



**OFFICE OF ADMINISTRATIVE HEARINGS  
Municipal Boundary Adjustment Unit  
Factual Information Form**

MBA Unit Docket Number: D-494 Moorhead/Moorhead Twp

This form is being completed by:

Name: *Kristie Leshovsky, AICP, City Planner & Zoning Administrator*

Representing: *City of Moorhead, Minnesota*

The term "subject area" refers to the area proposed for boundary adjustment.

**1. Population and Households:**

	Subject Area	City	Township/Other City
2000 Population	0	32,177	422
2010 Population	0	38,065	169
Current Population	0	N/A	169
Current Households	0	15,274	71
Projected in 5 Years	0	40,020 (2015 population)*	
Source of Data	0	US Census Bureau *McKibben Demographic Research - 2006 Demographic Forecast	US Census Bureau

**2. Geographic Features:**

**A.**

	Subject Area	City	Township	Adjacent Unit of Gov't
Total Acreage	144.128	12,621		2,055 (Dilworth)

**B. Describe any waterways within or adjacent to the subject area (rivers, streams, shore lands, protected water or wetlands, watershed districts):**

*Moorhead is situated between the Red River of the North on the west providing a boundary between Minnesota and North Dakota and the Buffalo Aquifer to the east. Moorhead is located in the Buffalo-Red River Watershed District (BRRWD).*

**C. Are the waterways subject to any State or Federal regulations? If yes, please describe:**

*BRRWD rules are governed by Minnesota Statutes, Chapter 112. A permit is required for certain drainage projects. Federal Emergency Management Agency flood insurance rate maps dictate the boundaries for the floodway and flood fringe districts. However, the subject property is not located within FEMA's 100 or 500-year floodplain.*

**D. Describe the soils in the subject area:**

*The subject area is primarily Bearden silty clay loam which is somewhat poorly drained and nearly level soil is on lake plains. Typically, the surface layer is black silty clay loam about 12 inches thick. The next layer is very strongly calcareous, grayish brown silty clay loam about 12 inches thick. Making up to 5 to 15 percent of this area are small areas of Colvin soils which are poorly drained and typically are on slightly lower landscape positions than those of the Bearden soil.*

**E. Describe the natural terrain in the subject area:**

*Natural terrain is flat with an elevation of 905.0 feet.*

**3. The perimeter of the subject area is bordered approximately:**

75% by the city

12.5% by the Township (*Moorhead Township*)

12.5% by other unit of government (*City of Dilworth*)

**4. Present pattern of physical development, planning, and intended land use(s):****A. Fill in the approximate acreage for each land use type.**

	Subject Area	City	Township
Residential	0	4,248	
Institutional	0	1,252	
Commercial/Retail	0	613	
Industrial	0	717	
Agricultural	144	12,065	
Vacant Land	0	867	

**B. What type of development/zoning is proposed for the subject area?**

*Based on the Future Land Use Map in the 2009 Addendum to the 2004 Comprehensive Plan, approximately one-third commercial, one-third medium density residential, and one-third low-density residential. See Attached*

**C. What are the current land use(s)/zoning in the adjacent area(s)?**

*Zoning: Transitional (55 acres), Light Industrial (10.5 acres), Public/Open space (73 acres), Institutional (51 acres), Residential Medium Density (47.7 acres), residential low-density (60 acres). See Attached*



## 5. Existing Transportation Network:

## A.

	Subject Area	City	Township
How many miles of highways, streets, and roads?	1.5 around perimeter	220	

## B. Are there any transportation changes planned:

In the subject area? Yes  No In the city? Yes  No In the adjacent area(s)? Yes  No 

## C. What are the road/highways that serve the subject area?

34<sup>th</sup> Street North (minor arterial) to the east15<sup>th</sup> Ave N (minor arterial) to the north28<sup>th</sup> Street N (collector) to the west

## 6. Land Use Controls and Planning:

A. Comprehensive Plan (Attach a copy of the portion that applies to the subject area):

	City	Township	County	Region
Adoption Date	11/9/2009			
Status of Plan				
No Existing Plan				

B. If any area planning authorities (planning commissions, Met Council, Regional Development Commissions, etc.) have adopted an official position on the proposed boundary adjustment, please describe and attach a copy of the position:

*Moorhead City Council opposed petition - July 23, 2012 (Resolution 2012-0723-9)*

C. Please note where the following exists and provide any necessary explanations on how it relates to the proposed boundary adjustment. (Since it may be possible to have two or more ordinances attempt to regulate the same area, please indicate whose ordinance presently applies to the subject area.) Attach copies of maps and portions of ordinances that apply to the subject area.

*The Moorhead City Code applies to this property. The Moorhead City Code is updated periodically and the adoption dates noted below are subject to change based on updates made by the City Council.**The Moorhead City Code is available at the Office of the City Clerk or online at [http://www.cityofmoorhead.com/city\\_hall/code.asp](http://www.cityofmoorhead.com/city_hall/code.asp)*

	City Adoption Date	Township Adoption Date	County Adoption Date	Which Applies to Subject Area?
Zoning Regulations	2005			
Subdivision Regulations	2012			
Official Map	2012			
Capital Improvements/ Budget	2012			
Fire Code	2011			
Shoreland Ordinance	NA			
Floodplain Ordinance	2012			
Wild and Scenic Rivers Ordinance	NA			
Sanitation Ordinance	2008			

**D. Is the subject area, or any portion thereof, eligible for "Green Acres"**  
(Minn. Stat. § 273.111)? If yes, please describe:

*Yes, the property currently qualifies for Green Acres. The Pay 2012 rate reflects the property taxes under Green Acres to be \$4,413; if the property did not receive Green Acres, the property taxes would be approximately \$17,650. The overall rate of taxation is about 31% higher in Moorhead City than Moorhead Township. County, school and watershed taxes are not impacted by being in a city or township. The increase in taxation for being located in the City limits is about \$1,050.00 annually.*

*As a qualifying Green Acres property, Special Assessments are also deferred under the Green Acres program. Currently there are roughly one million three hundred thousand dollars (\$1,300,000.00) of deferred special assessments for municipal improvements levied upon the property. The City of Moorhead has incurred significant expense in extending municipal improvements to the area in which the property is located.*

**E. Has the city established separate "Urban and Rural Taxing Districts"**  
(Minn. Stat. § 272.67) in the subject or adjacent area(s)? If yes, please describe:

*No.*



## 7. Government services being provided:

Please place check marks where appropriate:

	City provides to the city	City provides to the subject area	City will provide to the subject area	Township provides to the township	Township provides to the subject area
<b>Water</b>	X	X (trunk)	X (local)		
<b>Sanitary Sewer/Wastewater Treatment</b>	X	X (trunk)	X (local)		
<b>Storm Sewer</b>	X	X (trunk)	X (local)		
<b>Solid Waste Collection &amp; Disposal</b>	X	X (trunk)	X (local)		
<b>Fire Protection</b>	X	X			
<b>Law Enforcement</b>	X	X			
<b>Street Improvements</b>	X	X			
<b>Street Maintenance</b>	X	X			
<b>Administrative Services</b>	X	X			
<b>Recreational Services</b>	X	X			
<b>Other</b>					

A. Please provide any additional relevant information regarding the above mentioned government services:

*Trunk line services for water and wastewater have been installed. When the property is platted for development, local services will be installed. The property is serviced by existing paved major roadways as noted in 5C. Currently there are roughly one million three hundred thousand dollars (\$1,300,000.00) of deferred special assessments for municipal improvements levied upon the property, the result of multiple municipal projects which have provided infrastructure and utilities needed to service the property for development in the City, including paved major roadways, sewer and water trunk line facilities and electric service. City tax payers have incurred significant costs to provide the necessary municipal improvements to make the property developable. Similarly, the City provides city services to the site as noted above.*

**B. Are new services necessary for the subject area?**

*Municipal utility systems, including water, sewer, and electricity are available to service the detachment property upon platting and development. A major trunk sanitary sewer line, constructed in 2004, lies on the exterior boundary of the property. This sewer line provides service to a large portion of eastern and southern Moorhead and was designed with specific capacity reserved for the property. County Ditch 41, Lateral 1 lies at the northern end of the property and provides capacity for storm water discharges from future development of the property. Upon platting, the owner can easily tie into these major municipal improvements. Currently there are roughly one million three hundred thousand dollars (\$1,300,000.00) of deferred special assessments for municipal improvements levied upon the property.*

**C. What is the current capacity of the sewer and water systems? How much is being used and by whom?***Sewer:*

- Total capacity of system serving area: 7,700 gallons / minute
- Total capacity reserved for this property: 450 gallons / minute (based on Future Land Use Plan)

