

CHAPTER 145

DANGEROUS AND DILAPIDATED STRUCTURES

145.01 Definitions	145.08 Grading of Premises After Demolition
145.02 Procedure to Remedy	145.09 Extermination Procedure Before Demolition
145.03 Time for Compliance	145.10 Bids for Demolition; Bid Opening; Award of Contract
145.04 Removal of Posted Notice	145.11 Stay of Demolition; Bond
145.05 Service by Public Utilities	145.12 Emergency Procedures
145.06 Demolition	145.13 Assessment of Costs
145.07 Access for Demolition; Penalties	

145.01 DEFINITIONS. The following words when used in this chapter shall have the meanings:

1. "Dangerous or dilapidated structure" means:
 - A. Any building, shed, fence or other man-made structure which is dangerous to the public health because of its condition. A dangerous condition shall include, but not be limited to one which may cause or aid in the spread of disease; or which may cause injury to the health of the occupants of it or neighboring structures.
 - B. Any building, shed, fence or other man-made structure which, because of faulty construction, age, lack of proper repair or any other cause, constitutes or creates a fire hazard.
 - C. Any building, shed, fence or other man-made structure which, by reason of faulty construction or any other cause, is liable to cause injury or damage by its collapsing or by the collapse or fall of all or any part of such structure.
 - D. Any building, shed, fence or other man-made structure which, because of its condition or because of lack of doors or windows, is available to or frequented by persons who are not lawful occupants of such structure.
2. "Imminently dangerous structure" is any building, shed, fence or other man-made structure which is in danger of imminent collapse of all or any part of such structure and is thereby an imminent danger to the health and safety of the general public or adjacent property.
3. "Inspecting official" means the City Administrator or duly authorized designee.
4. "Owner" means the construct purchaser if there is one of record, otherwise the record title holder.

145.02 PROCEDURE TO REMEDY. Whenever the inspecting official determines that any structure is a dangerous or dilapidated structure, the inspecting official shall:

1. Cause to be posted in a conspicuous place on the structure a notice which shall read substantially as follows: "Danger — Unsafe or Unfit Structure." Such notice shall remain posted until the required repairs, removal or demolition is completed. Such notice shall not be removed except by the inspecting official or by the inspecting

official's written permission and no persons shall enter a building except for the purpose of making the required repairs, removal or demolition.

2. Cause to be served upon the owner thereof and the occupants, if any, a written notice which shall contain:

A. The street address and a legal description sufficient for identification of the premises upon which the structure is located.

B. A statement that the inspecting official has found the structure to be a dangerous or dilapidated structure with a description of the conditions found to render the structure dangerous under the provisions of this section.

C. That the structure must be vacated by all occupants within a specified time, which shall be reasonable under the circumstances.

D. A statement of the corrective action to be taken as determined by the inspecting official including a time for commencing and completing such corrective action. All repair or modification or demolition work ordered shall be commenced within a reasonable time not to exceed thirty (30) days from the date of the notice and to be completed within a reasonable time not to exceed six (6) months from the date of the notice. Corrective action may include repair, removal or demolition, as determined by the inspecting official.

E. A statement that if the required repair, modification or demolition work is not commenced within the time specified, the City may cause the structure to be demolished and will assess all costs thereof in accordance with State law. A statement that the inspecting official will report the failure of the owner to repair, modify or demolish the structure to the Council; that the Council will conduct a public hearing on the report and may order the City Administrator to proceed with demolition of the structure and thereafter assess all the costs of demolition against the property and to the owner; that the owner may file written objections with the Clerk or appear at the public hearing and be heard orally in relation to the matter; and the date, time and place of the public hearing before the Council.

F. A statement of the right to appeal the notice in writing to the City Administrator, within fifteen (15) days of the date of notice. However, a notice to demolish a structure shall not be subject to an appeal when said notice is given subsequent to a notice to repair or modify and such repairs or modifications have not been completed.

3. Such notice may be in the form of an ordinance or by certified mail to the property owner as shown by the records of the County Auditor and to the occupants, if any, and shall state the time within which action is required. However, in an emergency, the City may perform any action which may be required under this section without prior notice and assess the costs as provided by law, after notice to the property owner and hearing.

4. The inspecting official shall file a copy of such written notice with the County Recorder.

145.03 TIME FOR COMPLIANCE. Any structure which shall have been posted with a notice that it is unsafe or unfit shall immediately be made as safe, secure and free from dangers to others as is possible pending repair or demolition. When the corrective action required is

repair or modification, the owner of the premises shall, within thirty (30) days of the date of notice, file a sworn statement of intention, with plans and financial reports as may be requested by the inspecting official to assure such intention, to repair, or modify the structure as required for compliance with the provisions of intention. The owner shall within sixty (60) days of the date of notice, commence actual repairs or modifications as required and as stated in the sworn statement of intention. The owner shall, within a reasonable time determined by the inspecting official but not to exceed six months from the date of notice, complete such repairs or modifications as stated and required. When the corrective action required is the demolition of the structure, the owner of the premises shall, within fifteen days of the date of notice, commence said demolition; and shall, within a reasonable time determined by the inspecting official but not to exceed sixty days from the date of notice complete such demolition as stated and required. The board of housing appeals may grant one extension of time to comply with an order to repair or modify or demolish a structure when the owner affirmatively shows the financial ability to perform the work; and the work, through no fault of the owner, cannot be completed within the time provided. Such extension shall be for a reasonable period of time not to exceed ninety days for repairs or modifications and not to exceed sixty days for demolition.

145.04 REMOVAL OF POSTED NOTICE. No person shall deface, cover, obliterate, or remove the notice posted pursuant to Section 145.02 from any structure which has been so posted by the inspecting official as unsafe or unfit, except as provided in this section. No such structure shall again be occupied or used until such posted notice is removed by the inspecting official. The inspecting official shall remove such posted notice when the defect or defects which caused the posted notice have been eliminated, or when the demolition or removal of the structure is commenced.

145.05 SERVICE BY PUBLIC UTILITIES. After the date for the vacation of the structure, it is unlawful for any public utilities corporation or company to furnish gas or electrical service to any structure which has been posted with notice by the inspecting official as unsafe or unfit, when the inspecting official in his or her discretion has notified the public utilities corporation or company in writing of his or her action in posting the structure as of the date and services shall be discontinued. The utility service shall not be restored to a posted structure until notice in writing is received from the inspecting official authorizing the restoration of service to be used in connection with the revocation, repair or remodeling of the structure to comply with the provisions of this chapter. The inspecting official shall give such written authorization for the restoration of service when the posted notice is removed pursuant to the provisions of this chapter.

145.06 DEMOLITION.

1. When the owner fails to commence or complete the required repairs, removal or demolition within the specified time period, the inspecting official shall report the owner's failure to the Council.
2. The Council shall then hold a hearing and may, by resolution authorize the inspecting official to demolish the structure or take such other action it deems appropriate, including the granting of a stay.
3. Upon passage of such resolution, the inspecting official shall file a certified copy of such resolution with the County Recorder.

145.07 ACCESS FOR DEMOLITION; PENALTIES. The owner of the structure who has received the report of the intent of the inspecting official to demolish, shall give entry and free access to the agent and the inspecting official for the purpose of demolition. Any owner who refuses, impedes, interferes with or hinders or obstructs entry by such agent pursuant to a notice of intention to demolish shall be subject to the municipal infraction penalties of this code in Section 4.03.

145.08 GRADING OF PREMISES AFTER DEMOLITION. Whenever the premises is demolished, whether carried out by the owner, or by the inspecting official, such demolition shall include the filing of the excavation on which the demolished premises was located in such manner as to eliminate all potential danger to the public health, safety, or welfare arising from such excavation.

145.09 EXTERMINATION PROCEDURE BEFORE DEMOLITION. All demolition shall be preceded by an inspection of the premises by the inspecting official to determine whether or not extermination procedures are necessary. If the premises are found to be infested, appropriate rat extermination to prevent the spread of rats to adjoining or other areas shall be instituted before, during and after demolition.

145.10 BIDS FOR DEMOLITION; BID OPENING; AWARD OF CONTRACT. The inspecting official shall commence demolition as follows:

1. When the estimated cost of demolition, in the opinion of the appropriate authority, is five thousand dollars or more, the work shall be done under contract and the inspecting official shall seek sealed bids as near in form and manner as those used in contracts for street improvements. If no bids are received, the inspecting official may negotiate a contract with a qualified contractor. Bids, if any, shall be opened in the office of the inspecting official.

2. When the estimated cost of demolition, in the opinion of the inspecting official, is less than five thousand dollars, the work shall be done under contract and the inspecting official shall seek sealed bids in a manner he or she deems appropriate or shall negotiate a contract with a qualified contractor. Bids, if any, shall be opened in the office of the inspecting official.

3. A contract for demolition pursuant to subsection 1 of this section shall be awarded by resolution of the City Council.

4. A contract for demolition pursuant to subsection 2 of this section shall be awarded by the City Administrator.

145.11 STAY OF DEMOLITION; BOND.

1. The owner, or any interested person, may request a delay in the demolition of a structure at the time of the hearing on resolution authorizing demolition. Such request shall be made in writing. The Council may grant such request properly before it when in its opinion it is practical, economical and structurally possible to rehabilitate the structure to comply with this code.

2. No stay granted shall be effective, however, unless and until such person signs a written agreement with the City wherein the person agrees:

- A. To make all of the necessary repairs to bring the structure to current code standards within a time not to exceed sixty days of the date the stay is granted.
- B. To grant the City the right to award a contract and to enter in and upon such premises for the purposes of demolishing same upon the failure of the person to make such necessary repairs within the agreed upon time period; and
- C. Agrees to pay the City a per diem, in an agreed upon amount, which shall serve as reimbursement to the City for administrative and monitoring expenses for each day such person requests a delay in City demolition beyond the period of time established for the repair of the structure under the agreement; and such person files a performance bond with the City in the estimated cost of demolition, as determined by the inspecting official, and in an amount sufficient to assure payment of the per diem reimbursement to the City. In no event shall the portion of the bond attributable to the cost of demolition be less than one thousand dollars, nor shall the portion of the bond attributable to the per diem reimbursement be less than one thousand dollars. The bond shall be conditioned upon the person performing the repairs within the agreed upon time period, together with, written extensions thereto, and conditioned upon payment of the per diem reimbursement as same shall become due. Upon such person's failure to make all of the repairs in a manner acceptable to the City within the agreed upon time period, together with written extensions thereto, the inspecting official may proceed to demolish the structure without further notice.
3. The proceeds of the bond given pursuant to this section, if any, shall be applied by the City Treasurer first against any unpaid per diem reimbursement and then against the assessment for demolition.

145.12 EMERGENCY PROCEDURES. Whenever the inspecting official determines that any structure in the City is an imminently dangerous structure, the inspecting official shall notify the owner of said structure by any reasonable means, including telephonic means, and allow the owner a reasonable period of time, as determined by the inspecting official, in which to make the structure safe or to commence and complete demolition of the structure. Upon the failure or refusal of the owner to make the structure safe or to commence or complete demolition within the time period provided, the inspecting official shall proceed at once to make safe the structure or to demolish the structure. In the event the work is performed by the City, the costs of same shall be assessed against the property.

145.13 ASSESSMENT OF COSTS. Upon completion of demolition the inspecting official shall report to the Council the actual cost of demolition, grading, extermination, serving of notices, plus twenty percent of the total of said amounts to compensate for the cost of supervision and administration by the City. The Council may then proceed to assess said costs against the property pursuant to the provisions of Section 364.12 of the Code of the State of Iowa.

[The next page is 811]

CHAPTER 146

MANUFACTURED AND MOBILE HOMES

146.01 Definitions

146.03 Foundation Requirements

146.02 Conversion to Real Property

146.01 DEFINITIONS. For use in this chapter the following terms are defined:
(*Code of Iowa, Sec. 435.1*)

1. “Manufactured home” means a factory-built structure, built under the authority of 42 U.S.C. Sec. 5403, which was constructed on or after June 15, 1976, and is required by Federal law to display a seal from the United States Department of Housing and Urban Development.
2. “Manufactured home community” means any site, lot, field or tract of land under common ownership upon which ten or more occupied manufactured homes are harbored, either free of charge or for revenue purposes, and includes any building, structure or enclosure used or intended for use as part of the equipment of the manufactured home community.
3. “Mobile home” means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons; but also includes any such vehicle with motive power not registered as a motor vehicle in Iowa. A mobile home means any such vehicle built before June 15, 1976, which was not built to a mandatory building code and which contains no State or Federal seals.
4. “Mobile home park” means any site, lot, field or tract of land upon which three (3) or more mobile homes or manufactured homes, or a combination of any of these homes, are placed on developed spaces and operated as a for-profit enterprise with water, sewer or septic, and electrical services available.

The term “manufactured home community” or “mobile home park” is not to be construed to include manufactured or mobile homes, buildings, tents or other structures temporarily maintained by any individual, educational institution or company on their own premises and used exclusively to house their own labor or students. The manufactured home community or mobile home park shall meet the requirements of any zoning regulations that are in effect.

146.02 CONVERSION TO REAL PROPERTY. A mobile home or manufactured home which is located outside a manufactured home community or mobile home park shall be converted to real estate by being placed on a permanent foundation and shall be assessed for real estate taxes except in the following cases:

(*Code of Iowa, Sec. 435.26 & Sec. 435.35*)

1. **Retailer’s Stock.** Mobile homes or manufactured homes on private property as part of a retailer’s or a manufacturer’s stock not used as a place for human habitation.

