applicants for variances or conditional uses, and the owner or owners of property in or within 300 feet of property under consideration for a rezoning action by amendment to this Chapter, shall have the following rights in addition to any others they possess by law:

A. The right to have subpoenas issued for persons to appear at the hearings and for examination of documents by the person requesting the subpoena either before or during the hearing. Such subpoenas shall be enforceable against persons or for documents which have a substantial evidentiary connection with:

1. The property to which the request applies;
2. Facts which would support or negate the legal standards for granting the request;
3. Facts which would support or negate the conclusion that the property within 350 feet, excluding all public streets, alleys, or other public rights-of-way, will be substantially affected by the decision on the request being heard.

B. The right to cross-examine all witnesses testifying.

C. The right to present witnesses on their own behalf.

D. The right to be granted, upon request, one continuance for the purpose of presenting evidence to rebut testimony given by another party.

**Subd. 4. Administrative Procedures and Recordings at Public Hearings.** The body responsible for the hearing shall designate one from among the membership to record all pertinent data and comments at the hearing for later preparation as a written public record. Such written record shall be filed with the City Clerk within a reasonable period of time, but in no event later than thirty (30) days from the date of hearing. The hearing shall be conducted in an orderly manner according to rules of procedure established or accepted by the City. The Chairperson or acting Chairperson of the responsible body shall conduct the hearing and shall require that

all participants furnish name, address, and position of interest prior to comment on the subject under consideration during such hearing.

**Subd. 5. Continuance; Determination.** The responsible body may close the hearing or schedule a date, time, and place for a continuance of the same, subject to the requirements of the matter under consideration. Following closure, the responsible body shall meet to make the appropriate determination which shall be prepared and filed as a written public record in the office of the City Clerk. In no event shall such determination be made later than ten (10) days from the date of the hearing and the written record of the same filed not later than thirty (30) days from the date of the hearing.

Source: Ordinance No. 148, 2nd Series  
Effective Date: 8-9-86

## **SEC. 11.78 INTERIM USES.**

**Subd. 1. Purpose and intent.** The purpose and intent of allowing interim uses is:

**A.** To allow a use, that is neither a permitted use nor a conditional use, for a limited period of time subject to conditions set forth in this Chapter.

**B.** To allow a use for a brief period of time until a permanent location is obtained or while the permanent location is under construction.

**C.** To allow a use that is presently judged acceptable by the City but may not be acceptable in the future due to anticipated development or redevelopment in neighborhood of the use or will be replaced in the future by a permitted or conditional use allowed within the respective district.

**Subd. 2. Procedures.** The application, public hearing, public notice, and procedure requirements for Interim Use Permits shall be the same as those for Conditional Use Permits as provided in Section 11.73.

**Subd. 3. Standards.** An interim use shall comply with the following:

**A.** Meet the standards of a Conditional Use Permit set forth in Section 11.73.

**B.** Is allowed as an interim use in the respective zoning district.



C. Will terminate upon a date or an event that can be identified with certainty. In any event, permit will terminate upon change of ownership at which time new owner may apply for a new interim use permit.

D. Will not impose, by agreement, additional costs on the public if it is necessary for the public to take the property in the future.

E. Will be subjected to, by agreement with the owner, any conditions that the City has deemed appropriate for permission of the use, including a condition that the owner will provide an appropriate financial surety to cover the cost of removing the interim use and any interim use structures upon the expiration of the interim use permit.

**Subd. 4. Termination.** An Interim Use Permit shall terminate upon the occurrence of any of the following events whichever occurs first:

A. The date or event stated in the permit.

B. A violation of conditions under which the permit was issued.

C. Upon change in the City's zoning regulations that renders the use non-conforming.

D. The redevelopment of the use and property upon which it is located to a permitted or conditional use as allowed within the respective zoning district.

E. The use has been discontinued for a minimum of 1 year.

**Subd. 5. Certification of taxes paid.** Prior to approving an application for an interim use permit, the applicant shall provide certification to the City that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the interim use permit application relates.

Source: Ordinance No. 338, 2nd Series  
Effective Date: 10-7-2007

(Sections 11.79 through 11.98, inclusive, reserved for future expansion.)

(Pages 619 through 627 reserved)

**SEC. 11.99. VIOLATION A MISDEMEANOR.** Every person violates a section, subdivision, paragraph, or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

Source: Ordinance No. 148, 2nd Series  
Effective Date: 8-9-86