*Water:*

- Total capacity reserved for this property: based on development and flows needed (estimated between 250-1000 gallons / minute)

**D. Can necessary government services best be provided by the proposed boundary adjustment or would another type of boundary adjustment be more appropriate?**

*Government services for the site are best and most efficiently provided by the City of Moorhead. The City of Moorhead owns and maintains infrastructure serving and surrounding the property.*

**8. Describe any existing or potential environmental problems and whether the proposed boundary adjustment is likely to improve or resolve these problems: (Example: ground or surface water, sewage treatment, air pollutants, noise and/or odors; effect on fish and/or wildlife; effect on historical, archaeological, and/or aesthetic resources; impairment of park lands, prime farmlands, wild or scenic rivers, and/or critical habitat; dump and/or disposal sites, etc.):**

*Currently there are roughly one million three hundred thousand dollars (\$1,300,000.00) of deferred special assessments for municipal improvements levied upon the property, the result of multiple municipal projects which have provided infrastructure and utilities needed to service the property for development in the City, including paved major roadways, sewer and water trunk line facilities and electric service. If the property is detached and future development occurs on the property, it would result in utilizing substandard utility systems (wells, septic systems, etc), as connections to City utility services are available to property within City limits or via an annexation agreement.*



9. Will the proposed boundary adjustment generate a need for an Environmental Assessment Worksheet (EAW) or an Environmental Impact Statement (EIS) If so, please explain why:

*No.*

10. Describe the plan of the receiving unit of government for providing governmental services to the subject area as well as the impact on those services:

*Government services for the site are best and most efficiently provided by the City of Moorhead. The City of Moorhead owns and maintains infrastructure serving and surrounding the property.*

11. Describe the relationship and the effect of the proposed boundary adjustment on affected and adjacent school districts and communities:

*The school district and Clay County levy amounts are not impacted by the proposed boundary adjustment. The proposed boundary adjustment would increase taxes received by the Township and eliminate taxes received by the City of Moorhead. The City of Moorhead has installed, owns and maintains infrastructure serving and surrounding the property.*

12. Fiscal Impact:

	Subject Area	City	Township	Trend over last 3 years
Net Tax Capacity	3,510	21,730,823		

Tax Rates	Subject Area	City	Township	Trend over Last 3 years
County	54.63981	54.63981		
Local Unit of Gov't	34.46654	34.46654		
School District	33.26820	33.26820		
Special Tax District	3.3692	3.3692		
Insurance Rating (Fire)	4	4		
Levy Limit	NONE	NONE		
Actual Current Levy	125.74375	125.74375 (rate) \$7,441,836 (tax levy)		
Total Bonded Indebtedness		\$207,044,800		

13. If the proposed boundary adjustment were approved:

A. Would the city/township suffer any undue hardship? If yes, please describe:

*The City of Moorhead owns and maintains infrastructure serving and surrounding the property. The property benefits from City services such as roadway maintenance (ie: snow removal and maintenance) and municipal improvements (sewer, water, electric) are available due to its urban location. Moorhead Township does not provide any services to the property or the area surrounding the property. Currently there are roughly one million three hundred thousand dollars (\$1,300,000.00) of deferred special assessments for municipal improvements levied upon the property. The City of Moorhead has incurred significant expense in extending municipal improvements to the area in which the property is located.*

B. Would the symmetry of the city/township be affected? If yes, please describe:

*The property is surrounded on three sides by the City. Removing this section of land would not be symmetrical.*

C. Should the subject area be increased or decreased? If yes, please describe and attach a revised area map:

*No.*

14. Has the city/township provided any improvements to the subject area? If so, what improvements were provided and when:

Project Description	Year Assessed	Term	Interest Rate	Original Assessment	Accrued Interest	Total Balance
Curb, Gutter, Paving - 15th Ave N (28th To 34th St)	2009	20	6.00%	\$241,138	\$43,405	\$284,543
Sewer, Water, Curb, Gutter, Paving - 8th Ave N (HWY 75 to 28th St)	2009	20	6.00%	\$116,408	\$20,954	\$137,362
Curb, Gutter, Paving - Arbor Park/8th Ave N (33rd to 34th St)	2004	19	7.00%	\$29,433	\$0	\$29,433
Eastside Sanitary Sewer Interceptor	2006	20	4.52%	\$513,307	\$116,007	\$629,315
Curb, Gutter, Paving - 34th St N	2007	20	4.07%	\$178,217	\$29,014	\$207,230
Sewer & Water - Arbor Park/8th Ave N	2006	20	4.13%	\$11,629	\$2,401	\$14,031
<b>TOTAL SPECIAL ASSESSMENTS</b>				<b>\$1,090,132</b>	<b>\$211,781</b>	<b>\$1,301,914</b>

15. Has the city/township assessed the subject area for the improvements? If yes, please describe:

*Please see above*

16. Will the subject area be assuming any city/township indebtedness? If yes, please describe:

*Special Assessments, noted above, would apply upon platting of the property.*



17. Has there ever been a previous boundary adjustment filed for this property or substantially the same property? If yes, when and what was the outcome?:

*The subject property was formally approved by the MN Office of Administrative Hearings-Municipal Boundary Adjustments for annexation into the City on August 4, 2005 (OA-1037-1). In May of 2004, Moorhead filed a joint resolution between Moorhead Township and the City of Moorhead designating an area of Orderly Annexation to Municipal Boundary Adjustment to annex 27 parcels of land, totaling over 1,400 acres. This was a result of the City and Township working together regarding future growth, drainage, services and municipal improvements.*

*The reasons for the annexation stated in the resolution were:*

- 1. Certain Properties Urban or Suburban. Certain areas within the Town abutting upon the City are presently or are about to become urban or suburban in nature.*
- 2. City Capable of Providing Services. City has provided or is capable of providing wastewater collection services and water distribution and is capable of providing additional municipal service to this property to adequately protect the public health, safety, and general welfare of the property.*

*The extension of utilities to this property (see item 14 above) was to provide utility services specifically for development following the annexation of the property.*

18. Attach any additional information which you believe is important. If you have not supplied some information, please explain why:

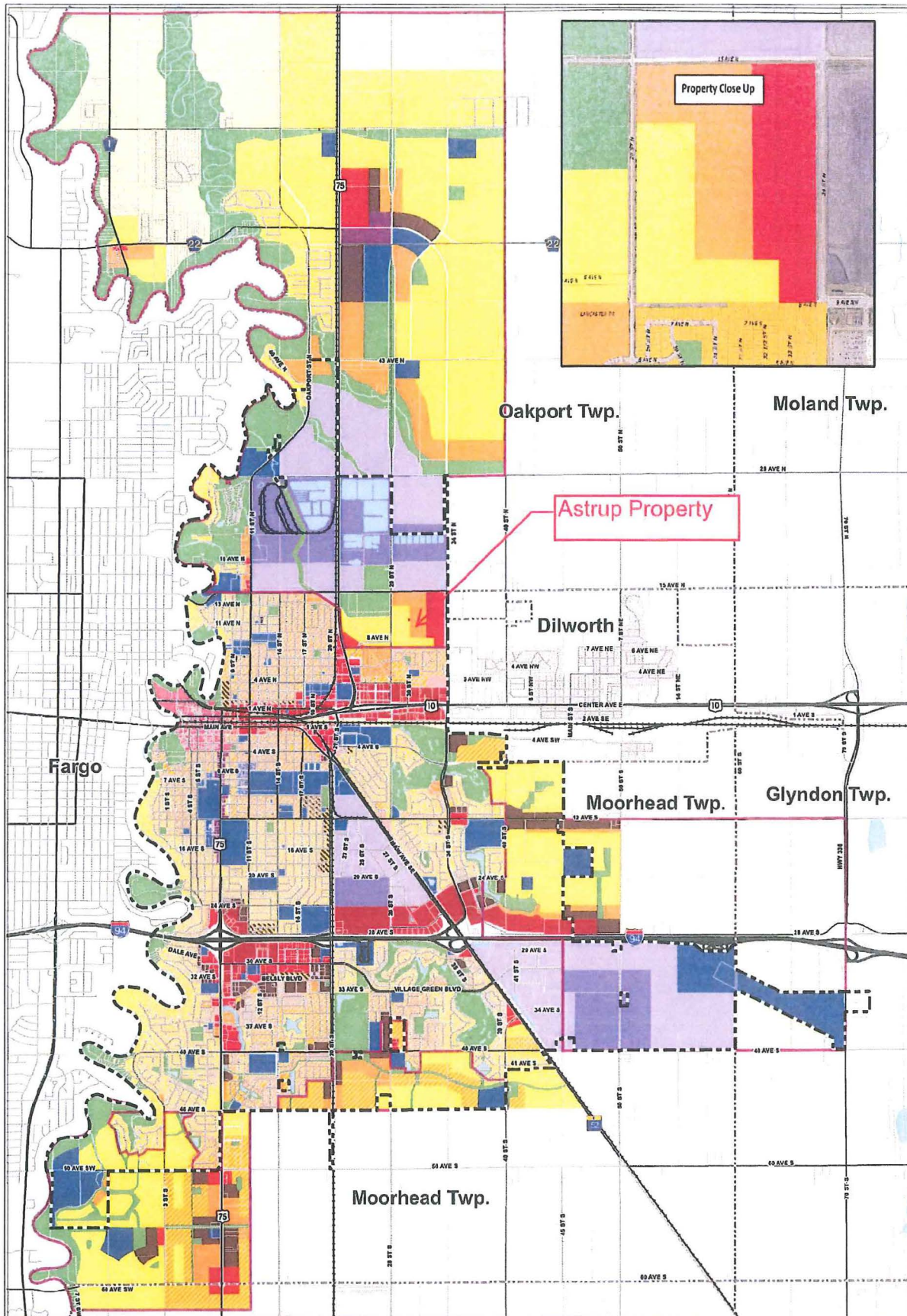
SUBMITTED BY:

City of Moorhead, this 23<sup>rd</sup> day of August, 2012.