2. Existing Homes. A taxable mobile home or manufactured home which is located outside of a manufactured home community or mobile home park as of January 1, 1995, shall be assessed and taxed as real estate, but is exempt from the permanent foundation requirement of this chapter until the home is relocated.

146.03 FOUNDATION REQUIREMENTS. A mobile home or manufactured home located outside of a manufactured home community or mobile home park shall be placed on a permanent frost-free foundation system which meets the support and anchorage requirements as recommended by the manufacturer or required by the State Building Code. The foundation system must be visually compatible with permanent foundation systems of surrounding residential structures. Any such home shall be installed in accordance with the requirements of the State Building Code.

(Code of Iowa, Sec. 103A.10 & 414.28)

[The next page is 825]

CHAPTER 150

BUILDING NUMBERING

150.01 Division Lines
150.02 Numbers

150.03 Assigning Numbers
150.04 Directional Designation of Streets and Avenues

150.01 DIVISION LINES. All buildings now or hereafter erected adjacent to the public streets within the City shall be numbered according to the following plan:

1. In numbering buildings fronting on streets running north and south, the division line shall be Plymouth Street.
2. In numbering buildings fronting on streets running east and west, the division line shall be Central Avenue.

150.02 NUMBERS. Buildings on the east side of the streets running north and south shall bear even numbers. Buildings on the west side of such streets shall bear odd numbers. Buildings on the north side of the streets running east and west shall bear odd numbers and those on the south side of such streets shall bear even numbers. Each twenty (20) feet of frontage shall constitute a number beginning on either side of the division line with numbers 1 and 2 for the first twenty (20) feet on either side of the street and the numbers in the successive blocks in either direction shall advance by 100.

150.03 ASSIGNING NUMBERS. The City Building Official shall, when requested by any property owner, designate the number of any building within the City in accordance with the provisions in this Chapter, and shall keep a record of the number so designated.

150.04 DIRECTIONAL DESIGNATION OF STREETS AND AVENUES.

1. That part of any street or avenue lying west of Central Avenue and north of Plymouth Street shall be designated by the suffix "Northwest."
2. That part of any street or avenue lying west of Central Avenue and south of Plymouth Street shall be designated by the suffix "Southwest."
3. That part of any street or avenue lying east of Central Avenue and south of Plymouth Street shall be designated by the suffix "Southeast."
4. That part of any street or avenue lying east of Central Avenue and north of Plymouth Street shall be designated by the suffix "Northeast."

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CHAPTER 151

TREES, SHRUBS AND OTHER PLANTS

151.01 Purpose	151.14 Permits for Planting or Removal Required
151.02 Definitions	151.15 Restrictive Covenants
151.03 Creation and Establishment of City Tree Board	151.16 Public Tree Care
151.04 Term of Office	151.17 Pruning and Corner Clearance
151.05 Compensation	151.18 Removal of Stumps
151.06 Duties and Responsibilities	151.19 Visibility at Intersections
151.07 Operation	151.20 Flowers on the Right-of-way
151.08 Street Trees	151.21 Abuse or Mutilation of Public Trees
151.09 Prohibited Trees	151.22 Penalty
151.10 Spacing	151.23 Interference with City Tree Board or Code Enforcement Officer and Their Agents
151.11 Distance from Curb and Sidewalk	151.24 Funds Received for Damage or Loss of Trees
151.12 Distance from Street Corners, Alleys and Fireplugs	151.25 Appeals
151.13 Utilities	

151.01 PURPOSE. It is the purpose of this chapter to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs and other plants within the City.

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

1. “Corner lot” means a lot at all intersecting streets and on curves of a continuous street.
2. “Large tree” means any tree with a mature height of more than thirty (30) feet.
3. “Park planting” means and includes any tree, shrub and all other woody vegetation in public parks having individual names and all areas owned by the City or to which the public has free access as a park.
4. “Parking” means the area between the curb or curb line and sidewalk or sidewalk line.
5. “Shrub” means any multiple-stemmed woody plant.
6. “Small tree” means any tree with a mature height of fifteen (15) to thirty (30) feet.
7. “Street tree” means and includes any tree on land lying between property lines on either side of all streets, avenues or ways within the City.
8. “Tree” means a single-stemmed woody plant with a mature height of a minimum of fifteen (15) feet.

151.03 CREATION AND ESTABLISHMENT OF CITY TREE BOARD. There is created and established a City Tree Board for the City, which shall consist of seven (7) members, five (5) of whom shall be residents of the City, appointed by the Mayor with Council approval. The remaining two (2) members shall be the Public Works Superintendent, acting as Board Secretary, and the Assistant Public Works Superintendent, both of whom shall serve ex officio.

151.04 TERM OF OFFICE. The term of the five (5) persons to be appointed by the Council shall be three (3) years, and the terms of office of such members are staggered so that in one year, one member is appointed and in each of the next two years two members are appointed. In the event that a vacancy shall occur during the term of any member, the successor shall be appointed for the unexpired portion of the term.

151.05 COMPENSATION. Members of the Board shall serve without compensation.

151.06 DUTIES AND RESPONSIBILITIES. The Board shall act as an advisory committee to the Council. The Board shall have the responsibility to study, investigate, counsel, develop and update a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented to the Council and upon acceptance and approval shall constitute the official comprehensive City Tree Plan for the City. The Board, when requested by the Council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.

151.07 OPERATION.

1. The Board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.
2. For purposes of enforcement of any regulations established in this chapter, the Code Enforcement Officer is hereby designated as the person responsible for enforcing all regulations established herein.

151.08 STREET TREES. Street trees not allowed for planting along City streets are as follows:

Silver Maple	Fruit-bearing trees
Conifer – Evergreens	Box Elder
Nut-bearing trees	Pin Oak
Russian Olive	Catalpa
Salix (Willows)	Elms - except American Elm hybrids -
Poplars and Cottonwoods	resistant to Dutch Elm disease

A current list of street trees recommended for planting along City streets shall be kept on file at the office of the Code Enforcement Officer.

151.09 PROHIBITED TREES. The following nuisance types of trees shall not be planted upon public or private property and are subject to removal at the property owner's expense, as determined by the Code Enforcement Officer:

Cotton-bearing Poplar and	Box Elder
Cottonwood	Tree of Heaven

151.10 SPACING. Small trees shall not be planted closer than twenty (20) feet from one another or closer than thirty (30) feet from a large tree. Large trees shall not be planted closer than thirty (30) feet from one another.

151.11 DISTANCE FROM CURB AND SIDEWALK. No trees shall be planted on parkings that are less than eight (8) feet wide. Trees shall be planted no closer than four (4)

feet to the curb or curb line and no closer than three (3) feet to the sidewalk or sidewalk line. Whenever possible, trees shall be centered between the curb or curb line and the sidewalk or sidewalk line.

151.12 DISTANCE FROM STREET CORNERS, ALLEYS AND FIREPLUGS. No street trees shall be planted closer than ten (10) feet to the intersecting lot lines of a corner lot. No street trees shall be planted within five (5) feet of any alley or drive. No street trees shall be planted closer than ten (10) feet of any fireplug or utility pole.

151.13 UTILITIES. No street trees other than those approved as small trees by the Tree Board may be planted under or within ten (10) lateral feet of any overhead utility wire.

151.14 PERMITS FOR PLANTING OR REMOVAL REQUIRED. No street tree shall be planted unless a permit is obtained from the Code Enforcement Officer. All plantings must be specified and noted on the permit as well as the location of said plantings. Any plantings done prior to issuance of a permit are subject to removal by order of the Code Enforcement Officer if in violation of any regulation contained in this chapter and will require the immediate acquisition of a permit. No living tree shall be destroyed or removed from the parking unless a permit is obtained.

151.15 RESTRICTIVE COVENANTS. The provisions of this chapter are required to be included in the restrictive covenants of all new subdivisions of the City.

151.16 PUBLIC TREE CARE. The City shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The City may remove or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines or public improvements, or is affected with any disease, insect or other pest. This section does not prohibit the planting of street trees by adjacent property owners, providing that the selection and location of such trees is in accordance with this chapter.

151.17 PRUNING AND CORNER CLEARANCE. Every owner or occupant of real property bordering upon any street, alley or public place shall keep the branches of any tree overhanging any street or right-of-way within the City pruned so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of fifteen (15) feet above the surface of any street or alley and a clear space of ten (10) feet above the surface of any right-of-way grounds or sidewalk. The owner shall remove broken or decayed limbs which constitute a menace to the safety of the public. The City shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility or any traffic control device or sign.

151.18 REMOVAL OF STUMPS. All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

151.19 VISIBILITY AT INTERSECTIONS. On a corner lot in any residential district, nothing shall be erected, placed, planted or allowed to grow in such a manner as to materially impede vision between a height of two and one-half (2½) and ten (10) feet above the centerline

grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said street lines twenty-five (25) feet from the point of intersection of the right-of-way lines. If a violation is discovered by the Code Enforcement Officer, he or she is to give a 20-day written notice to the property owner or occupant to remedy the violation. The notice shall specify the exact extent of the violation and provide that the property owner or occupant may appeal to the City Tree Board if said owner or occupant disagrees with the Code Enforcement Officer's notice. If the City Tree Board finds that it agrees with the Code Enforcement Officer, it shall order the Code Enforcement Officer to proceed with remedying any violations at the expense of the property owner or occupant.

151.20 FLOWERS ON THE RIGHT-OF-WAY. Shrubs and flowers may be grown on public right-of-way if maintained under 2½ feet above ground level and if they present no safety hazard. No vegetables may be planted on public right-of-ways.

151.21 ABUSE OR MUTILATION OF PUBLIC TREES.

1. It is unlawful as a normal practice for any person, firm or City department to top any street, park or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this chapter at the determination of the Council. Unless specifically authorized by the City Tree Board, no person shall intentionally damage, cut, carve, transplant or remove any tree on public property; attach any rope, wire, nail, advertising poster or other contrivance to any tree on public property; allow any gaseous liquid or solid substance that is harmful to such trees to come in contact with them or with their roots; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree on public property.

2. The City Tree Board shall assess to the person who causes damage to or loss of City trees the damage value based on estimate figures using International Society of Arboriculture Standards.

151.22 PENALTY. Any person violating any provisions of this chapter shall be in violation of this Code of Ordinances. Said person shall comply in all respects with any previous orders or notices issued by the Code Enforcement Officer within five (5) days of conviction or plea.

151.23 INTERFERENCE WITH CITY TREE BOARD OR CODE ENFORCEMENT OFFICER AND THEIR AGENTS. It is unlawful for any person to prevent, delay or interfere with the City Tree Board, Code Enforcement Officer or any of their agents, while engaging in or participating in any planting, cultivation, mulching, pruning, spraying, removing or inspecting any street trees, park trees or other trees, shrubs or other plantings on public property as specified in this chapter.

151.24 FUNDS RECEIVED FOR DAMAGE OR LOSS OF TREES. Any funds received or collected by the City for damage or loss of street or park trees shall be placed in a City Tree Fund and designated for the purchase of replacement street and park trees.

151.25 APPEALS. A decision of the Code Enforcement Officer may be appealed to the City Tree Board. All appeals must be made in writing, addressed to the Chairperson of the

Tree Board. The Tree Board is then required to hold a hearing on the appeal within thirty-five (35) days of the receipt of said appeal. Written notice of the hearing date and time is to be mailed to the appellant and the Tree Board ten (10) days prior to said hearing date. The Tree Board shall then make a written finding within forty-five (45) days of the hearing date, with a copy to the appellant and Council. The Tree Board recommendation shall be presented to the Council for a final decision. The Council may abide by the Tree Board's recommendation or make its own decision. However, in no case will the Council conduct further hearings on such matters. The decision of the Council will be final.

[The next page is 835]

CHAPTER 152

SIGNS

152.01 Purpose	152.08 Canopy Signs
152.01 Definitions	152.09 Portable Signs
152.03 Signs Allowed in All Districts	152.10 Paper Posters
152.04 Signs in Business and Industrial Districts	152.11 Billboard
152.05 Wall Signs	152.12 Prohibited Signs
152.06 Projecting Signs	152.13 Permits
152.07 Free-Standing Signs	

152.01 PURPOSE. The purpose of this chapter is to provide that all signs and sign structures are constructed to protect the safety and development of the City.

152.02 DEFINITIONS. For use in this chapter, unless the context specifically indicates otherwise, the following terms are defined:

1. “Animated Sign” means a sign using actual motion or the illusion of motion.
2. “Awning” means a projection from and supported by the exterior wall of a building and composed of a covering of rigid or non-rigid material placed upon supporting framework.
3. “Billboard” means a sign erected, maintained or used for the purpose of displaying commercial or noncommercial messages not specific to the use of the property on which it is placed.
4. “Canopy” means any of the following:
 - A. Attached. An overhead structure or projection supported by the exterior wall of a building and columns at additional points.
 - B. Free-Standing. An overhead structure supported by columns on all sides and free from buildings.
5. “Canopy Sign” means a sign placed on a canopy.
6. “Changeable Sign” means a sign in which the message or content can be changed by means of manual or remote input.
7. “Free-Standing Sign” means a sign supported by a structure or structures affixed to the ground and not supported by a building. Acceptable means of support shall include columns or posts. This type of sign may also be referred to as “ground”, “pole” or “monument” sign.
8. “Political Sign” means a sign, temporary in nature, intended to promote an election or candidate.
9. “Portable Sign” means a sign not permanently attached to a building or the ground. Portable signs shall be considered temporary.
10. “Projecting Sign” means a sign that is attached to and extends more than 18 inches from the exterior wall of a building or structure.