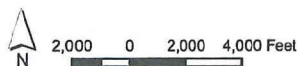
  
\_\_\_\_\_  
Mark Voxland, Mayor

  
\_\_\_\_\_  
Jill Wenger, City Clerk/Assistant City Manager

(SEAL)



**Future Land Use Map**  
 2009 Comprehensive Plan Addendum  
 City of Moorhead, Minnesota



- |                                |                         |
|--------------------------------|-------------------------|
| Moorhead City Boundary         | Neighborhood Commercial |
| Other Municipal Boundary       | Community Commercial    |
| Growth Area Boundaries         | Regional Commercial     |
| Agricultural                   | Downtown                |
| Rural Residential              | Mixed Use               |
| Low Density Residential        | Light Industrial        |
| Medium Density Residential     | Heavy Industrial        |
| High Density Residential       | Public/Institutional    |
| High Density Mixed Residential | Parks/Open Space        |
|                                | Open Water              |

Figure 17



# CITY OF MOORHEAD MINNESOTA

## Official Zoning Map

April 2012

### Zoning Districts

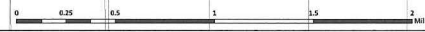
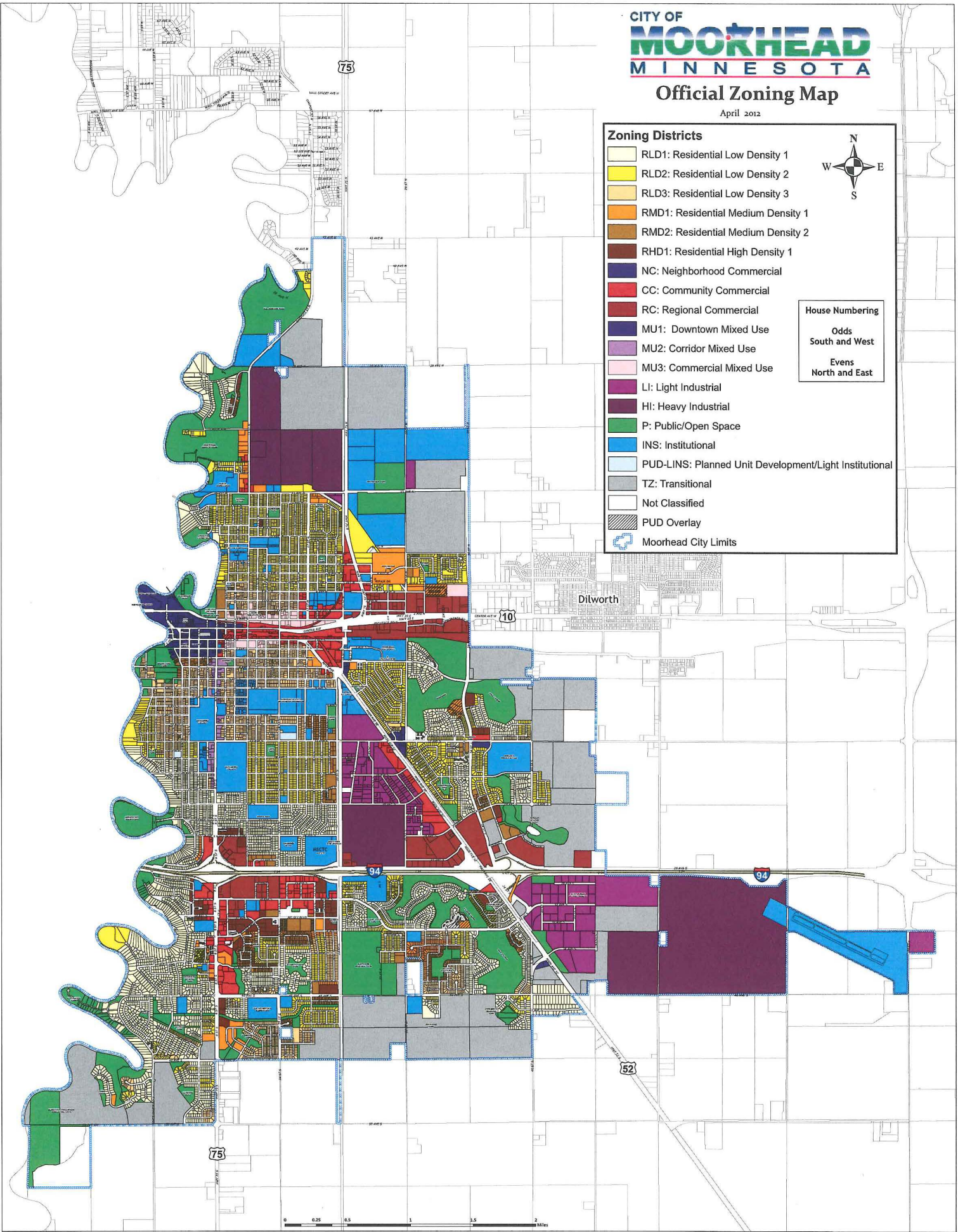
- RLD1: Residential Low Density 1
- RLD2: Residential Low Density 2
- RLD3: Residential Low Density 3
- RMD1: Residential Medium Density 1
- RMD2: Residential Medium Density 2
- RHD1: Residential High Density 1
- NC: Neighborhood Commercial
- CC: Community Commercial
- RC: Regional Commercial
- MU1: Downtown Mixed Use
- MU2: Corridor Mixed Use
- MU3: Commercial Mixed Use
- LI: Light Industrial
- HI: Heavy Industrial
- P: Public/Open Space
- INS: Institutional
- PUD-LINS: Planned Unit Development/Light Institutional
- TZ: Transitional
- Not Classified
- PUD Overlay
- Moorhead City Limits



**House Numbering**

Odds  
South and West

Evens  
North and East














# CITY OF MOORHEAD MINNESOTA

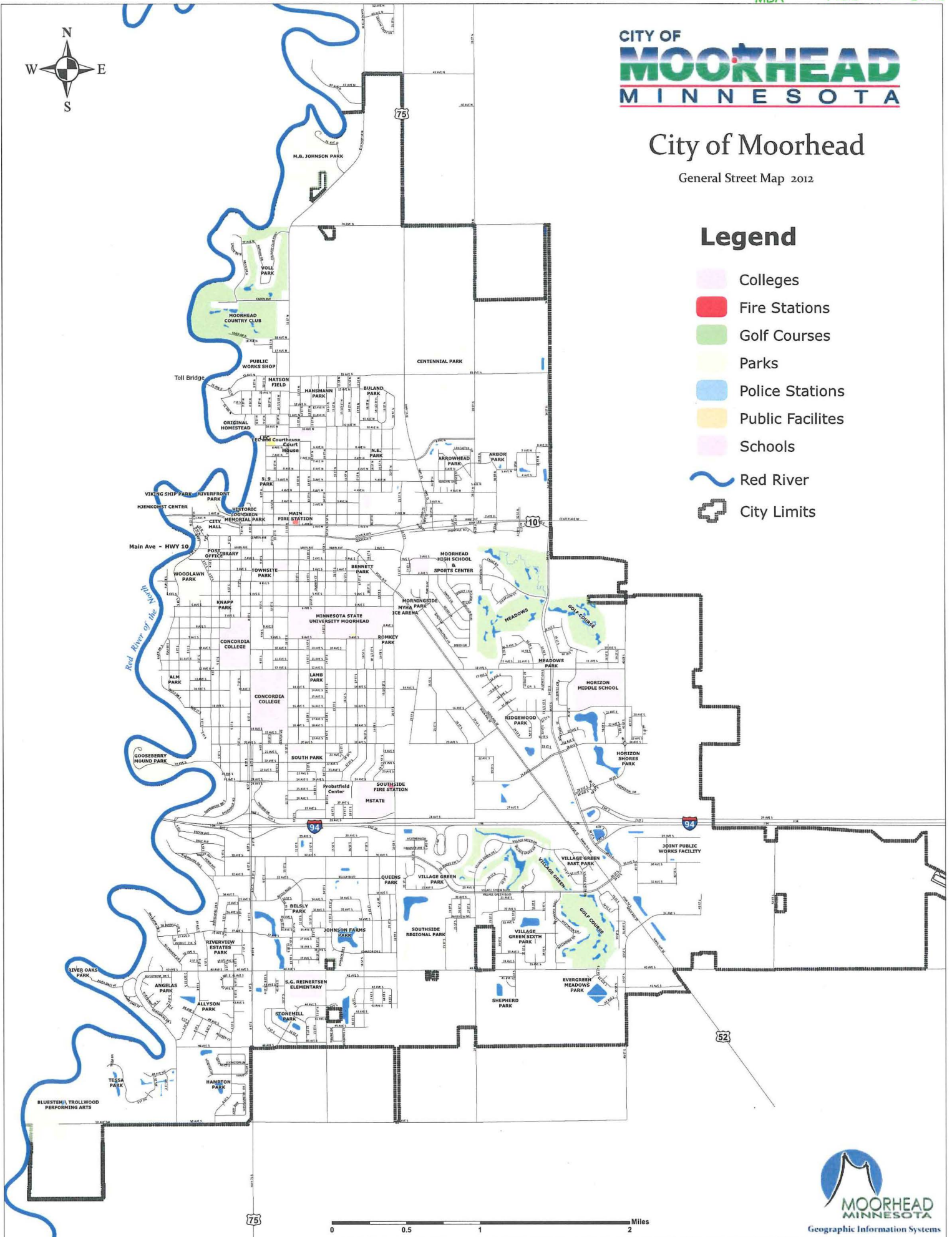
## City of Moorhead

General Street Map 2012



### Legend

-  Colleges
-  Fire Stations
-  Golf Courses
-  Parks
-  Police Stations
-  Public Facilities
-  Schools
-  Red River
-  City Limits









**RESOLUTION 2012-0723-9****Resolution Opposing Astrup Detachment Petition**

WHEREAS, the City of Moorhead received a "Property Owner Petition for Detachment of Property from a city" (hereinafter referred to as the "Petition" – attached as Exhibit A) on or about July 9, 2012; and

WHEREAS, the Petition was signed and submitted by Peter and Michael Astrup (hereinafter the "Astrups"); and

WHEREAS, the property owned by the Astrups contains 144.7 acres, more or less; and

WHEREAS, the matter of the detachment Petition by the Astrups came before the Moorhead City Council at its regular meeting on July 23, 2012; and

WHEREAS, the City of Moorhead opposes the Petition.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Moorhead, based upon the record herein and the evidence before it, that the City Council hereby makes and adopts the following findings of fact:

1. The land that is subject to this Resolution is legally described as follows:

Parcel Number	Owner(s)	Legal Description	Acres
58.900.0096	Michael Astrup Peter Astrup III	Northwest Quarter of Section 3, Township 139, Range 48, less east 185 feet and Highway	144.7

hereinafter referred to as the "property."

2. The area of the property is greater than 40 acres.
3. The Petition for Detachment was signed by more than seventy five percent (75%) of the property owners.
4. The property is identified in Exhibit B.
5. The property is currently situated within the city limits of the City of Moorhead. See Exhibit C.
6. A portion of the property is adjacent to the municipal limits of the City Dilworth.
7. The property *is not rural* in character. The property is located in the northeast section of the City of Moorhead. See Exhibit C. A large housing development is located adjacent to and south of the property; a large commercial retail business (Wal-Mart) is located east of the property, and City park/recreational facilities are located directly west of the property. The area is currently utilized as agricultural



property, but is anticipated to further develop into commercial and residential property.

8. The property is serviced by existing paved major roadways, including 34<sup>th</sup> Street to the east (minor arterial roadway), 15<sup>th</sup> Avenue North to the north (minor arterial roadway), and 28<sup>th</sup> Street North to the west (collector roadway). As a minor arterial roadway, 34<sup>th</sup> Street provides transportation connections to U.S. Highway 10 and Interstate 94, which serve as interregional corridors. Similarly, 15<sup>th</sup> Avenue North provides transportation connections to the City of Fargo, North Dakota. Current traffic volumes on 34<sup>th</sup> Street, 15<sup>th</sup> Avenue North, and 28<sup>th</sup> Street North near the property are approximately 7,900 vehicles per day (vpd), 2,235 vpd, and 510 vpd, respectively. These streets are owned and maintained by the City of Moorhead.
9. Municipal utility systems, including water, sewer, and electricity are available to service the detachment property upon platting and development. A major trunk sanitary sewer line, constructed in 2004, lies on the exterior boundary of the property. This sewer line provides service to a large portion of eastern and southern Moorhead and was designed with specific capacity reserved for the property. County Ditch 41, Lateral 1 lies at the northern end of the property and provides capacity for storm water discharges from future development of the property. Upon platting, the owner can easily tie into these major municipal improvements. Currently there are roughly one million three hundred thousand dollars (\$1,300,000.00) of deferred special assessments for municipal improvements levied upon the property.
10. The detachment property is zoned Transitional (TZ). The TZ district is utilized for annexed, unplatted areas within City limits which are undergoing a transition from, in most cases, agricultural to urban uses.
11. Future land use of the detachment property is guided by the 2009 *Comprehensive Plan Addendum* Future Land Use Map. The map indicates that the detachment property is to be developed into commercial and residential uses.
12. The property is **not rural** in charter and is anticipated to be developed for future urban residential and commercial purposes. Moorhead Township no longer provides any services to the property or the area surrounding the property.
13. The detachment of the property would negatively affect the symmetry of the City of Moorhead. The area north of the property is in city limits. See Exhibit C. The property is surrounded on three sides by the City of Moorhead. Id. The property was annexed into the City of Moorhead pursuant to a joint resolution between Moorhead Township and the City of Moorhead designating an area of Orderly Annexation.

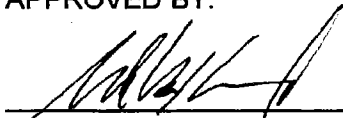
14. The property is needed for reasonable anticipated future development. The land is needed for orderly growth. It is likely that this property will be developed as it is across from a newly constructed Wal-Mart and on a major street corridor and next to a new housing development.
15. The Petition notes the reason for the detachment request as "Real Estate taxes are higher in the City of Moorhead than in the Township of Moorhead." This reason does not meet the requirements for detachment as outlined in Minnesota Statute 414.06.
16. The detachment of the property would impact the ability of the City of Moorhead to carry out the functions of local government and create undue hardship as there are significant amounts of special assessments levied against the property and deferred. The City of Moorhead has incurred significant expense in extending municipal improvements to the area in which the property is located.

BE IT FURTHER RESOLVED by the City Council of the City of Moorhead that, based upon the foregoing findings of fact, the City of Moorhead does hereby object to the detachment of the area set forth in the Petition and as described above.

BE IT FURTHER RESOLVED by the City Council of the City of Moorhead that City Staff and the City Attorney are hereby directed to take all necessary action to oppose the Petition, and the City Attorney is authorized to appear on behalf of the City at hearings before the Office of Administrative Hearings, regarding this matter.

PASSED: July 23, 2012 by the City Council of the City of Moorhead.

APPROVED BY:

  
\_\_\_\_\_  
MARK VOXLAND, Mayor

ATTEST:

  
\_\_\_\_\_  
JILL WENGER, City Clerk



REC'D BY  
MBA

AUG 28 2012

# **Title 3**

## **PUBLIC HEALTH AND SANITATION**

### **Chapter 1**

#### **FOOD AND BEVERAGE ESTABLISHMENTS**

##### **3-1-1: ADOPTION OF MINNESOTA FOOD CODE:**

The Minnesota food code contained in Minnesota rules, parts 4626.0010 to 4626.1870 is hereby adopted by the city as its food code. Copies of the rules are available in the office of the environmental health officer of the city. Provided, that any amendments to Minnesota rules, parts 4626.0010 to 4626.1870 by the state shall not take effect in the city until they have been adopted by the city council by resolution. (Ord. 98-13, 12-7-1998)

##### **3-1-2: DEFINITIONS:**

**BOARDING ESTABLISHMENT:** A food and beverage service establishment where food or beverages, or both, are furnished to five (5) or more regular boarders, whether with or without sleeping accommodations, for periods of one week or more.