11. "Roof Sign" means a sign that is mounted and supported by the roof of a building.
12. "Sign" means a device visible from a public or private place that displays either commercial or noncommercial messages.
13. "Temporary Sign" means a sign displaying commercial or noncommercial messages of a temporary nature not permanently attached to a building, a structure or the ground. Temporary signs shall include portable signs.
14. "Wall Sign" means a sign that is attached to and extends no more than 18 inches from the exterior wall of a building or structure.

152.03 SIGNS ALLOWED IN ALL DISTRICTS. The following signs are allowed in all districts:

1. Temporary signs not exceeding twelve (12) square feet in area advertising the sale or lease of real estate when located upon property to which the sign refers and when not located closer than ten (10) feet to a lot line, which shall be removed upon sale or lease of the property.
2. Temporary free-standing signs advertising future use or development of property on which such signs are located may be maintained subject to the provisions of this section provided such signs do not exceed thirty (30) square feet in area or remain longer than six (6) months. "For Rent" and "For Lease" signs in commercial and industrial districts for new buildings shall not exceed forty-eight (48) square feet or remain more than ninety (90) days after the building is completed.
3. Church or public building bulletin boards not exceeding twenty-four (24) square feet in area.
4. Traffic and public signs.
5. Political signs, on private property, not exceeding six (6) square feet in area. Such signs for election candidates or ballot propositions shall be displayed only for a period of sixty (60) days preceding the election and shall be removed ten (10) days after the election, provided that signs promoting successful candidates or ballot propositions in a primary election may remain displayed until not more than ten (10) days after the general election. Such signs shall not be placed in any public right-of-way.

152.04 SIGNS IN BUSINESS AND INDUSTRIAL DISTRICTS. In the business and industrial districts, there may be roof signs, wall signs, projecting signs, free-standing signs, canopy signs and awning signs when displaying no advertising matter except pertaining to the business conducted in the building or on the premises on which any such sign is placed. The total square foot area of roof signs, wall signs, projecting signs, canopy signs and awning signs shall not exceed one-fifth (1/5) of the total square foot area of the face of the building on which they are placed. There shall not be more than one free-standing sign for each one hundred (100) feet of street frontage. For the purpose of this section, "pertaining to the business conducted in the building or on the premises on which any such sign is placed" refers to advertising matter pertaining to significant business or industrial operations being conducted in the building or on the premises in question (other than mere advertising). The Zoning Board of Adjustment may, on appeal from a decision of the Building Official, vary the requirements of this subsection in instances where strict enforcement of this subsection would cause undue

hardship due to unique circumstances. However, any variances from the provisions of this section shall be granted only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the Zoning Ordinances.

152.05 WALL SIGNS.

1. No wall sign shall extend beyond the building more than eighteen (18) inches.
2. No wall sign shall be so erected as to cover the doors or windows of any building or otherwise prevent free ingress or egress to or from any window, door or any fire escape of any building.

152.06 PROJECTING SIGNS.

1. No projecting sign may extend more than four feet, six inches (4' 6") from a building or structure.
2. Projecting signs must have a minimum height of ten (10) feet from grade level to the bottom of the sign.

152.07 FREE-STANDING SIGNS. No free-standing sign shall extend downward nearer than ten (10) feet to ground or pavement. The maximum total area for all free-standing signs on the premises shall be based on street frontage as follows:

1. 0 to 80 foot frontage — 2.0 square feet per foot of frontage;
2. For the next 80 to 160 foot frontage — 1.5 square feet per foot of frontage;
3. For the next 160 to 240 foot frontage — 1.0 square foot per foot of frontage;
4. For all over 240 foot frontage — 0.5 square foot per foot of frontage;
5. No free-standing sign shall exceed 400 square feet total, all faces.

152.08 CANOPY SIGNS. A sign may be placed upon a canopy provided such sign does not extend more than three (3) feet above or one foot below such canopy.

152.09 PORTABLE SIGNS. Portable signs may only be allowed in business and industrial districts under the following conditions:

1. One portable sign will be allowed at each service station restricted solely to stating the price of gasoline. Said sign cannot exceed three (3) feet in length (horizontally) or be over five (5) feet high.
2. Portable signs shall not have any lights attached to them or shining on them, although they may have a constant light or lights inside of the sign for illumination.
3. Portable signs shall not be placed on public right-of-way and shall not be placed in such a location as they are hazardous to traffic as determined by the Police Chief.
4. One portable sign will be allowed at all other locations and will be considered temporary in nature and with the issuance of a temporary sign permit.

152.10 PAPER POSTERS. Paper posters applied directly to the wall or building or pole or other support and letters or pictures in the form of advertising, printed or applied directly on the wall of a building are prohibited. Temporary signs may be displayed in or attached to the

inside of show or display windows provided the total sign area does not exceed twenty percent (20%) of the show or display window area.

152.11 BILLBOARDS. All new billboards are prohibited except those specifically designated by the City Council, when and after the Council has determined it is in the best interests of the City to allow said billboards. The Council shall conduct a public hearing on the placement and location of said billboards.

152.12 PROHIBITED SIGNS. Any sign, including animated signs and changeable signs, due to blinking, flashing, color, location, or design that resembles or conflicts with traffic control signs, devices or emergency vehicles shall be prohibited.

152.13 PERMITS. It is unlawful for any person to place or erect a sign without a valid permit issued by the Code Enforcement Officer. Permits issued for temporary signs are valid for thirty (30) consecutive days in any three (3) month period, and not more than ninety (90) days in any calendar year.

(Ch. 152 – Ord. 885 –Aug. 11 Supp.)

[The next page is 855]

CHAPTER 154

WIRELESS TELECOMMUNICATIONS FACILITIES SITING

154.01 Purpose and Legislative Intent	154.17 Retention of Expert Assistance and Reimbursement by Applicant
154.02 Title	154.18 Public Hearing and Notification Requirements
154.03 Severability	154.19 Action on an Application for a Special Use Permit for Wireless Telecommunications Facilities
154.04 Definitions	154.20 Extent and Parameters of Special Use Permit for Wireless Telecommunications Facilities
154.05 Overall Policy and Desired Goals for Special Use Permits for Wireless Telecommunications Facilities	154.21 Application Fee
154.06 Exceptions from a Special Use Permit for Wireless Telecommunications Facilities	154.22 Performance Security
154.07 Exclusions	154.23 Reservation of Authority to Inspect Wireless Telecommunications Facilities
154.08 Special Use Permit Application and Other Requirements	154.24 Liability Insurance
154.09 Location of Wireless Telecommunications Facilities	154.25 Indemnification
154.10 Shared Use of Wireless Telecommunications Facilities and Other Structures	154.26 Fines
154.11 Placement of Wireless Telecommunications Facility on City-Owned Property	154.27 Default and/or Revocation
154.12 Height of Telecommunications Tower(s)	154.28 Removal of Wireless Telecommunications Facilities
154.13 Visibility of Wireless Telecommunications Facilities	154.29 Relief
154.14 Security of Wireless Telecommunications Facilities	154.30 Periodic Regulatory Review by City
154.15 Signage	154.31 Adherence to State and/or Federal Rules and Regulations
154.16 Lot Size and Setbacks	154.32 Home Rule
	154.33 Conflict with Other Laws
	154.34 Effective Date
	154.35 Authority

154.01 PURPOSE AND LEGISLATIVE INTENT. The Telecommunications Act of 1996 affirmed the City of Le Mars, Iowa's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The City of Le Mars, Iowa finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the City and its inhabitants. The City also recognizes that facilitating the development of wireless service technology can be an economic development asset to the City and of significant benefit to the City and its residents. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the City's land use policies, the City is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this Local Ordinance is to minimize impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and establish fair leases and protect the health, safety and welfare of the City of Le Mars, Iowa.

154.02 TITLE. This chapter shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for the City of Le Mars, Iowa.

154.03 SEVERABILITY.

1. If any word, phrase, sentence, part, section, subsection, or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be

severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

2. Any Special Use Permit issued under this chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the Permit shall be void in total, upon determination by the City.

154.04 DEFINITIONS. For purposes of this chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word “shall” is always mandatory, and not merely directory.

1. “**Accessory Facility or Structure**” means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

2. “**Applicant**” means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.

3. “**Application**” means all necessary and appropriate documentation that an Applicant submits in order to receive a Special Use Permit for Wireless Telecommunications Facilities.

4. “**Antenna**” means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

5. “**Co-location**” means the use of an existing Tower or structure to support Antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed in a reasonable short time frame after the new tower is constructed.

6. “**Commercial Impracticability**” or “**Commercially Impracticable**” means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.

7. “**Completed Application**” means an Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application.

8. “**Council**” means the City Council of the City of Le Mars, Iowa.

9. “**FAA**” means the Federal Aviation Administration, or its duly designated and authorized successor agency.

10. **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
11. **“Height”** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
12. **“Modification” or “Modify”** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site as a co-location is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.
13. **“NIER”** means Non-Ionizing Electromagnetic Radiation
14. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
15. **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’
16. **“Personal Wireless Services” or “PWS” or “Personal Telecommunications Service” or “PCS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
17. **“Repairs and Maintenance”** means the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.
18. **“Special Use Permit”** means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use Wireless Telecommunications Facilities as granted or issued by the City.
19. **“Stealth” or “Stealth Technology”** means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances,
20. **“State”** means the State of Iowa.
21. **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems

22. **“Telecommunication Site”** See definition for Wireless Telecommunications Facilities
23. **“Telecommunications Structure”** means a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’
24. **“Temporary”** means, temporary in relation to all aspects and components of this chapter, something intended to, or that does not exist for more than ninety (90) days.
25. **“Tower”** means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.
26. **“Wireless Telecommunications Facilities”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility”**. It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

154.05 OVERALL POLICY AND DESIRED GOALS FOR SPECIAL USE PERMITS FOR WIRELESS TELECOMMUNICATIONS FACILITIES. In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the City’s health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this chapter, the City hereby adopts an overall policy with respect to a Special Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

1. Requiring a Special Use Permit for any new, co-location or modification of a Wireless Telecommunications Facility.
2. Implementing an Application process for person(s) seeking a Special Use Permit for Wireless Telecommunications Facilities;
3. Establishing a policy for examining an application for and issuing a Special Use Permit for Wireless Telecommunications Facilities that is both fair and consistent.
4. Promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers.
5. Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

6. That in granting a Special Use Permit, the City has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the City.

154.06 EXCEPTIONS FROM A SPECIAL USE PERMIT FOR WIRELESS TELECOMMUNICATIONS FACILITIES.

1. Except as otherwise provided by this chapter no Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, Wireless Telecommunications Facilities as of the effective date of this chapter without having first obtained a Special Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this chapter, no Special Use Permit shall be required for those non-commercial exceptions noted in Chapter 154.07.
2. All legally permitted Wireless Telecommunications Facilities, constructed as permitted, existing on or before the effective date of this chapter shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing Wireless Telecommunications Facility will require the complete facility and any new installation to comply with this chapter.
3. Any Repair and Maintenance of a Wireless Facility does not require an Application for a Special Use Permit.

154.07 EXCLUSIONS. The following shall be exempt from this chapter:

1. The City's fire, police, department of transportation or other public service facilities owned and operated by the City.
2. Any facilities expressly exempt from the City's siting, building and permitting authority.
3. Over-the-Air reception Devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception.
4. Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications.
5. Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11 a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower.

154.08 SPECIAL USE PERMIT APPLICATION AND OTHER REQUIREMENTS.

1. All Applicants for a Special Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this chapter. The City Council is the officially designated agency or body of the City to whom applications for a Special Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting or revoking Special Use Permits for Wireless Telecommunications Facilities. The City may at its discretion delegate or designate other official agencies or officials of the City to accept, review, analyze, evaluate and make recommendations to the City Council with respect to the granting or not granting or revoking Special Use Permits for Wireless Telecommunications Facilities.
2. The City may reject applications not meeting the requirements stated herein or which are otherwise incomplete.
3. No Wireless Telecommunications Facilities shall be installed, constructed or modified until the Application is reviewed and approved by the City, and the Special Use Permit has been issued.
4. Any and all representations made by the Applicant to the City on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the City.
5. An Application for a Special Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.
6. The Applicant must provide documentation to verify it has the right to proceed as proposed on the Site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.
7. The Applicant shall include a statement in writing:
 - A. That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, without exception, unless specifically granted relief by the City in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable City, State and Federal Laws, rules, and regulations;
 - B. That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.
8. Where a certification is called for in this chapter, such certification shall bear the signature and seal of a Registered Professional licensed in the State.
9. In addition to all other required information as stated in this chapter, all applications for the construction or installation of new Wireless Telecommunications Facilities or modification of an existing facility shall contain the information hereinafter set forth.

- A. A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;
- B. Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the City. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;
- C. The name, address and phone number of the person preparing the report;
- D. The name, address, and phone number of the property owner and Applicant, and to include the legal name of the Applicant. If the site is a tower and the owner is different than the applicant, provide name and address of the tower owner;
- E. The postal address and tax map parcel number of the property;
- F. The Zoning District or designation in which the property is situated;
- G. Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- H. The location of nearest residential structure;
- I. The location, size and height of all existing and proposed structures on the property which is the subject of the Application;
- J. The type, locations and dimensions of all proposed and existing landscaping, and fencing;
- K. The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure;
- L. The number, type and model of the Antenna(s) proposed with a copy of the specification sheet;
- M. The make, model, type and manufacturer of the Tower and design plan stating the Tower's capacity to accommodate multiple users;
- N. A site plan describing the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
- O. The frequency, modulation and class of service of radio or other transmitting equipment;
- P. The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;
- Q. Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not

categorically excluded, a complete RF Emissions study is required to provide verification;

R. A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;

S. A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;

T. A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing Tower site and if existing Tower or water tank site, a copy of the installed foundation design.