**FOOD AND BEVERAGE SERVICE ESTABLISHMENT:** A building, structure, enclosure, or any part of a building, structure, or enclosure used as, maintained as, advertised as, or held out to be an operation that prepares, serves, or otherwise provides food or beverages, or both, for human consumption.

**FOOD CART:** A food and beverage service establishment that is a nonmotorized vehicle self-propelled by the operator.

**LIMITED FOOD AND/OR BEVERAGE SERVICE:** A place that sells only prepackaged food which receives heat treatment and is served in the package (such as prepackaged sandwiches and frozen pizzas, etc.).

**MOBILE FOOD UNIT:** A food and beverage service establishment that is a vehicle mounted unit, either motorized or trailered, operating no more than twenty one (21) days annually at any one place or is operated in conjunction with a permanent business at the site of a permanent business by the same individual or company, and readily movable, without disassembling, for transport to another location.

**REGULATORY AUTHORITY:** When reference is made in the food code to "regulatory authority" it shall mean the city of Moorhead, Minnesota, and, in particular, the environmental health officer of

the city of Moorhead.

**RESTAURANT:** A food and beverage service establishment, whether the establishment serves alcoholic or nonalcoholic beverages, which operates from a location for more than twenty one (21) days annually. Restaurant does not include a food cart or a mobile food unit.

**SEASONAL PERMANENT FOOD STAND:** A food and beverage service establishment which is a permanent food service stand or building, but which operates no more than twenty one (21) days annually.

**SEASONAL TEMPORARY FOOD STAND:** A food and beverage service establishment that is a food stand which is disassembled and moved from location to location, but which operates no more than twenty one (21) days annually at any one location.

**SPECIAL EVENT FOOD STAND:** A food and beverage service establishment which is used in conjunction with celebrations and special events no more than three (3) times annually for no more than ten (10) total days.

**SPECIAL EVENT FOOD STAND - LIMITED:** A fee category where food is served at special events that is prepared at another licensed location and is only held and served with no additional preparation at the serving site of the special event, and which operates no more than three (3) times annually for no more than ten (10) total days. (Ord. 98-13, 12-7-1998; amd. Ord. 2010-6, 7-12-2010)

### **3-1-3: FOOD AND BEVERAGE ESTABLISHMENT AND RELATED LICENSES:**

- A. **Term Of License:** Initial and renewal food and beverage service establishment licenses, boarding establishment licenses, mobile food unit licenses, seasonal permanent food stand licenses, seasonal temporary food stand licenses, special event food stand licenses and special event food stand - limited licenses shall be used for the calendar year for which the application is made and shall expire on December 31 of each year with the fee for such licenses to be established by council. (Ord. 98-13, 12-7-1998)
- B. **Fee Schedule:** The fee schedule for the licenses set out in subsection A of this section shall be as established by the city's fee schedule. (Ord. 98-13, 12-7-1998; amd. Ord. 2007-30, 1-7-2008, eff. retroactive to 1-1-2008)
- C. **Penalty Fee:** Whenever an application is made for a license under this section after January 31 for a year round establishment, or thirty (30) days after opening for seasonal or new establishments, a penalty fee in an amount set by resolution of the city council will be assessed in addition to any regular fee required under this section. (Ord. 98-13, 12-7-1998)



D. Reduced License Fees: New establishments and new owners opening after October 1 and before January 1 are required only to pay a fee as set by the city's fee schedule, plus any penalty that may be required. (Ord. 98-13, 12-7-1998; amd. Ord. 2007-30, 1-7-2008, eff. retroactive to 1-1-2008)

### **3-1-4: PENALTIES FOR VIOLATION:**

In addition to the administrative enforcement methods set forth in the food code regulations, any person violating a provision of this chapter shall, upon conviction, be penalized in accordance with the provisions of section 1-4-2 of this code, or an administrative penalty pursuant to section 1-4-4 of this code. However, nothing in this section shall in any way affect the right of the city to proceed to obtain an injunction or restraining order preventing further violations or to deny, suspend, or revoke any license issued under this chapter for violations of the food code. (Ord. 2010-6, 7-12-2010)

## **Chapter 2 LODGING ESTABLISHMENTS**

### **3-2-1: PURPOSE:**

The purpose of these rules is to establish standards for lodging establishments within the City to protect the health, safety, and general welfare of the people of the City pursuant to the powers granted under Minnesota statutes. (1987 Code)

### **3-2-2: SCOPE:**

These rules shall be applicable to all lodging establishments such as hotels, motels, lodging houses, and resorts as defined in Minnesota Statutes, chapter 157 as that chapter may be from time to time amended, supplemented or replaced. (1987 Code)

### **3-2-3: DEFINITIONS:**

APPROVED: Acceptable to the City following its determination as to conformity with established public health practices.

**CITY:** The City of Moorhead whose governing body is the City Council of the City of Moorhead hereinafter referred to as Council.

**CLEAN:** Absence of dirt, grease, rubbish, garbage, and other offensive, unsightly or extraneous matter.

**GOOD REPAIR:** Free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions, and similar defects so as to constitute a good and sound condition.

**SINGLE SERVICE ARTICLES :** Cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, placemats, napkins, doilies, or similar articles intended for one-time, one-person use and then discarded.

**USABLE FLOOR SPACE:** All floor space in a sleeping room not occupied by closets, toilet rooms, showers or bathrooms.

### **3-2-4: SANITATION REQUIREMENTS:**

- A. **Building:** Every building, structure or enclosure used to provide lodging accommodations for the public shall be kept in good repair and so maintained as to promote the health, comfort, safety, and well-being of persons accommodated.
  
- B. **Floors:** The floors of all guest rooms, hallways, bathrooms, storerooms and all other spaces used or traversed by guests shall be of such construction as to be easily cleaned, smooth, and shall be kept clean and in good repair. Cleaning of floors shall be done as to minimize the raising of dust and the exposure of guests thereto. The requirements of this provision shall not prevent the use of rugs, carpets or natural stone which can be kept clean. Abrasive strips for safety purposes may be used wherever deemed necessary to prevent accidents.
  
- C. **Walls and Ceilings:** The walls and ceilings of all rooms, halls and stairways shall be kept clean and in good repair. Studs, joists or rafters shall not be left exposed except when suitably finished and kept clean.
  
- D. **Screening:** When flies, mosquitos and other insects are prevalent, all outside doors, windows and other outer openings shall be screened. Provided that such screening shall not be required for rooms deemed by the City to be located high enough in the upper stories of the building as to be free of such insects or in such areas where other effective means are provided to prevent their entrance.



- E. **Lighting and Ventilation:** All rooms and areas used by patrons and guests and all other rooms or spaces in which lighting and ventilation, either natural or artificial, are essential to the efficiency of the building operation shall be well lighted and ventilated. An area shall be considered well ventilated when excessive heat, odors, fumes, vapors, smoke or condensation is reduced to a negligible level and barely perceptible to the normal senses. During seasons when winter conditions require tempering of make-up air, adequate equipment shall be provided to temper the make-up air. Every gas-fired or oil-fired room heater and water heater shall be ventilated to the outside air.
- F. **Space:** Every room occupied for sleeping purposes by one person shall contain at least seventy (70) square feet of usable floor space and every room occupied for sleeping purposes by more than one person shall contain not less than sixty (60) square feet of usable floor space for each occupant thereof. Under no circumstances shall there be provided less than four hundred (400) cubic feet of air space per occupant. Beds shall be spaced at least three feet (3') apart and placed side by side. No sleeping quarters shall be provided in any basement having more than half its clear floor to ceiling height below the average grade of the adjoining ground. When strict compliance herewith is impractical, the City may waive any of the provisions of this paragraph subject to such conditions as may be deemed desirable in the individual case.
- G. **Bedding and Linen:** All beds, bunks, cots and other sleeping places provided for guests in hotels, motels, resorts and lodging houses shall be supplied with suitable pillow slips and under and top sheets. All bedding, including mattresses, quilts, blankets, pillows, sheets, spreads and all bath linen shall be kept clean. No bedding, including mattresses, quilts, blankets, pillows, bed and bath linen shall be used which are worn out or unfit for further use. Pillow slips, sheets and bath linen after being used by one guest shall be washed before they are used by any other guest occupying a guest room. A clean set shall be furnished each succeeding guest. For any guest occupying a guest room for an extended period of time, a clean set of sheets and pillow slips shall be furnished at least once each week and at least two (2) clean towels shall be furnished each day except that the proprietor will not be responsible for the sheets, towels, pillow slips and bath linen furnished by a guest.
- H. **Room Furnishings:** All equipment, fixtures, furniture and furnishings, including windows, draperies, curtains and carpets shall be kept clean and free of dust, dirt, vermin and other contaminants and shall be maintained in good order and repair.
- I. **Toilets:** Every hotel, motel and lodging house shall be equipped with adequate and conveniently located water closets for the accommodation of its employees and guests. Water closets, lavatories and bathtubs or showers shall be available on each floor when not provided in each individual room. Toilets, lavatories and bath facilities shall be provided in the ratio of one toilet and one lavatory for every ten (10) occupants or fraction thereof, and one bathtub or shower for every twenty (20) occupants or fraction thereof. Toilet rooms shall be well ventilated by natural

or mechanical methods. The doors of all toilet rooms serving the public and employees shall be self-closing. Toilets and bathrooms shall be kept clean and in good repair and shall be well lighted and ventilated. Hand washing signs shall be posted in each toilet room used by employees. Every resort shall be equipped with adequate and convenient toilet facilities for its employees and guests. If privies are provided, they shall be separate buildings and shall be constructed, equipped and maintained in conformity with the standards of the City and the State of Minnesota and shall be kept clean.

- J. **Water Supply:** A safe adequate supply of water shall be provided. The water supply system shall be located, constructed and operated in accordance with the rules and standards of the Minnesota Water Well Codes. The temperature of hot water which is provided in any public area or guest room, including, but not limited to lavatories, bathtubs or showers shall not exceed one hundred thirty degrees (130°) Fahrenheit (approximately 55°C.)
- K. **Handwashing:** All lavatories for public use or furnished in guest rooms at hotels, motels, lodging houses and resorts shall be supplied with hot and cold running water and with soap. Scullery sinks should not be used as handwashing sinks.

In the case of separate housekeeping cabins at resorts not supplied with running hot water, equipment shall be provided for heating water in the cabin.

Individual or other approved sanitary towels or warm air dryers shall be provided at all lavatories for use by employees or the public.

L. **Eating Utensils And Drinking Vessels Provided In Guestrooms:**

1. **Multiuse Eating Utensils And Drinking Vessels:** When multiuse eating utensils and drinking vessels are used at hotels, motels and lodging houses, they shall be thoroughly washed in hot water containing a suitable soap or synthetic detergent, rinsed in clean water, and effectively subjected to a bactericidal process approved by the city. Approved facilities for manual dishwashing shall consist of a three (3) compartment sink with stacking and drainboards at each end. All mechanical dishwashing machines shall conform to standard number 3 of the National Sanitation Foundation dated June 1982, as said standard may be from time to time amended, supplemented or replaced. All dishes, glasses, utensils and equipment after washing and bactericidal treatment shall be permitted to drain and air dry.
2. **Single Service Eating Utensils, Drinking Vessels And Other Articles:** If a three (3) compartment sink or a mechanical dishwashing machine is not provided, single service articles, including single service eating utensils and drinking vessels, must be provided. Single service articles as defined in Minnesota rule part 4625.2400 as such rule may be from time to time amended, supplemented or replaced, must be handled in a sanitary manner. Such utensils may not be reused. (1987 Code)



**M. Waste Disposal:** All liquid wastes shall be disposed of in an approved public sewage system or in a sewage system which is designed, constructed and operated in accordance with the regulations of the city and the rules of the Minnesota pollution control agency (chapter 7080 of the Minnesota rules or as such rule may be amended, supplemented or replaced). Prior to removal, all garbage and refuse in storage shall be kept in watertight, nonabsorbent receptacles which are covered with close fitting, flytight lids. All garbage, trash and refuse shall be removed from the premises frequently to prevent nuisance and unsightly conditions and shall be disposed of in a sanitary manner. All garbage receptacles shall be kept clean and in good repair. (Ord. 2010-6, 7-12-2010)

**N. Insect And Rodent Control:**

1. Every hotel, motel, lodging house and resort shall be so constructed and equipped as to prevent the entrance, harborage or breeding of flies, roaches, bedbugs, rats, mice and all other insects and vermin and specific means necessary for the elimination of such pests such as cleaning, renovation or fumigation shall be used.
2. The city may order any hotel, motel, lodging house or resort to hire an exterminator licensed by the state of Minnesota to exterminate pests when:
  - a. The infestation is so extensive that it is unlikely that a nonprofessional can eradicate the pests effectively, or
  - b. The extermination method of choice can only be carried out by a licensed exterminator, or
  - c. Upon reinspection, it is found that an establishment has not been brought into compliance with a prior order to rid the establishment of pests.

**O. Personnel Health And Cleanliness:**

1. No persons shall resume work after visiting the toilet without first thoroughly washing the person's hands.
2. Personnel of hotels, motels, lodging houses and resorts may be required to undergo medical examination to determine whether or not they are cases or carriers of a communicable disease.

**P. Cleanliness Of Premises:** The premises of all hotels, motels, lodging houses and resorts shall be kept clean and free of litter or rubbish.

**Q. Fire Protection:** All lodging establishments shall provide suitable fire escapes which shall be kept in good repair and accessible at all times. Hallways shall be marked and exit lights provided. Fire extinguishers shall be provided and shall be recharged annually and kept accessible for use. No sleeping quarters shall be maintained in rooms which do not have unobstructed egress

to the outside or to a central hall leading to all fire escapes. All fire protection measures shall be in accordance with the requirements of the city and the state of Minnesota including the fire code as adopted by title 9, chapter 5 of this code as such chapter may be from time to time amended, supplemented or replaced. (1987 Code)

#### R. Plumbing And Pools:

1. All new plumbing in hotels, motels, lodging houses and resorts, and all plumbing reconstructed or replaced hereafter shall be designed, constructed and installed in conformity with the requirements of the city and the state of Minnesota, specifically including the requirements found in the building code set forth in title 9, chapter 1 of this code as well as the requirements of chapter 4715 of the Minnesota plumbing code as such city and state code provisions may be from time to time amended, supplemented or replaced.
2. All public pools and facilities must be located, constructed and operated in conformity with Minnesota rules 4717.0150 to 4717.3975, including chapter 9 of this title and the Minnesota plumbing code as such city and state regulations may be from time to time amended, supplemented or replaced. (Ord. 2010-6, 7-12-2010)

S. Sanitary Dispensing Of Ice: Any lodging establishment which makes ice available in public areas, including, but not limited to, lobbies, hallways and outdoor areas shall restrict access to such ice in accordance with the following provisions:

1. Any newly constructed lodging establishment which installs ice making equipment and any existing lodging establishment which replaces its ice making equipment shall install only automatic dispensing, sanitary ice making and storage equipment.
2. Any existing lodging establishment which has not converted to automatic dispensing ice making and storage equipment shall no longer permit unrestricted public access to open type ice bins, and shall dispense ice to guests only by having employees give out prefilled, individual, sanitary containers of ice, or by making available prefilled, disposable, closed bags of ice. (1987 Code)

### **3-2-5: CONSTRUCTION PLAN REVIEW:**

All persons who hereafter construct, remodel or convert buildings or facilities for use as a lodging or boarding facility shall conform and comply in their construction, erection or alteration with the requirements of this chapter. Plans and specifications for such construction, remodeling or alteration shall show layout, mechanical, plumbing and electrical specifications, construction materials, and location and type of equipment and facilities and shall be filed by its owner with the city. The city shall not issue a building permit for the construction, remodeling or conversion of the buildings or facilities until such plans have been approved by authorized city personnel. A lodging establishment shall be constructed and finished in conformance with the approved plans. The city

shall inspect the lodging establishment as frequently as it may deem necessary during construction to ensure that construction occurs in conformance with approved plans. The city shall conduct a final inspection prior to the start of the operations and issuance of any license to the owner for a lodging establishment. (1987 Code)

### **3-2-6: LICENSING OF LODGING ESTABLISHMENTS:**

- A. License Required: No person, firm or corporation shall establish, conduct or operate a lodging establishment within the city without first obtaining a city license. (Ord. 91-26, 10-21-1991, eff. 1-1-1992)
  
- B. License Fee: A fee shall be charged for each license issued to a person, firm or corporation wishing to establish, conduct or operate a lodging establishment within the city in accordance with the lodging fee schedule as established by the city's fee schedule. (Ord. 91-26, 10-21-1991, eff. 1-1-1992; amd. Ord. 2007-30, 1-7-2008, eff. retroactive to 1-1-2008)
  
- C. Expiration Date: Initial and renewal lodging establishment licenses shall be issued for the calendar year for which application is made and shall expire on December 31 of such year.
  
- D. License Renewals: License renewals shall be obtained on an annual basis. License renewal applications shall be submitted to the city on forms provided by the city no later than December 31 of the year preceding the year for which application is sought.
  