10. The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new Tower or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines, that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

11. Application for New Tower.

A. In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the City. Copies of written requests and responses for shared use shall be provided to the City in the Application, along with any letters of rejection stating the reason for rejection.

B. In order to better inform the public, in the case of a new Telecommunication Tower, the Applicant shall, prior to the public hearing on the application, hold a "balloon test". The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the City. The Applicant shall inform the City, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the Application.

C. The Applicant shall examine the feasibility of designing the proposed Tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least four (4) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be

waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:

- (1) The foreseeable number of FCC licenses available for the area;
- (2) The kind of Wireless Telecommunications Facilities site and structure proposed;
- (3) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
- (4) Available space on existing and approved Towers.

D. The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:

- (1) Respond within 60 days to a request for information from a potential shared-use Applicant;
- (2) Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
- (3) Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference;
- (4) Failure to abide by the conditions outlined above may be grounds for revocation of the Special Use Permit.

12. The Applicant shall provide certification with documentation (structural analysis) including calculations that the Telecommunication Facility Tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, City, State and Federal structural requirements for loads, including wind and ice loads.

13. If proposal is for a co-location or modification on an existing Tower, the applicant is to provide signed documentation of the Tower condition such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.

14. All proposed Wireless Telecommunications Facilities shall contain a demonstration that the Facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the Wireless Telecommunications Facility.

15. If a new Tower, proposal for a new Antenna attachment to an existing structure, or modification adding to a visual impact, the Applicant shall furnish a Visual Impact Assessment, which shall include:

A. If a new Tower or increasing the height of an existing structure is proposed, a computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen.

B. Pictorial representations of "before and after" (photo simulations) views from key viewpoints both inside and outside of the City as may be appropriate, including but not limited to State highways and other major roads; State and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure.

C. A written description of the visual impact of the proposed facility including; and as applicable the Tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.

16. The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility

17. The Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may be required by the City.

18. All utilities at a Wireless Telecommunications Facilities site shall be installed underground whenever possible and in compliance with all Laws, Ordinances, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

19. At a Telecommunications Site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

20. All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes

referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

21. A holder of a Special Use Permit granted under this chapter shall obtain, at its own expense, all permits and licenses required by applicable Law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.

22. There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site.

23. An Applicant shall submit to the City the number of completed Applications determined to be needed at the pre-application meeting. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities as applicable and/or requested.

24. The holder of a Special Use Permit shall notify the City of any intended Modification of a Wireless Telecommunication Facility and shall apply to the City to modify, relocate or rebuild a Wireless Telecommunications Facility.

25. With respect to this application process, the Council will normally seek to have lead agency status pursuant to SEQRA. The Council shall conduct an environmental review of the proposed project pursuant to SEQRA in combination with its review of the Application.

154.09 LOCATION OF WIRELESS TELECOMMUNICATIONS FACILITIES.

1. Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and seven (7) being the lowest priority.

- 1) On existing Towers or other structures on city owned properties
- 2) On existing Towers or other structures on other property in the City
- 3) A new Tower on City-owned properties
- 4) A new Tower on properties in areas zoned for Heavy Industrial use
- 5) A new Tower on properties in areas zoned for Commercial use
- 6) A new Tower on properties in areas zoned for Agricultural use
- 7) A new Tower on properties in areas zoned for Residential use

2. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.

3. An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the Applicant must explain to the reasonable satisfaction of the City why co-location is Commercially or otherwise

Impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship.

4. Notwithstanding the above, the City may approve any site located within an area in the above list of priorities, provided that the City finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.

5. The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.

6. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an Application for any of the following reasons.

- A. Conflict with safety and safety-related codes and requirements;
- B. Conflict with the historic nature or character of a neighborhood or historical district;
- C. The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
- D. The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the City, or employees of the service provider or other service providers;
- E. Conflicts with the provisions of this chapter.

154.10 SHARED USE OF WIRELESS TELECOMMUNICATIONS FACILITIES AND OTHER STRUCTURES.

1. The City, as opposed to the construction of a new Tower, shall prefer locating on existing Towers or others structures without increasing the height. The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within two (2) miles of the location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure cannot be used.

2. An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the Applicant.

3. Such shared use shall consist only of the minimum Antenna Array technologically required to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown.

154.11 PLACEMENT OF WIRELESS TELECOMMUNICATIONS FACILITY ON CITY-OWNED PROPERTY.

1. To assure revenues from site leases of City-owned and -controlled land and structures reflects fair compensation for use of City property and administration of this section.

A. No person or other entity shall use any public property without first obtaining a lease from the City.

B. No lease for the use of public property shall be granted without requiring the lessee thereof to pay a reasonable and competitively neutral fee for the use of that public property.

C. No lease for the use of public property shall be granted for a term of more than one year or as approved by the Council.

2. Placement of Facilities and Related Lease Fees. The placement and maintenance of communications antennas or towers on City-owned sites, such as water towers and parks, will be allowed when the following additional requirements are met.

A. Water Tower or Reservoir Sites. The City's water tower and reservoir represent a large public investment in water pressure stabilization and peak capacity reserves. Therefore, its protection is of prime importance. As access to the City's water storage system increases, so does the potential for contamination of the public water supply. For these reasons, the placement of communications towers or antennas on water towers or reservoir sites will be allowed only when the following requirements are met:

(1) The applicant must have written approval from the Water Superintendent each time access to the facility is desired. This will minimize the risk of contamination to the water supply.

(2) There is sufficient room on the structure and/or the grounds to accommodate the applicant's facility.

(3) The presence of the facility will not increase the water tower or reservoir maintenance cost to the City.

(4) The presence of the facility will not be harmful to the health or safety of the workers maintaining the water tower or reservoir.

The fees assessed for placing facilities on a City water tower shall be as set by resolution of the Council.

B. Parks. The presence of certain communications antennas or towers represents a potential conflict with the purpose of certain City-owned parks and recreational facilities. Towers shall be prohibited in designated conservation areas. Communications antennas or towers will be considered only in the following parks after the recommendation of the Parks and Recreation Committee and approval of the Council.

(1) Public parks of a sufficient scale and character that are adjacent to an existing commercial or industrial use.

(2) Commercial recreational areas and major ball fields.

(3) Park maintenance facilities.

The fees assessed for placing facilities on park property shall be as set by resolution of the Council.

3. Termination. The Council may terminate any lease if it is determined that any one of the following conditions exist.

A. A potential user with a higher priority cannot find another adequate location and the potential use would be incompatible with the existing use.

B. A user's frequency broadcast unreasonably interferes with other users of higher priority, regardless of whether or not this interference was adequately predicted in the technical analysis.

C. A user violates any of the standards in this chapter or the conditions attached to the City's lease agreement.

Before taking action, the City will provide notice to the user of the intended termination and the reasons for it, and provide an opportunity for a hearing before the Council regarding the proposed action. This procedure need not be followed in emergency situations.

154.12 HEIGHT OF TELECOMMUNICATIONS TOWER(S).

1. The Applicant shall submit documentation justifying the total height of any Tower, Facility and/or Antenna requested and the basis therefor. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown.

2. No Tower constructed after the effective date of this chapter, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with City, State, and/or any Federal statute, law, local law, City Ordinance, code, rule or regulation.

154.13 VISIBILITY OF WIRELESS TELECOMMUNICATIONS FACILITIES.

1. Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law.

2. Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this chapter.

3. If lighting is required, Applicant shall provide a plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

154.14 SECURITY OF WIRELESS TELECOMMUNICATIONS FACILITIES. All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

1. All Antennas, Towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and

2. Transmitters and Telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

154.15 SIGNAGE. Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

154.16 LOT SIZE AND SETBACKS. All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying Zoning District, whichever is greater. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

154.17 RETENTION OF EXPERT ASSISTANCE AND REIMBURSEMENT BY APPLICANT.

1. The City may hire any consultant and/or expert necessary to assist the City in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections.
2. An Applicant shall deposit with the City funds sufficient to reimburse the City for all reasonable costs of consultant and expert evaluation and consultation to the City in connection with the review of any Application including where applicable, the lease negotiation, the pre-approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500.00 with the City shall precede the pre-application meeting. The City will maintain a separate escrow account for all such funds. The City's consultants/experts shall invoice the City for its services related to the Application. If at any time during the process this escrow account has a balance less than \$2,500.00, the Applicant shall immediately, upon notification by the City, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the City before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the City is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant.
3. The total amount of the funds needed as set forth in subsection (2) of this Section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

154.18 PUBLIC HEARING AND NOTIFICATION REQUIREMENTS.

1. Prior to the approval of any Application for a Special Use Permit for Wireless Telecommunications Facilities, a Public Hearing shall be held by the City, notice of which shall be published in the newspaper general circulation in of the City no less than ten (10) calendar days prior to the scheduled date of the Public Hearing. In order that the City may notify nearby landowners, the Application shall contain the names and address of all landowners whose property is located within fifteen hundred (1,500) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located.
2. There shall be no Public Hearing required for an Application to co-locate on an existing Tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the Tower or structure, including attachments thereto.
3. The City shall schedule the Public Hearing referred to in Subsection 1 of this section once it finds the Application is complete, the City, at any stage prior to issuing a Special Use Permit, may require such additional information as it deems necessary.

154.19 ACTION ON AN APPLICATION FOR A SPECIAL USE PERMIT FOR WIRELESS TELECOMMUNICATIONS FACILITIES.

1. The City will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
2. The City may refer any Application or part thereof to any advisory, other committee or commission for a non-binding recommendation.
3. After the Public Hearing and after formally considering the Application, the City may approve, approve with conditions, or deny a Special Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the granting of the Permit shall always be upon the Applicant.
4. If the City approves the Special Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the City's action, and the Special Use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Special Use Permit has been granted hereunder, no additional permits or approvals from the City, such as site plan or zoning approvals, shall be required by the City for the Wireless Telecommunications Facilities covered by the Special Use Permit.
5. If the City denies the Special Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the City's action.

154.20 EXTENT AND PARAMETERS OF SPECIAL USE PERMIT FOR WIRELESS TELECOMMUNICATIONS FACILITIES. The extent and parameters of a Special Use Permit for Wireless Telecommunications Facilities shall be as follows:

1. Such Special Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the City.
2. Such Special Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit, or for a material violation of this chapter after prior written notice to the holder of the Special Use Permit.

154.21 APPLICATION FEE. At the time that a Person submits an Application for a Special Use Permit for a new Tower, such Person shall pay a non-refundable application fee of \$5,000.00 to the City. If the Application is for a Special Use Permit for co-locating on an existing Tower or other suitable structure, where no increase in height of the Tower or structure is required, the non-refundable fee shall be \$2,500.00.

154.22 PERFORMANCE SECURITY. The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the City a bond, or other form of security acceptable to the City as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the City to assure the faithful performance of the terms and conditions of this chapter and conditions of any Special Use Permit issued pursuant to this chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Special Use Permit.

154.23 RESERVATION OF AUTHORITY TO INSPECT WIRELESS TELECOMMUNICATIONS FACILITIES. In order to verify that the holder of a Special Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, Laws, Ordinances and regulations and other applicable requirements, the City may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.

154.24 LIABILITY INSURANCE.

1. A holder of a Special Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below:
 - A. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - B. Automobile Coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - C. Workers Compensation and Disability: Statutory amounts.
2. For a Wireless Telecommunications Facility on City property, the Commercial General Liability insurance policy shall specifically include the City and its officers,

Councils, employees, committee members, attorneys, agents and consultants as additional insureds.

3. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
4. The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
5. Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
6. Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the granting of the Special Use Permit, the holder of the Special Use Permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.

154.25 INDEMNIFICATION.

1. Any application for Wireless Telecommunication Facilities that is proposed for City property, pursuant to this chapter, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the City, and its officers, Councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.
2. Notwithstanding the requirements noted in subsection 1 of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a Special Use Permit for Wireless Telecommunications Facilities.

154.26 FINES.

1. In the event of a violation of this chapter or any Special Use Permit issued pursuant to this chapter, the City may impose and collect, and the holder of the Special Use Permit for Wireless Telecommunications Facilities shall pay to the City, fines or penalties as set forth below.
2. The holder of a Special Use Permits failure to comply with provisions of this chapter shall constitute a violation of this chapter and shall subject the Applicant to the

code enforcement provisions and procedures as provided in Section 1.14 of the City of Le Mars, Iowa Code of Ordinances and Chapter _____, _____ Statutes.

3. Notwithstanding anything in this chapter, the holder of the Special Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit. The City may also seek injunctive relief to prevent the continued violation of this chapter, without limiting other remedies available to the City.

154.27 DEFAULT AND/OR REVOCATION. If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter or of the Special Use Permit, then the City shall notify the holder of the Special Use Permit in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as in Section 154.26 and if a violation is not corrected to the satisfaction of the City in a reasonable period of time the Special Use Permit is subject to revocation.

154.28 REMOVAL OF WIRELESS TELECOMMUNICATIONS FACILITIES.

1. Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of Wireless Telecommunications Facilities.

A. Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;

B. Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;

C. Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or any other necessary authorization and the Special Permit may be revoked.

2. If the City makes such a determination as noted in subsection 1 of this section, then the City shall notify the holder of the Special Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed, the City may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.

3. The holder of the Special Use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability, within ninety (90) days of receipt of written notice from the City. However, if the owner of the property upon which the Wireless Telecommunications

Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the City.