- E. Penalty Fee: A penalty fee in an amount set by resolution of the city council shall be added to the amount of the license fee if the application has not been filed with the city on or before January 31, or in the event of a new business, thirty (30) days after the opening of such business. (Ord. 91-26, 10-21-1991, eff. 1-1-1992)
  
- F. Reduced License Fee: New establishments and new owners opening after October 1 and before January 1, are required only to pay a fee as established by the city's fee schedule plus any penalty that may be required. (Ord. 91-26, 10-21-1991, eff. 1-1-1992; amd. Ord. 2007-30, 1-7-2008, eff. retroactive to 1-1-2008)

### **3-2-7: DENIAL, SUSPENSION OR REVOCATION OF LICENSE:**



The council may deny, suspend or revoke any license for a lodging establishment as defined in this chapter in accordance with the provisions of section 2-1-10 of this code. (1987 Code)

### **3-2-8: PENALTY FOR VIOLATIONS:**

Any person violating any provision of this chapter shall, upon conviction, be penalized in accordance with the provisions of section 1-4-2 of this code, or an administrative penalty pursuant to section 1-4-4 of this code. However, nothing in this section shall in any way affect the right of the city to proceed to obtain an injunction or restraining order preventing further violations or to deny, suspend or revoke any license issued under this chapter for violations of its provisions. (Ord. 2010-6, 7-12-2010)

### **3-2-9: SUMMARY ACTION:**

When the condition of a lodging establishment, or any rental dwelling, or individual room is in such a condition that it is detrimental to the health, sanitation, safety and general welfare of the community at large, or residents of the lodging establishment so as to constitute a nuisance, fire hazard, or other unsafe or dangerous condition and give rise to an emergency, the director of environmental health and the fire chief, jointly, shall have the authority to summarily condemn or close off individual rental units or such areas of the rental dwelling as necessary. Notice of summary condemnation shall be posted at the units or areas affected and shall indicate the units or areas affected. The notice may not be removed by anyone but the appropriate city inspector, the fire marshal or city manager. Any person aggrieved by the decision or the action of the fire marshal taken pursuant to the authority of this section may appeal the decision taken pursuant to this section by filing a written appeal filed with the city clerk.

- A. The city manager shall set up a hearing within ten (10) days of the written appeal, at which time the license holder of the lodging establishment affected may appear in person or by an attorney representing the licensee. The city manager, after the hearing, shall issue an order either denying or upholding the decision of the fire marshal, or may issue another order under such terms and conditions as the city manager deems necessary to accomplish the purposes of this section. The decision of the city manager may be appealed by the licensee to the city council by filing a written appeal at the office of the city clerk within ten (10) days of the order of the city manager. The decision of the fire marshal to summarily condemn or close off individual rental units or parts thereof shall not be voided by the filing of the appeal.
- B. If the order is appealed to the city council, the licensee shall receive at least seven (7) days' written notice of the hearing date before the council and, at that hearing, the licensee, or an

attorney representing the licensee, may present evidence. After the hearing, the council may uphold the decision of the city manager, reverse the decision, or enter a different order with different conditions if the city council deems it necessary to protect the public health, sanitation, safety and general welfare of the community at large or the residents of the lodging establishment. The city council shall issue written findings of fact and its order within twenty (20) days of the hearing.

- C. The decision of the city council may be appealed by the licensee by filing an appeal or an appropriate writ with the Clay County district court within fifteen (15) days of the date of the order of the city council. (Ord. 94-13, 7-5-1994)

## **Chapter 3 NUISANCES**

### **3-3-1: PUBLIC NUISANCES PROHIBITED:**

No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the city or within its police jurisdiction. (1967 Code §32.01)

### **3-3-2: PUBLIC NUISANCES DEFINED:**

- A. General: A public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as to:
1. Substantially annoy, injure or endanger the comfort, health, repose or safety of the public; or
  2. In any way render the public insecure in life or in the use of property; or
  3. Greatly offend the public morals or decency; or
  4. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any sidewalk, street, alley, highway, navigable body of water or other public way.
- B. Public Nuisances Affecting Health: The following acts, omissions, places, conditions and things are hereby specifically declared to be public health nuisances, but shall not be construed to exclude other health nuisances coming within the definition of subsection A of this section:
1. All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to

the public;

2. Carcasses of animals, birds or fowl not buried or otherwise disposed of in a sanitary manner within twenty four (24) hours after death;
3. Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material in which flies, mosquitoes, disease carrying insects, rats or other vermin may breed; (1967 Code §32.02)
4. All stagnant water on private property in which, if the conditions were suitable, mosquitoes, flies or other insects could multiply, whether or not such insects are doing so at the time, or whether or not the weather conditions are conducive to such activity at that time; (Ord. 96-15, 9-3-1996)
5. Garbage cans which are not flytight;
6. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the city limits in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property;
7. The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, creamery or industrial wastes or other substances;
8. Any use of property, substances or things within the city emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the city;
9. All abandoned wells not securely covered or secured from public use;
10. Any privy vault or outhouse maintained after notice to remove has expired.

C. Public Nuisances Offending Morals And Decency: The following acts, omissions, places, conditions and things are hereby specifically declared to be public nuisances offending public morals and decency, but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of subsection A of this Section:

1. All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual intercourse or gambling;
2. All illegal gambling devices and slot machines;
3. All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided for by this Code or by the Minnesota Statutes<sup>1</sup>;
4. Any place or premises where the ordinances or State laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated;



5. Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of the laws of the State or other ordinances of the City.

D. **Public Nuisances Affecting Peace And Safety:** The following acts, omissions, places, conditions and things are hereby declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the provisions of subsection A of this Section:

1. All buildings erected, repaired or altered within the fire limits of the City in violation of the provisions of the ordinances of the City relating to materials and manner of construction of buildings and structures within said district.
2. All unauthorized signs, signals, markings or devices which purport to be or may be mistaken as official traffic-control devices placed or maintained upon or in view of any public highway or railway crossing.
3. All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.
4. All limbs of trees which project over a public sidewalk less than eight feet (8') above the surface thereof or less than twelve feet (12') above the surface of a public street.
5. All use or display of fireworks except as provided by the laws of the State and ordinances of the City.
6. All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.
7. All wires over streets, alleys or public grounds which are strung less than fifteen feet (15') above the surface of the street or ground.
8. All loud and discordant noises or vibrations of any kind.
9. All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by ordinance.
10. All open and unguarded pits, wells, excavations or unused basements freely accessible from any public street, alley or sidewalk.
11. All abandoned refrigerators or iceboxes from which the doors and other covers have not been removed or which are not equipped with a device for opening from the inside by pushing only.
12. Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.
13. Any abandoned above or underground tank whose capacity is in excess of one thousand one hundred (1,100) gallons.

14. Repeated or continuous violations of the ordinances of the city or the laws of the state.  
(1967 Code §32.02)

15. Any use of water from fire hydrants in the city limits of Moorhead, other than by fire department, without first obtaining a permit from the Moorhead public service commission, or if person or entity has obtained permit, not following the rules and procedures set by Moorhead public service commission relating to such permits. (Ord. 2007-17, 8-20-2007)

E. **Other Public Nuisances:** It is hereby determined that dilapidated fences and the storage or accumulation of trash, rubbish, junk, building materials and demolition materials, upon any private property within the city tends to result in blighted and deteriorated neighborhoods, the spread of vermin and disease, and is contrary to the public peace, health, safety and general welfare of the community.

1. **Definitions:** Definitions for purposes of this subsection E are as follows:

**BUILDING MATERIALS:** Shall include, without limitation, lumber, bricks, concrete, cinder blocks, plumbing materials, electric wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails, screws or any other materials used in constructing any structure.

**DEMOLITION MATERIALS:** Shall include, without limitation, debris resulting from the demolition of buildings, such as concrete, stone, plaster, bricks, concrete blocks and other materials that are a result of the demolition and construction operations.

**DILAPIDATED FENCES:** Any fence, in whole or in part, which has fallen on the ground, or because of decay or disrepair has deteriorated to such an extent that it presents a danger of imminent collapse on its own, or as a result of normal weather conditions.

**JUNK:** Shall include, without limitation, parts of machinery or motor vehicles, unused furniture, stoves, refrigerators or other appliances, remnants of wood, metal or any other cast off material of any kind, whether or not the same could be put to any reasonable use.

**TRASH AND RUBBISH:** Shall include any and all forms of debris not herein otherwise classified.

2. **Unlawful To Accumulate Junk, Trash And Rubbish:** It shall be a nuisance and an offense for any person to store or permit the storage or accumulation of trash, rubbish or junk on any private property within the city, except within a completely enclosed building or upon the business premises of a properly zoned business and which materials which would otherwise constitute junk, trash or rubbish are materials that are used in the ordinary course of that business.