4. If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the Permit holder has received notice, then the City may order officials or representatives of the City to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Special Use Permit holder.

5. If, the City removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the City may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.

6. Notwithstanding anything in this section to the contrary, the City may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Special Use Permit, subject to the approval of the City, and an agreement to such plan shall be executed by the holder of the Special Use Permit and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this section.

154.29 RELIEF. Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this chapter may request such, provided that the relief or exemption is contained in the submitted Application for either a Special Use Permit, or in the case of an existing or previously granted Special Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the City, its residents and other service providers.

154.30 PERIODIC REGULATORY REVIEW BY THE CITY.

1. The City may at any time conduct a review and examination of this entire chapter.
2. If after such a periodic review and examination of this chapter, the City determines that one or more provisions of this chapter should be amended, repealed, revised, clarified, or deleted, then the City may take whatever measures are necessary in accordance with applicable Law in order to accomplish the same. It is noted that where warranted, and in the best interests of the City, the City may repeal this entire chapter at any time.
3. Notwithstanding the provisions of subsections 1 and 2 of this section, the City may at any time and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this chapter.

154.31 ADHERENCE TO STATE AND/OR FEDERAL RULES AND REGULATIONS.

1. To the extent that the holder of a Special Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
2. To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Special Use Permit for Wireless Telecommunications Facilities, then the holder of such a Special Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

154.32 HOME RULE. This chapter is intended to be and shall be construed as consistent with the reservation of local authority contained in the 25th Amendment to the Iowa Constitution granting cities Home Rule powers. To such end, any limitation on the power of the City contained herein is to be strictly construed and the City reserves to itself the right to exercise all power and authority to regulate and control its local affairs and all ordinances and regulations of the City shall be enforced against the holders of any lease.

154.33 CONFLICT WITH OTHER LAWS. Where this chapter differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, State or Federal government, this chapter shall apply.

154.34 EFFECTIVE DATE. This chapter shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

154.35 AUTHORITY. This local Ordinance No. 883, codified by this chapter, is enacted pursuant to applicable authority granted by the State and Federal government.

(Chapter 154 – Ord. 883 – Aug. 11 Supp.)

[The next page is 885]

CHAPTER 155

BUILDING AND CONSTRUCTION REGULATIONS

155.01 Purpose	155.06 Inspections Required in Case of Violation
155.02 Effect of Provisions on City and Individual Liability	155.07 Setting Fees for Additional Inspections
155.03 Enforcement	155.08 Inspection Certificates
155.04 Right to Enter or Stop Work	155.09 Removal of Violations
155.05 Permit Fees; Building	155.10 Technical Codes Adopted by Reference
	155.11 Minimum Width of Buildings and Structures

155.01 PURPOSE. The purpose of this chapter is to provide for safety, health and public welfare through structural strength and stability, means of egress, adequate light and ventilation and protection to life and property from fire and hazards incident to the design, construction, alteration, removal or demolition of buildings and other structures; safe wiring and electrical appliances; safe gas piping and appliances; safe heating devices; safe and sanitary design, construction, installation, quality of materials, location, operation and maintenance of plumbing, heating, ventilating, comfort cooling, refrigeration systems, incinerators and other miscellaneous heat-producing appliances and other installations, equipment and appliances regulated herein.

155.02 EFFECT OF PROVISIONS ON CITY AND INDIVIDUAL LIABILITY. The inspection and control of buildings and repair work or the granting of certificates or the issuance of permits by the Code Enforcement Officer or inspectors shall not tend to make the City liable on account of such control or granting of such certificates or issuing of permits, or lessen the liability which would otherwise exist of persons owning, installing, building or repairing such buildings or other structures; electrical wires, apparatus, poles, conduits, etc.; gas appliances or piping; plumbing, heating or mechanical installation, appliance or equipment; or any other activity regulated herein.

155.03 ENFORCEMENT. It is the duty of the Code Enforcement Officer to enforce all of the provisions of this chapter.

155.04 RIGHT TO ENTER OR STOP WORK. The Code Enforcement Officer and inspectors shall have the right at any time to enter any building or premises in the City in the performance of official duties and to order and compel the suspension of any work being done in violation of the provisions of this chapter and to prohibit the use of any materials in violation of this chapter. The Code Enforcement Officer and inspectors shall have the power to stop any work where the same in any way is in violation of the provisions of this chapter or in any way will affect the health, safety or welfare of the public. The Code Enforcement Officer and inspectors shall have the power to cause the removal of all electrical wires or the turning off of all electrical current where the circuits interfere with the work of the Fire Department, and to cause the removal of all gas, sewer, water or mechanical pipes, fixtures, equipment and appliances where the same interfere in any way with the health, safety or welfare of the public.

155.05 PERMIT FEE; BUILDING. Fees for permits for the construction of any building or repair thereof shall be paid to the City as required under the *International Building Code*. No permit fee will be charged for churches, schools, or charitable organizations.

155.06 INSPECTIONS REQUIRED IN CASE OF VIOLATION. Additional inspections shall be required where there is reason to believe that construction, alterations or installations are being made not in accordance with the regulations laid down in this chapter, or when written objections are filed by any party interested or affected by said construction or alteration and the Council finds objections are well taken, or when the Health Officer or Fire Chief requests the Council to have an inspection made. The Council shall, in any of the above events when an additional inspection is required, order the Code Enforcement Officer or inspector, as the case may be, to make said inspection and report back such official's or inspector's findings to the Council within two (2) days from the time said inspection is required.

155.07 SETTING FEES FOR ADDITIONAL INSPECTIONS. Whenever the Council orders an inspection to be made under the provisions of Section 155.06, it shall assess a reasonable fee adequate to cover the cost of the inspection.

155.08 INSPECTION CERTIFICATES. It is unlawful to use any altered, repaired or newly constructed building, to turn on any electrical current, to use any gas appliance or piping, to use any plumbing, or to do anything for which approval is required by this chapter, without first securing a certificate from the Code Enforcement Officer of a satisfactory inspection.

155.09 REMOVAL OF VIOLATIONS. Any person who erects any building, structure, or addition thereto, or makes any installation or uses any equipment or appliance contrary to the provisions of this chapter shall be given ten (10) days' notice in writing by the Code Enforcement Officer to remove the same, and if such removal is not completed within said time, the Code Enforcement Officer shall cause the same to be done, and report the same to the Clerk, and the costs of removal shall be charged to the person committing such violation. The costs and expense may be collected by an action brought in the name of the City against such party, or may be collected by a special assessment upon the real estate upon which such violation occurs, all in the manner and form as provided for special assessments.

155.10 TECHNICAL CODES ADOPTED BY REFERENCE. For the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, location and maintenance of buildings and structures; electrical wiring, equipment and appliances; gas piping, equipment and appliances, plumbing, heating, ventilating, comfort cooling piping, equipment and appliances; minimum health and safety standards in housing; and other matter regulated therein, the following codes, copies of which are on file in the Clerk's office, are hereby adopted by the City and incorporated herein by reference, subject to all deletions, modifications, amendments and conflicting provisions contained in this Code of Ordinances:

1. *International Building Code*, 2009 Edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is hereby adopted by reference as the general requirements for building construction, with the following amendments:

- Delete section 101.2 and insert in lieu thereof the following new section:

101.2 Scope. The provisions of this code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a

separate means of egress and their accessory structures shall comply with the International Residential Code, as amended.

- Delete section 101.4 and sections therein.
- Delete section 102.6 and insert in lieu thereof the following new section:
102.6 Existing Structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as specifically covered in this code or the state fire code, or as deemed necessary by the building code commissioner for the general safety and welfare of the occupants and the public.
- Delete sections 103 and 105 and sections therein.
- Delete section 106 and sections therein.
- Delete section 113 and sections therein.
- Delete section 202 definitions for 'Awning', 'Basement', 'Boarding House', 'Building', 'Building Line', 'Building Official', 'Canopy', 'Dwelling', 'Dwelling Unit', 'Height, Building', 'Lot', 'Marquee', 'Person', 'Publicway', 'Story', 'Townhouse', 'Yard'.
- Delete section 906.1 and insert in lieu thereof the following new section:
906.1 Where required. Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.
2. Within 30 feet of commercial cooking equipment.
3. In areas where flammable or combustible liquids are stored, used or dispensed.
4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1 of the International Fire Code.
5. Where required by the sections indicated in Table 906.1.
6. Special-hazard areas, including but not limited to laboratories, computer rooms and generator rooms, where required by the fire code official.

- Delete section 907.2.2 and insert in lieu thereof the following new section:
907.2.2 Group B. A manual fire alarm system shall be installed in Group B Occupancies where one of the following conditions exists:

1. The combined Group B occupant load of all floors is 500 or more.
2. The Group B occupant load is more than 100 persons above or below the lowest level of exit discharge.
3. The Group B fire area contains a Group B ambulatory health care facility.
4. The Group B fire area contains an educational occupancy for students above the twelfth grade with an occupant load of 50 or more persons.

Exception: Manual fire alarm boxes are not required where the building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 and the occupant notification appliances will activate throughout the notification zones upon sprinkler water flow.

- Delete section 907.2.3 and insert in lieu thereof the following new section:
907.2.3 Group E. In the absence of a complete automatic sprinkler system, a complete automatic detection system shall be installed throughout the entire Group E occupancy. A Group E occupancy with a complete automatic sprinkler system shall be provided with a fire alarm system with a minimum of corridor smoke detection, at a maximum spacing of 30 feet on center, and heat or smoke detection in any hazardous or nonoccupied areas. When automatic sprinkler systems or smoke detectors are

installed, such systems or detectors shall be connected to the building fire alarm system.

Exceptions:

1. Group E occupancies with an occupant load of less than 50.
 2. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
 - 2.1 Interior corridors are protected by smoke detectors with alarm verification.
 - 2.2 Auditoriums, cafeterias, gymnasiums and the like are protected by heat detectors or other approved detection devices.
 - 2.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
 - 2.4 Off-premises monitoring is provided.
 - 2.5 The capability to activate the evacuation signal from a central point is provided.
 - 2.6 In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from which a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.
 3. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system, the notification appliances will activate on sprinkler water flow and manual activation is provided from a normally occupied location.
- Add the following new section 1003.8:
1003.8 Location of Preschool through Second Grade Students. In Group E occupancies, rooms normally occupied by preschool, kindergarten or first grade students shall not be located above or below the level of exit discharge. Rooms normally occupied by second grade students shall not be located more than one story above the level of exit discharge.
 - Add the following new section 1100:
1100. Any building or facility which is in compliance with the applicable requirements of 661 Iowa Administrative Code Chapter 302 shall be deemed to be in compliance with any applicable requirements contained in the International Building Code concerning accessibility for persons with disabilities.
 - Delete chapter 29.
 - Amend section 3001.2 by adding the following new unnumbered paragraph after the introductory paragraph:
Notwithstanding the references in Chapter 35 to editions of national standards adopted in this section, any editions of these standards adopted by the elevator safety board in 875 Iowa Administrative Code Chapter 72 are hereby adopted by reference. If a standard is adopted by reference in this section and there is no adoption by reference of the same standard in 875 Iowa Administrative Code Chapter 72, the adoption by reference in this section is of the edition identified in Chapter 35.
 - Amend section 3401.3 by deleting "International Private Sewage Disposal Code" and inserting in lieu thereof "567 Iowa Administrative Code Chapter 69."
 - Delete appendices A through K.
 - Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."
 - Delete all references to the "ICC Electrical Code" and insert in lieu thereof "National Electrical Code, 2008 edition as amended by Ordinance 878, Le Mars Code of Ordinances."

- Delete all references to the “International Fuel Gas Code” and insert in lieu thereof “rule 661 Iowa Administrative Code 301.9(103A).”

2. *International Residential Code*, 2009 Edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is hereby adopted by reference as the requirements for construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal, and demolition of detached one- and two-family dwellings multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures, with the following amendments:

- Delete sections R103, R105 and R112 and sections therein.

NOTE: The values for table R301.2(1) shall be determined by the location of the project and referenced footnotes from table R301.2(1).

- Delete section R202 definitions for ‘Accessory Structure’, ‘Basement’, ‘Building’, ‘Building Line’, ‘Building Official’, ‘Dwelling’, ‘Dwelling Unit’, ‘Height, Story’, ‘Lot’, ‘Manufactured Home’, ‘Townhouse’, and ‘Yard’.
- Delete chapter 11.

- Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

- Delete section R310.1 and insert in lieu thereof the following new section:
 R310.1 Emergency escape and rescue required. Basements and every sleeping room shall have at least one operable emergency and rescue opening. Such opening shall open directly into a public street, public alley, yard or court. Where basements contain one or more sleeping rooms, emergency egress and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of the basement. Where emergency escape and rescue openings are provided they shall have a sill height of not more than 44 inches above an adjacent permanent interior standing surface. The adjacent permanent interior standing surface shall be no less than 36 inches wide and 18 inches deep and no more than 24 inches high. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure, the bulkhead enclosure shall comply with section R310.3. The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside. Emergency escape and rescue openings with a finished sill height below the adjacent ground elevation shall be provided with a window well in accordance with section R310.2. Emergency escape and rescue openings shall open directly into a public way, or to a yard or court that opens to a public way.

Exception: Basements used only to house mechanical equipment and not exceeding total floor area of 200 square feet.

- Delete section R313.1.

NOTE: Deletion of section R313.1, which would have required the installation of sprinklers in newly constructed townhouses, is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

- Delete section R313.2.

NOTE: Deletion of section R313.2, which would have required the installation of sprinklers in newly constructed one- and two-family residences, is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

- Amend section R322.1.7 by striking the words “Chapter 3 of the International Private Sewage Disposal Code” and inserting in lieu thereof 567 Iowa Administrative Code Chapter 69.

- Delete section R907.3 and insert in lieu thereof the following new section:
 R907.3 Recovering versus replacement. New roof coverings shall not be

installed without first removing all existing layers of roof or roof coverings where any of the following conditions exist:

1. Where the existing roof or roof covering is water-soaked or has deteriorated to the point that the existing roof or roof covering is not adequate as a base for additional roofing.
2. Where the existing roof covering is wood shake, slate, clay, cement or asbestos cement tile.
3. Where the existing roof has two or more applications of any type of roof covering.

- Delete chapter 24 and sections therein and insert in lieu thereof the following new section:

All fuel gas piping installations shall comply with rule 661 Iowa Administrative Code 301.9(103A).

- Delete chapters 25 to 33 and sections therein, except for section P2904, and insert in lieu thereof the following new section:

All plumbing installations shall comply with the state plumbing code as adopted by the state plumbing and mechanical systems board pursuant to Iowa Code Chapter 105. Exception: Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with the International Plumbing Code, 2009 Edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041. The manufacturer's data plate must indicate which plumbing code was utilized for compliance with this rule, as required by 661 Iowa Administrative Code paragraph 16.610(15)"e".

- Delete chapters 34 to 43 and sections therein and insert in lieu thereof the following new section:

All electrical installations shall comply with National Electrical Code, 2008 Edition, as amended by Ordinance 878, Le Mars Code of Ordinances.

- Delete appendices A through Q.

3. *International Mechanical Code*, 2009 Edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is hereby adopted by reference as the requirements for the design, installation, maintenance, alteration, and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings, with the following amendments:

- Delete sections 103, 106 and 109 and sections therein.

- Delete section 403 and insert in lieu thereof the following new section:

SECTION 403

MECHANICAL VENTILATION

Mechanical ventilation systems shall be designed in accordance with the provisions of ASHRAE Standard 62.1-2007, "Ventilation for Acceptable Indoor Air Quality," published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329.

- Delete appendices A and B.

- Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

- Delete all references to the "ICC Electrical Code" and insert in lieu thereof "National Electrical Code, 2008 edition, as amended by Ordinance 878, Le Mars Code of Ordinances.

- Delete all references to the "International Fuel Gas Code" and insert in lieu thereof "rule 661 Iowa Administrative Code 301.9(103A)."

4. *National Electrical Code*, 2008 Edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471, is hereby adopted by reference as the requirements for electrical installations, with the following amendment:

- Delete section 210.8, paragraph (A) and insert in lieu thereof the following newparagraph:

(A) Dwelling Units. All 125-volt, single-phase, 15- and 20-ampere receptacles installed in the locations specified in (1) through (8) shall have ground-fault circuit-interrupter protection for personnel.

(1) Bathrooms.

(2) Garages, and also accessory buildings that have a floor located at or below level not intended as habitable rooms and limited to storage areas, work areas, and areas of similar use.

Exception No. 1 to (2): Receptacles that are not readily accessible.

Exception No. 2 to (2): A single receptacle or a duplex receptacle for two Appliances located within dedicated space for each appliance that, in normal use, is not easily moved from one place to another and that is cord-and-plug connected in accordance with 400.7(A)(6), (A)(7), or (A)(8).

Receptacles installed under the exceptions to 210.8(A)(2) shall not be considered as meeting the requirements of 210.52(G).

(3) Outdoors.

Exception to (3): Receptacles that are not readily accessible and are supplied by a dedicated branch circuit for electric snow-melting or deicing equipment shall be permitted to be installed in accordance with 426.28.

(4) Crawl spaces – at or below grade level.

(5) Unfinished basements – for purposes of this section, unfinished basements are defined as portions or areas of the basement not intended as habitable rooms and limited to storage areas, work areas, and the like.

Exception No. 1 to (5): Receptacles that are not readily accessible.

Exception No. 2 to (5): A single receptacle or a duplex receptacle for two appliances located within dedicated space for each appliance that, in normal use, is not easily moved from one place to another and that is cord-and-plug connected in accordance with 400.7(A)(6), (A)(7), or (A)(8).

Exception No. 3 to (5): A receptacle supplying only a permanently installed fire alarm or burglar alarm system shall not be required to have ground-fault circuit-interrupter protection.

Receptacles installed under the exceptions to 210.8(A)(5) shall not be considered as meeting the requirements of 210.52(G).

(6) Kitchens – where the receptacles are installed to serve the countertop surfaces.

(7) Laundry, utility, and wet bar sinks – where the receptacles are installed within 1.8 m (6 ft) of the outside edge of the sink.

(8) Boathouses.

5. *State Plumbing Code, 641 – Chapter 25*, is hereby adopted by reference as the requirements for plumbing installations.

Exception: Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with the *International Plumbing Code*, 2009 Edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.

6. *International Existing Building Code*, 2009 Edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is hereby adopted by reference as the requirements for repair, alteration, change of

occupancy, addition, and relocation of existing buildings, with the following amendments:

- Delete section 101.1.
- Delete section 101.4.2 and insert in lieu thereof the following new section:
101.4.2 Buildings Previously Occupied. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as specifically covered in this code or the Le Mars Code of Ordinances, or as deemed necessary by the building code official for the general safety and welfare of the occupants and the public.
- Delete section 101.5.4.
- Delete section 101.5.4.1.
- Delete section 101.5.4.2.
- Delete section 101.7.
- Delete sections 103 and 105 and sections therein.
- Delete sections 106.1, 106.3.1, 106.3.3, 106.5, and 106.6.
- Delete sections 108, 109, 110, 112, 113, 114, 115, 116 and 117 and sections therein.
- Delete section 605.
- Delete section 706.
- Delete section 806.
- Delete section 912.8.
- Delete chapters A1 through A5.
- Delete appendix B and insert in lieu thereof the following new section:
Any building or facility subject to this rule shall comply with the provisions of 661 Iowa Administrative Code – Chapter 302.
- Delete resource A.
- Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”
- Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, 2008 Edition, as amended by Ordinance 878, Le Mars Code of Ordinances.
- Delete all references to the “International Fuel Gas Code” and insert in lieu thereof rule 661 Iowa Administrative Code – 301.9(103A).

NOTE 1: *International Existing Building Code*, 2009 Edition, Resource A, provides guidelines for evaluating fire ratings of archaic materials and assemblies which may be used by designers and code officials when evaluating compliance with provisions of this chapter.

NOTE 2: Except for elevators excluded from the jurisdiction of the Iowa division of labor services by the provisions of Iowa Code section 89A.2, each elevator is required to comply with any applicable requirements established by the Iowa division of labor services and is subject to enforcement of any applicable regulations by the Iowa division of labor services.

NOTE 3: Except for boilers and pressure vessels excluded from the jurisdiction of the Iowa division of labor services by the provisions of Iowa Code 89.4, each boiler or pressure vessel is required to comply with any applicable requirements established by the Iowa division of labor services and is subject to enforcement of any applicable regulations by the Iowa division of labor services.

Any Boiler which is subject to requirements established by the Iowa department of natural resources is required to comply with any such requirements and is subject to enforcement of any applicable regulations by the Iowa department of natural resources. This rule is intended to implement Iowa Code sections 103A.41 through 103A.45.

7. *Fuel Gas Piping Requirements.* Fuel gas piping shall comply with the requirements of 661 Iowa Administrative Code – Chapter 221. Liquefied petroleum

gas facilities and appliances shall comply with 661 Iowa Administrative Code - 226.1(101).

(Section 155.10 – Ord. 892 – Aug. 11 Supp.)

155.11 MINIMUM WIDTH OF BUILDINGS AND STRUCTURES. The minimum width of buildings or structures constructed or established for use as dwellings in the City shall be not less than twenty-two (22) feet wide as measured across the narrowest dimension of the dwelling unit or units thereof; however, the minimum width requirement shall not apply in large scale residential developments, mobile homes and/or manufactured home courts.

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CHAPTER 156

FIRE PREVENTION CODE

156.01 Adoption of International Fire Code

156.02 Establishment of Limits

156.01 ADOPTION OF INTERNATIONAL FIRE CODE. The *International Fire Code*, 2009 Edition, including Appendix Chapters B, C, D, E, F, G, H, & I, as published by the International Code Council, is hereby adopted with the following amendments:

1. Delete Section 108, Board of Appeals.
2. Delete definitions for 'Awning', 'Basement', 'Boarding House', 'Building', 'Building Official', 'Canopy', 'Dwelling', 'Dwelling Unit', 'Lot', 'Story', 'Townhouse', and 'Yard' from Section 202, Definitions.

156.02 ESTABLISHMENT OF LIMITS.

1. Storage of Explosives and Blasting Agents. The limits referred to in the *International Fire Code*, in which storage of explosives and blasting agents is prohibited, are hereby established as follows: "within the City limits."
2. Manufacture and Storage of Fireworks. The limits referred to in the *International Fire Code*, in which manufacture and storage of fireworks is prohibited, are hereby established as follows: "within the City limits."
3. Storage of Flammable and Combustible Liquids and Anhydrous Ammonia in Outside Aboveground Tanks and Bulk Plants.

A. The limits referred to in the *International Fire Code* in which storage of flammable or combustible liquids and anhydrous ammonia in outside aboveground tanks is prohibited, are hereby established as follows: "within the City limits, with exception of the I-3 Heavy Industrial District near Business Highway 75 and Industrial Road in the southwest part of the City, provided that such storage is permitted under the Zoning Ordinance." (In the case of combustible liquids, such as gasoline, all existing installations in violation of the Code shall be permitted to continue for a period of not more than two (2) years or upon discontinuance of use, whichever comes first. This clause shall be taken as an exception to the general provisions of the *International Fire Code*.)

B. The limits referred to in the *International Fire Code* in which new bulk plants for flammable or combustible liquids are prohibited, are hereby established as follows: "within the City limits, with the exception of the I-3, Heavy Industrial District near Business Highway 75 and Industrial Road in the southwest part of the City, provided that such storage is permitted under the Zoning Ordinance."

C. The limits referred to in the *International Fire Code* with regard to establishment of the aboveground storage of flammable or combustible liquids (Class I and Class II liquids) are hereby established as follows: "for locations and use for its business only." Commercial resale and dispensing shall be

prohibited and all existing shall be permitted to continue until tanks need to be replaced. The size of dispensing aboveground tanks shall be 1,100 gallons or less and approved by the Fire Chief. Within the City limits, aboveground tanks are prohibited in the residential and other areas that may constitute a distinct hazard to life or property in the opinion of the Fire Chief. There shall be no more than a total of 1,100 gallons of aboveground storage capacity on any one permitted site. Any installation dispensing motor vehicle fuel shall comply with any applicable provisions of rules of the State Fire Marshal adopted pursuant to Chapter 101 of the *Code of Iowa* and with *National Fire Protection Association Standard 30*, 2008 edition, and *National Fire Protection Association Standard 30A*, 2008 edition.

4. Liquefied Petroleum Gases. The limits referred to in the *International Fire Code* in which storage of liquefied petroleum gas is restricted are hereby established as follows:

A. There is to be a maximum limit of 125 gallon tank for aboveground storage of liquefied petroleum gases within the City limits. These tanks shall meet Table 3804.3 of the *2009 International Fire Code*. The minimum distance for aboveground containers shall be measured from the pressure relief device and the filling or liquid level gauge vent connection at the container.

B. All underground tanks shall meet the requirements limits referred to in the *International Fire Code*.

C. The rules under this section shall make reasonable provisions for facilities which were in service prior to the effective date of these regulations and not in strict conformity therein. Such facilities may continue in service unless the nonconformity is such as to constitute a distinct hazard to life or adjoining property. Should this nonconformity be considered as distinctly hazardous in the sole discretion of the City Fire Chief, then such facilities and tanks shall be eliminated and compliance under these rules mandated.

D. All properties currently using LP gas tanks may continue to do so until such time as the City of Le Mars approved natural gas franchise utility becomes reasonably available to the property owner. Upon determination of the reasonable availability the property owner at the owner's expense shall connect to the City of Le Mars natural gas franchise utility within two years of that availability.

E. The Fire Chief for the City of Le Mars may approve upon application and issuance of a City permit the use of temporary liquid petroleum gas tanks for construction projects or certain occasions. In particular installation the Le Mars City Fire Chief may in his sole discretion consider amendments to this section after consideration of special features such as topographical conditions, nature of occupancy, and proximity to buildings, capacity of proposed liquid petroleum gas containers, degree of the fire protection to be provided and capabilities of the local fire department.

F. Any bulk storage of liquefied petroleum gases shall comply with any applicable provisions of the rules adopted by the State Fire Marshal pursuant to Chapter 101 of the *Code of Iowa* and the *International Fire Code* as adopted by the City Code of Ordinances.

(Subsection 4 – Ord. 888 – Aug. 11. Supp.)

(Chapter 156 – Ord. 884 – Aug. 11 Supp.)

[The next page is 925]

CHAPTER 160

FLOOD PLAIN REGULATIONS

160.01 Purpose	160.14 Administration
160.02 Definitions	160.15 Flood Plain Development Permit Required
160.03 Lands to Which Chapter Applies	160.16 Application for Permit
160.04 Rules for Interpretation of District Boundaries	160.17 Action on Permit Application
160.05 Compliance	160.18 Construction and Use to Be as Provided in Application and Plans
160.06 Abrogation and Greater Restrictions	160.19 Conditional Uses, Appeals and Variances
160.07 Interpretation	160.20 Factors Upon Which the Decision to Grant Variances Is Based
160.08 Warning and Disclaimer of Liability	160.21 Conditions Attached to Variances
160.09 Establishment of Zoning (Overlay) Districts	160.22 Appeals to the Court
160.10 Floodway (Overlay) District - FW	160.23 Nonconforming Uses
160.11 Floodway Fringe (Overlay) District - FF	160.24 Amendments
160.12 General Flood Plain (Overlay) District - FP	
160.13 Shallow Flooding (Overlay) District - SF	

160.01 PURPOSE. It is the purpose of this chapter to protect and preserve the rights, privileges and property of the City and its residents and to preserve and improve the peace, safety, health, welfare and comfort and convenience of its residents by minimizing flood losses with provisions designed to:

1. Reserve sufficient flood plain area for the conveyance of flood flows so that flood heights and velocities will not be increased substantially.
2. Restrict or prohibit uses which are dangerous to health, safety, or property in times of flood or which cause excessive increases in flood heights or velocities.
3. Require that uses vulnerable to floods, including public utilities which serve such uses, be protected against flood damage at the time of initial construction or substantial improvement.
4. Protect individuals from buying lands which may not be suited for intended purposes because of flood hazard.
5. Assure that eligibility is maintained for property owners in the community to purchase flood insurance through the National Flood Insurance Program.

160.02 DEFINITIONS. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

1. "Base flood" means the flood having one percent (1%) chance of being equaled or exceeded in any given year. (See 100-year flood.)
2. "Basement" means any enclosed area of a building which has its floor or lowest level below ground level (subgrade) on all sides. Also see "lowest floor."
3. "Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

4. “Existing construction” means any structure for which the “start of construction” commenced before the effective date of the community’s Flood Insurance Rate Map. May also be referred to as “existing structure.”
5. “Existing factory-built home park or subdivision” means a factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the effective date of these flood plain management regulations.
6. “Expansion of existing factory-built home park or subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
7. “Factory-built home” means any structure designed for residential use which is wholly or in substantial part made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site. For the purpose of this chapter, factory-built homes include mobile homes, manufactured homes and modular homes and also includes “recreational vehicles” which are placed on a site for greater than 180 consecutive days and not fully licensed for and ready for highway use.
8. “Factory-built home park” means a parcel or contiguous parcels of land divided into two or more factory-built home lots for sale or lease.
9. “Flood” means a general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid runoff of surface waters from any source.
10. “Flood elevation” means the elevation floodwaters would reach at a particular site during the occurrence of a specific flood. For instance, the 100-year flood elevation is the elevation of floodwaters related to the occurrence of the 100-year flood.
11. “Flood Insurance Rate Map (FIRM)” means the official map prepared as part of (but published separately from) the Flood Insurance Study which delineates both the flood hazard areas and the risk premium zones applicable to the community.
12. “Flood plain” means any land area susceptible to being inundated by water as a result of a flood.
13. “Flood plain management” means an overall program of corrective and preventive measures for reducing flood damages and promoting the wise use of flood plains, including but not limited to emergency preparedness plans, flood control works, floodproofing and flood plain management regulations.
14. “Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures, including utility and sanitary facilities which will reduce or eliminate flood damage to such structures.
15. “Floodway” means the channel of a river or stream and those portions of the flood plains adjoining the channel, which are reasonably required to carry and discharge floodwaters or flood flows so that confinement of flood flows to the

floodway area will not cumulatively increase the water surface elevation of the base flood by more than one foot.

16. “Floodway fringe” means those portions of the flood plain, other than the floodway, which can be filled, leveed, or otherwise obstructed without causing substantially higher flood levels or flow velocities.

17. “Historic structure” means any structure that is:

A. Listed individually in the National Register of Historic Places, maintained by the Department of Interior, or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing in the National Register;

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by either: (i) an approved state program as determined by the Secretary of the Interior; or (ii) directly by the Secretary of the Interior in states without approved programs.

18. “Lowest floor” means the floor of the lowest enclosed area in a building including a basement except when all the following criteria are met:

A. The enclosed area is designed to flood to equalize hydrostatic pressure during floods with walls or openings that satisfy the provisions of Section 160.11(4)(A); and

B. The enclosed area is unfinished (not carpeted, drywalled, etc.) and used solely for low damage potential uses such as building access, parking or storage; and

C. Machinery and service facilities (e.g., hot water heater, furnace, electrical service) contained in the enclosed area are located at least one foot above the 100-year flood level; and

D. The enclosed area is not a “basement” as defined in this section.

In cases where the lowest enclosed area satisfies criteria A, B, C and D above, the lowest floor is the floor of the next highest enclosed area that does not satisfy the criteria above.

19. “New construction” (new buildings, factory-built home parks) means those structures or development for which the start of construction commenced on or after November 1977, the effective date of the Flood Insurance Rate Map.

20. “New factory-built home park or subdivision” means a factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the

pouring of concrete pads) is completed on or after the effective date of these flood plain management regulations.

21. “100-Year Flood” means a flood, the magnitude of which has a one percent (1%) chance of being equaled or exceeded in any given year or which, on the average, will be equaled or exceeded at least once every one hundred (100) years.

22. “Recreational vehicle” means a vehicle which is:

- A. Built on a single chassis;
- B. Four hundred (400) square feet or less when measured at the largest horizontal projection;
- C. Designed to be self-propelled or permanently towable by a light duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

23. “Special flood hazard area” means the land within a community subject to the “100-year flood.” This land is identified as Zone A on the Flood Insurance Rate Map.

24. “Start of construction” includes substantial improvement, and means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement or permanent construction of a structure on a site, such as pouring of a slab or footings, the installation of pile, the construction of columns, or any work beyond the stage of excavation; or the placement of a factory-built home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

25. “Structure” means anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, cabins, factory-built homes, storage tanks and other similar uses.

26. “Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

27. “Substantial improvement” means any improvement to a structure which satisfies either of the following criteria:

- A. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either: (i) before the “start of construction” of the improvement; or (ii) if the structure has been “substantially damaged” and is being restored, before the damage occurred. The term does not, however, include any project for improvement of a structure to comply with existing State or local health,

sanitary, or safety code specifications which are solely necessary to assure safe conditions for the existing use. The term also does not include any alteration of an “historic structure,” provided the alteration will not preclude the structure’s designation as an “historic structure.”

B. Any addition which increases the original floor area of a building by twenty-five percent (25%) or more. All additions constructed after November, 1977, shall be added to any proposed addition in determining whether the total increase in original floor space would exceed twenty-five percent.

28. “Variance” means a grant of relief by a community from the terms of the flood plain management regulations.

29. “Violation” means the failure of a structure or other development to be fully compliant with this chapter.

160.03 LANDS TO WHICH CHAPTER APPLIES. The provisions of this chapter shall apply to all lands within the jurisdiction of the City shown on the Official Flood Plain Zoning Map as being within the boundaries of the Floodway, Floodway Fringe, General Flood Plain and Shallow Flooding (Overlay) Districts. The Flood Insurance Rate Map prepared as part of the Flood Insurance Study for the City, dated November 1977, is hereby adopted by reference and declared to be the Official Flood Plain Zoning Map. The flood profiles and all explanatory material contained with the Flood Insurance Study are also declared to be a part of this chapter.

160.04 RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES. The boundaries of the zoning district areas shall be determined by scaling distances on the Official Flood Plain Zoning Map. When an interpretation is needed as to the exact location of a boundary, the City Administrator shall make the necessary interpretation. The Zoning Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the City Administrator in the enforcement or administration of this chapter.

160.05 COMPLIANCE. No 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 chapter and other applicable regulations which apply to uses within the jurisdiction of this chapter.

160.06 ABROGATION AND GREATER RESTRICTIONS. It is not intended by this chapter to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provision of this chapter shall prevail. Any ordinances inconsistent with this chapter are hereby repealed to the extent of the inconsistency only.

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

160.08 WARNING AND DISCLAIMER OF LIABILITY. The standards required by this chapter are considered reasonable for regulatory purposes. This chapter does not imply that areas outside the designated Flood Plain (Overlay) District areas will be free from flooding

or flood damages. This chapter 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 chapter or any administrative decision lawfully made thereunder.

160.09 ESTABLISHMENT OF ZONING (OVERLAY) DISTRICTS. The flood plain areas within the jurisdiction of this chapter are hereby divided into the following districts:

1. Floodway District (FW)
2. Floodway Fringe District (FF)
3. General Flood Plain District (FP)
4. Shallow Flooding District (SF).

The boundaries are as shown on the Official Flood Plain Zoning Map. Within these districts all uses not allowed as permitted uses or permissible as conditional uses are prohibited unless a variance to the terms of this chapter is granted after due consideration by the Board of Adjustment.

160.10 FLOODWAY (OVERLAY) DISTRICT - FW.

1. Permitted Uses. The following uses shall be permitted within the Floodway District to the extent they are not prohibited by any other ordinance (or underlying zoning district) and provided they do not include placement of structures, factory-built homes, fill or other obstruction, the storage of material or equipment, excavation or alteration of a watercourse.

- A. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- B. Industrial-commercial uses such as loading areas, parking areas, airport landing strips.
- C. Private and public recreational uses such as 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, hiking and horseback riding trails.
- D. Residential uses such as lawns, gardens, parking areas and play areas.
- E. Such other open-space uses similar in nature to the above uses.

2. Conditional Uses. The following uses which involve structures (temporary or permanent), fill, storage of materials or equipment, excavation or alteration of a watercourse may be permitted only upon issuance of a conditional use permit by the Board of Adjustment as provided for in Section 160.19. Such uses must also meet the applicable provisions of the Floodway District Performance Standards.

- A. Uses or structures accessory to open-space uses.
- B. Circuses, carnivals, and similar transient amusement enterprises.
- C. Drive-in theaters, new and used car lots, roadside stands, signs, and billboards.
- D. Extraction of sands, gravel, and other materials.

- E. Marinas, boat rentals, docks, piers, and wharves.
 - F. Utility transmission lines and underground pipelines.
 - G. Other uses similar in nature to uses described in subsection 1 and in this subsection which are consistent with the provisions of subsection 3 and the general spirit and purpose of this chapter.
3. Performance Standards. All Floodway District uses allowed as a permitted or conditional use shall meet the following standards:
- A. No use shall be permitted in the Floodway District that would result in any increase in the 100-year flood level. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
 - B. All uses within the Floodway District shall:
 - (1) Be consistent with the need to minimize flood damage.
 - (2) Use construction methods and practices that will minimize flood damage.
 - (3) Use construction materials and utility equipment that are resistant to flood damage.
 - C. No use shall affect the capacity or conveyance of the channel or floodway of any tributary to the main stream, drainage ditch or any other facility or system.
 - D. Structures, buildings and sanitary and utility systems, if permitted, shall meet the applicable performance standards of the Floodway Fringe District and shall be constructed or aligned to present the minimum possible resistance to flood flows.
 - E. Buildings, if permitted, shall have a low flood damage potential and shall not be for human habitation.
 - F. Storage of materials or equipment that are buoyant, flammable, explosive or injurious to human, animal or plant life is prohibited. Storage of other material may be allowed if readily removable from the Floodway District within the time available after flood warning.
 - G. Watercourse alterations or relocations (channel changes and modifications) must be designed to maintain the flood carrying capacity within the altered or relocated portion. In addition, such alterations or relocations must be approved by the Department of Natural Resources.
 - H. Any fill allowed in the floodway must be shown to have some beneficial purpose and shall be limited to the minimum amount necessary.
 - I. Pipeline river or stream crossings shall be buried in the streambed and banks or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering or due to the action of flood flows.

160.11 FLOODWAY FRINGE (OVERLAY) DISTRICT - FF. All uses within the Floodway Fringe District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet applicable performance

standards of the Floodway Fringe District. All uses must be consistent with the need to minimize flood damage and shall meet the following applicable performance standards.

1. All structures shall:
 - A. Be adequately anchored to prevent flotation, collapse or lateral movement of the structure.
 - B. Use construction materials and utility equipment that are resistant to flood damage.
 - C. Use construction methods and practices that will minimize flood damage.
2. Residential Buildings. All new or substantially improved residential structures shall have the lowest floor, including basement, elevated a minimum of one foot above the 100-year flood level. Construction shall be upon compacted fill which shall, at all points, be no lower than one foot above the 100-year flood level and extend at such elevation at least 18 feet beyond the limits of any structure erected thereon. Alternate methods of elevating (such as piers) may be allowed, subject to favorable consideration by the Board of Adjustment, where existing topography, street grades, or other factors preclude elevating by fill. In such cases, the methods used must be adequate to support the structure as well as withstand the various forces and hazards associated with flooding. All new residential structures shall be provided with a means of access which will be passable by wheeled vehicles during the 100-year flood.
3. Nonresidential Buildings. All new or substantially improved non-residential buildings shall have the lowest floor (including basement) elevated a minimum of one foot above the 100-year flood level, or together with attendant utility and sanitary systems, be floodproofed to such a level. When floodproofing is utilized, a professional engineer registered in the State of Iowa shall certify that the floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the 100-year flood; and that the structure, below the 100-year flood level, is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to National Geodetic Vertical Datum) to which any structures are floodproofed shall be maintained by the Administrator.
4. All new and substantially improved structures:
 - A. Fully enclosed areas below the "lowest floor" (not including basements) that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:
 - (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (2) The bottom of all openings shall be no higher than one foot above grade.

- (3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

Such areas shall be used solely for parking of vehicles, building access and low damage potential storage.

B. New and substantially improved structures must be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

C. New and substantially improved structures must be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

5. Factory-Built Homes.

A. All factory-built homes, including those placed in existing factory-built home parks or subdivisions, shall be elevated on a permanent foundation such that the lowest floor of the structure is a minimum of one foot above the 100-year flood level.

B. All factory-built homes, including those placed in existing factory-built home parks or subdivisions, shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

6. Utility and Sanitary Systems.

A. On-site waste disposal and water supply systems shall be located or designed to avoid impairment to the system or contamination from the system during flooding.

B. All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system as well as the discharge of effluent into floodwaters. Wastewater treatment facilities (other than on-site systems) shall be provided with a level of flood protection equal to or greater than one foot above the 100-year flood elevation.

C. New or replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system. Water supply treatment facilities (other than on-site systems) shall be provided with a level of protection equal to or greater than one foot above the 100-year flood elevation.

D. Utilities such as gas or electrical systems shall be located and constructed to minimize or eliminate flood damage to the system and the risk associated with such flood damaged or impaired systems.

7. Storage of materials and equipment that are flammable, explosive or injurious to human, animal or plant life is prohibited unless elevated a minimum of one foot above the 100-year flood level. Other material and equipment must either be similarly elevated or: (i) not subject to major flood damage and anchored to prevent movement

due to flood waters; or (ii) readily removable from the area within the time available after flood warning.

8. Flood control structural works such as levees, floodwalls, etc. shall provide, at a minimum, protection from a 100-year flood with a minimum of 3 feet of design freeboard and shall provide for adequate interior drainage. In addition, structural flood control works shall be approved by the Department of Natural Resources.

9. Watercourse alterations or relocations must be designed to maintain the flood-carrying capacity within the altered or relocated portion. In addition, such alterations or relocations must be approved by the Department of Natural Resources.

10. Subdivisions (including factory-built home parks and subdivisions) shall be consistent with the need to minimize flood damages and shall have adequate drainage provided to reduce exposure to flood damage. Development associated with subdivision proposals (including the installation of public utilities) shall meet the applicable performance standards of this chapter. Subdivision proposals intended for residential use shall provide all lots with a means of access which will be passable by wheeled vehicles during the 100-year flood. Proposals for subdivisions greater than five (5) acres or fifty (50) lots (whichever is less) shall include 100-year flood elevation data for those areas located within the Flood Plain (Overlay) District.

11. Accessory Structures.

A. Detached garages, sheds, and similar structures accessory to a residential use are exempt from the 100-year flood elevation requirements where the following criteria are satisfied:

- (1) The structure shall not be used for human habitation.
- (2) The structure shall be designed to have low flood damage potential.
- (3) The structure shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters.
- (4) The structure shall be firmly anchored to prevent flotation which may result in damage to other structures.
- (5) The structure's service facilities such as electrical and heating equipment shall be elevated or floodproofed to at least one foot above the 100-year flood level.

B. Exemption from the 100-year flood elevation requirements for such a structure may result in increased premium rates for flood insurance coverage of the structure and its contents.

12. Recreational Vehicles.

A. Recreational vehicles are exempt from the requirements of Section 160.11(5) of this chapter regarding anchoring and elevation of factory-built homes when the following criteria are satisfied.

- (1) The recreational vehicle shall be located on the site for less than 180 consecutive days, and,
- (2) The recreational vehicle must be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is

on its wheels or jacking system and is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

B. Recreational vehicles that are located on the site for more than 180 consecutive days or are not ready for highway use must satisfy requirements of Section 160.11(5) of this chapter regarding anchoring and elevation of factory-built homes.

13. Pipeline river and stream crossings shall be buried in the stream bed and banks, or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering.

160.12 GENERAL FLOOD PLAIN (OVERLAY) DISTRICT - FP.

1. Permitted Uses. The following uses shall be permitted within the General Flood Plain District to the extent they are not prohibited by any other ordinance (or underlying zoning district) and provided they do not include placement of structures, factory-built homes, fill or other obstructions; the storage of materials or equipment; excavation or alteration of a watercourse.

A. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.

B. Industrial-commercial uses such as loading areas, parking areas, and airport landing strips.

C. Private and public recreation uses such as 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, hiking and horseback riding trails.

D. Residential uses such as lawns, gardens, parking areas and play areas.

2. Conditional Uses. Any use which involves placement of structures, factory-built homes, fill or other obstructions; the storage of materials or equipment; excavation or alteration of a watercourse may be allowed only upon issuance of a conditional use permit by the Board of Adjustment as provided for in Section 160.19. All such uses shall be reviewed by the Department of Natural Resources to determine (i) whether the land involved is either wholly or partly within the floodway or floodway fringe and (ii) the 100-year flood level. The applicant shall be responsible for providing the Department of Natural Resources with sufficient technical information to make the determination.

3. Performance Standards.

A. All conditional uses, or portions thereof, to be located in the floodway as determined by the Department of Natural Resources shall meet the applicable provisions and standards of the Floodway (Overlay) District (Section 160.10).

B. All conditional uses, or portions thereof, to be located in the floodway fringe as determined by the Department of Natural Resources shall meet the

applicable standards of the Floodway Fringe (Overlay) District (Section 160.11).

160.13 SHALLOW FLOODING (OVERLAY) DISTRICT - SF. All uses within the Shallow Flooding District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet the applicable performance standards of the Shallow Flooding District. The performance standards for the Shallow Flooding District shall be the same as the performance standards for the Floodway Fringe District with the following exceptions:

1. In shallow flooding areas designated as an AO Zone on the Flood Insurance Rate Map, the minimum floodproofing/flood protection elevation shall be equal to the number of feet as specified on the Flood Insurance Rate Map (or a minimum of 2.0 feet if no number is specified) above the highest natural grade adjacent to the structure.
2. In shallow flooding areas designated as an AH Zone on the Flood Insurance Rate Map, the minimum floodproofing/flood protection elevation shall be equal to the elevation as specified on the Flood Insurance Rate Map.

160.14 ADMINISTRATION. The City Administrator is hereby appointed to implement and administer the provisions of this chapter and will herein be referred to as the Administrator. The duties and responsibilities of the Administrator include, but are not necessarily limited to, the following:

1. Review all flood plain development permit applications to assure that the provisions of this chapter will be satisfied.
2. Review flood plain development permit applications to assure that all necessary permits have been obtained from Federal, State or local governmental agencies including approval when required from the Department of Natural Resources for flood plain construction.
3. Record and maintain a record of (i) the elevation (in relation to National Geodetic Vertical Datum) of the lowest floor (including basement) of all new or substantially improved structures or (ii) the elevation to which new or substantially improved structures have been floodproofed.
4. Notify adjacent communities and/or countries and the Department of Natural Resources prior to any proposed alteration or relocation of a watercourse and submit evidence of such notifications to the Federal Emergency Management Agency.
5. Keep a record of all permits, appeals, and such other transactions and correspondence pertaining to the administration of this chapter.
6. Submit to the Federal Insurance Administrator an annual report concerning the community's participation, utilizing the annual report form supplied by the Federal Insurance Administrator.
7. Notify the Federal Insurance Administration of any annexations or modifications to the community's boundaries.
8. Review subdivision proposals to insure such proposals are consistent with the purpose of this chapter and advise the Council of potential conflicts.

160.15 FLOOD PLAIN DEVELOPMENT PERMIT REQUIRED. A Flood Plain Development Permit issued by the Administrator shall be secured prior to any flood plain

development (any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, filling, grading, paving, excavation or drilling operations) including the placement of factory-built homes.

160.16 APPLICATION FOR PERMIT. Application for a Flood Plain Development Permit shall be made on forms supplied by the Administrator and shall include the following information.

1. Description of the work to be covered by the permit for which application is to be made.
2. Description of the land on which the proposed work is to be done (i.e., lot, block, tract, street address or similar description) that will readily identify and locate the work to be done.
3. Indication of the use or occupancy for which the proposed work is intended.
4. Elevation of the 100-year flood.
5. Elevation (in relation to National Geodetic Vertical Datum) of the lowest floor (including basement) of buildings or of the level to which a building is to be floodproofed.
6. For buildings being improved or rebuilt, the estimated cost of improvements and market value of the building prior to the improvements.
7. Such other information as the Administrator deems reasonably necessary (e.g., drawings or a site plan) for the purpose of this chapter.

160.17 ACTION ON PERMIT APPLICATION. The Administrator shall, within a reasonable time, make a determination as to whether the proposed flood plain development meets the applicable standards of this chapter and shall approve or disapprove the application. For disapprovals, the applicant shall be informed, in writing, of the specific reasons therefor. The Administrator shall not issue permits for variances except as directed by the Board of Adjustment.

160.18 CONSTRUCTION AND USE TO BE AS PROVIDED IN APPLICATION AND PLANS. Flood Plain Development Permits issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this chapter. The applicant shall be required to submit certification by a professional engineer or land surveyor, as appropriate, registered in the State of Iowa, that the finished fill, building floor elevations, floodproofing or other flood protection measures were accomplished in compliance with the provisions of this chapter, prior to the use or occupancy of any structure.

160.19 CONDITIONAL USES, APPEALS AND VARIANCES. The Board of Adjustment shall hear and decide: (i) applications for conditional uses upon which the Board is authorized to pass under this chapter; (ii) appeals; and (iii) requests for variances to the provisions of this chapter; and shall take any other action which is required of the Board.

1. Conditional Uses. Requests for conditional uses shall be submitted to the Administrator, who shall forward such to the Board of Adjustment for consideration. Such requests shall include information ordinarily submitted with applications as well as any additional information deemed necessary by the Board of Adjustment.

2. Appeals. Where it is alleged there is any error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter, the aggrieved party may appeal such action. The notice of appeal shall be filed with the Board of Adjustment and with the official from whom the appeal is taken and shall set forth the specific reason for the appeal. The official from whom the appeal is taken shall transmit to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.

3. Variances. The Board of Adjustment may authorize upon request in specific cases such variances from the terms of this chapter that will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this chapter will result in unnecessary hardship. Variances granted must meet the following applicable standards.

A. Variances shall only be granted upon: (i) a showing of good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and (iii) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local codes or ordinances.

B. Variances shall not be issued within any designated floodway if any increase in flood levels during the 100-year flood would result. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.

C. Variances shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

D. In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this chapter, the applicant shall be notified in writing over the signature of the Administrator that: (i) the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and (ii) such construction increases risks to life and property.

E. All variances granted shall have the concurrence or approval of the Department of Natural Resources.

4. Hearings and Decisions of the Board of Adjustment.

A. Hearings. Upon the filing with the Board of Adjustment of an appeal, an application for a conditional use or a request for a variance, the Board shall hold a public hearing. The Board shall fix a reasonable time for the hearing and give public notice thereof, as well as due notice to parties in interest. At the hearing, any party may appear in person or by agent or attorney and present written or oral evidence. The Board may require the appellant or applicant to provide such information as is reasonably deemed necessary and may request the technical assistance and/or evaluation of a professional engineer or other expert person or agency, including the Department of Natural Resources.

B. Decisions. The Board shall arrive at a decision on an appeal, conditional use or variance within a reasonable time. In passing upon an appeal, the Board may, so long as such action is in conformity with the provisions of this chapter, reverse or affirm wholly or in part, or modify the order, requirement, decision, or determination appealed from, and it shall make its decision, in writing, setting forth the findings of fact and the reasons for its decision. In granting a conditional use or variance, the Board shall consider such factors as contained in this section and all other relevant sections of this chapter and may prescribe such conditions as contained in Section 160.21.

160.20 FACTORS UPON WHICH THE DECISION TO GRANT VARIANCES IS BASED. In passing upon applications for variances, the Board shall consider all relevant factors specified in other sections of this chapter and:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments.
2. The danger that materials may be swept on to other land or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
5. The importance of the service provided by the proposed facility to the City.
6. The requirements of the facility for a flood plain location.
7. The availability of alternate locations not subject to flooding for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
10. The safety of access to the property in times of flood for ordinary and emergency vehicles.
11. The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.
12. The cost of providing governmental services during and after flood conditions, including maintenance and repair of public utilities (sewer, gas, electrical and water systems), facilities, streets and bridges.
13. Such other factors which are relevant to the purpose of this chapter.

160.21 CONDITIONS ATTACHED TO VARIANCES. Upon consideration of the factors listed above, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose of this chapter. Such conditions may include, but not necessarily be limited to:

1. Modification of waste disposal and water supply facilities.

2. Limitation on periods of use and operation.
3. Imposition of operational controls, sureties, and deed restrictions.
4. Requirements for construction of channel modifications, dikes, levees, and other protective measures, provided such are approved by the Department of Natural Resources and are deemed the only practical alternative to achieving the purpose of this chapter.
5. Floodproofing measures designed consistent with the flood protection elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The Board of Adjustment shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

160.22 APPEALS TO THE COURT. Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the Board.

160.23 NONCONFORMING USES.

1. A structure or the use of a structure or premises which was lawful before the passage or amendment of this chapter but which is not in conformity with the provisions of this chapter may be continued subject to the following conditions:
 - A. If such use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this chapter.
 - B. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.
 - C. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty percent (50%) of the market value of the structure before the damage occurred, unless it is reconstructed in conformity with the provisions of this chapter.
2. Except as provided in subsection B above, any use which has been permitted as a conditional use or variance shall be considered a conforming use.

160.24 AMENDMENTS. The regulations and standards set forth in this chapter may from time to time be amended, supplemented, changed, or repealed. No amendment, supplement, change, or modification shall be undertaken without prior approval of the Department of Natural Resources.