3. **Unlawful To Dismantle Automobiles Or Machinery; Exception:** It shall be a nuisance and an offense for any person to dismantle, cut up, remove parts from or otherwise disassemble an automobile, whether or not the same be a junk automobile, abandoned vehicle or otherwise, or any appliance or machinery, or store such parts, except in a completely enclosed building or upon the business premises of a properly zoned business and which disassembling and

storing of parts are done in the ordinary course of that business.

4. Unlawful To Store Building Materials Or Demolition Materials; Exception: It shall be a nuisance and an offense for any person to store or permit the storage or accumulation of building materials or demolition materials on any private property, except in a completely enclosed building or except where such building materials are part of the stock and trade of a business located on said property, or except when such materials are being used in the construction of a structure on the property in accordance with a valid building permit issued by the city, and unless that construction is completed within a reasonable period of time.
5. Unlawful To Permit Dilapidated Fences: It shall be a nuisance and offense for any person to allow or permit a dilapidated fence on their property.

F. State Defined Nuisances: Any nuisance so defined by the Minnesota statutes<sup>2</sup> or by the common law of the state is also a nuisance under this chapter. (Ord. 96-15, 9-3-1996)

### **3-3-3: WEEDS:**

- A. Removal: Every owner or occupant of land or, if the land is unoccupied, the owner or resident agent, shall cut down, destroy or eradicate all weeds as defined by the laws of the state and grasses standing or growing upon such lands, in such manner and at such times as may be directed or ordered by a city authorized weed inspector. Any land, with the lesser of thirty percent (30%) or more of its grass and weed growth above the height of eight inches (8"), or with an area of two hundred fifty (250) contiguous square feet or greater of weeds or grass exceeding the height of eight inches (8"), will be considered in violation of this section. Further, all land must remain debris free, such that it does not become a dumping site for grass clippings, garbage, dirt and any other substances that would directly alter the normal condition of the land and that would make adequate maintenance of said land difficult. Any violation of the aforementioned conditions and following issuance of a citation for said violation, the city may cause the land to be cleared and leveled to eradicate the improper condition of the land, with the expense for doing so becoming the responsibility of the landowner. (Ord. 2005-31, 12-5-2005)
- B. Weed Inspector: A city authorized weed inspector(s) shall examine the lands, highways and public grounds for the purpose of ascertaining if the provisions of this section are being complied with, and if it is found that such is not the case, shall issue a notice in writing on a form to be prescribed by the council to the owner(s) or occupant(s) requiring them to cut down, destroy or eradicate, within five (5) days, all noxious weeds which are growing or in danger of going to seed. If the owner is a nonresident of the city, then the occupant shall be deemed to be the owner's agent to receive any such notice.



- C. **Weed Cutting:** Whenever any person(s) fails to comply with the notice served upon them, the city authorized weed inspector shall cause the same to be cut down, destroyed, cleared, leveled or eradicated at the expense of the owner of the property. The expense of maintenance of said land shall be billed directly to the landowner. Said notice shall be served by depositing a copy in the post office addressed to the owner at the address shown on the real estate tax rolls of the county. If timely payment is not forthcoming from the landowner, the bill shall be assessed against the property as provided by law. (Ord. 2007-19, 9-4-2007)
- D. **Natural Lawns:**
1. Any owner or occupant of land within the city may apply for approval of a land management plan for a natural lawn, one where the grasses and other growth may exceed eight inches (8") in height, provided that such land management plan shall provide that plantings shall be maintained so as not to present hazards to adjoining properties or to persons or vehicles traveling on the public ways, nor to present a hazard to structures on such affected land, and further, shall be maintained as to enhance the appearance of the property on which located.
  2. "Land management plan" means a written plan relating to management of the lawn which contains a legal description of the lawn upon which the grass and other growth will exceed eight inches (8") in length, a statement of intent and purpose for the lawn, a general description of the vegetation types, plants, and plant succession involved, and the specific management and maintenance techniques to be employed. The management plan must include provisions for cutting at a length not greater than eight inches (8") the berm area, that portion between the sidewalk and the street or a strip not less than fifteen feet (15') adjacent to the street where there is no sidewalk and a strip not less than four feet (4') adjacent to neighboring property lines unless waived by the abutting property owner on the side so affected.
  3. Each application of a land management plan shall be on a form provided by the city. A copy of the application shall be mailed by the applicant or given personally by the applicant to each of the owners of record, as listed in the office of the city assessor, who are owners of the property situated in whole or in part within two hundred feet (200') of the boundaries of the properties affected. The applicant shall certify, under oath, on a form to be furnished by the city that such owners have been duly notified and the manner in which they have been notified. If, within fifteen (15) days of receipt of a copy of the application, at least fifty one percent (51%) of such property owners file written objections to the application with the city, the application shall be referred to the planning commission for hearing and recommendation to the council.
  4. The council shall receive the recommendation of the planning commission and shall have the power to approve or deny an application for a land management plan based upon the recommendations of the planning commission.
  5. Notwithstanding the fact that approval shall be given for a land management plan, the city may order the cutting of such natural lawn at any time when it is determined that the growth has become so hazardous as to cause danger to the safety of the inhabitants of any residential structure on said property or to the citizens and residents of the neighborhood within which the land management plan has been approved.

6. The city shall have the right to further enforce the terms of this section in the same manner as subsections A, B and C of this section upon such notice to the owner or occupant of the property as required by those subsections, with the cost of enforcement of the order contained in said notice to be borne by the owner of the property. (Ord. 810, 10-15-1984)

### **3-3-4: OPEN BURNING RESTRICTIONS:**

Minnesota rules parts 7005.0700 to 7005.0820, inclusive, relating to open burning and the issuance of permits for open burning, as such rules may be from time to time amended, supplemented or replaced, are hereby adopted by reference and are made a part of this code as if fully set forth herein. The city fire department shall accept applications and issue open burning permits within the city in accordance with the terms and conditions of Minnesota rules part 7005.0760, as such rules may be from time to time amended, supplemented or replaced. (Ord. 817, 3-4-1985)

### **3-3-5: OUTSIDE STORAGE OF FIREWOOD:**

A. Purpose: In the interest of promoting public health, safety and welfare, the city does hereby enact this section governing and regulating the outside storage of firewood within the city.

#### **B. Storage Restrictions:**

1. Firewood shall be stored in a compact and orderly fashion so as not to constitute a hazard to adjacent buildings or property and to endanger the public health; all firewood shall be stored or stacked up off the surface of the ground.
2. Stacks of wood in the open shall not exceed six feet (6') in height and shall not be located less than five feet (5') from a boundary line.
3. There shall be no front yard or front lot storage of firewood in the city, provided that this subsection shall not prevent businesses that sell firewood from displaying firewood to the public in a manner that is deemed necessary for said business purposes, as long as said storage and display does not violate any of the other provisions of this section. (Ord. 702, 12-3-1979)

### **3-3-6: MAINTAINING NUISANCE PROHIBITED:**

No owner or occupant of any premises shall permit any nuisance to be or remain in or upon the

premises or between the same and the center of the adjoining street. (Ord. 187; amd. 1967 Code §32.03)

### **3-3-7: ABATEMENT PROCEDURES:**

- A. **Existence Of Nuisance:** The existence of any nuisance shall be reported to the city, or city officials may institute a nuisance action based on their own observations. (Ord. 94-14, 7-5-1994)
- B. **Notice To Abate Nuisance And Penalties:** Authorized city personnel shall give notice to any person maintaining a nuisance to abate such nuisance forthwith or within a designated time, and if the owner or occupant of the premises on which such nuisance shall be situated shall neglect or refuse to remove the same for the space of twenty four (24) hours after such notice is given or within the time specified therein, the owner shall, upon conviction, be penalized in accordance with the provisions of section 1-4-2 of this code, and be liable for the expense of removing such nuisance and the costs of prosecution. (Ord. 187; amd. 1967 Code §32.05)
- C. **Assessing Cost Of Abatement:** Whenever any person fails to abate a nuisance after notice by the city to do so, or whenever the nature of a nuisance requires its immediate abatement, the city may abate the nuisance, and the cost thereof shall be assessed against the property on which the nuisance was located and certified as other taxes are certified. (1967 Code §32.06)
- D. **Subsequent Violation:** If a person or entity has been given one notice to abate a nuisance and, subsequently, within a twelve (12) month period from the date of the first notice a second violation of this chapter of the same type occurs, the city may elect to commence an administrative violation procedure or a criminal violation procedure without giving the violator a period to correct the violation. Provided, however, the city may not abate the violation without giving the violator an opportunity to correct the violation pursuant to subsection B of this section. (Ord. 2004-18, 6-21-2004)

### **3-3-8: PENALTY:**

Any person violating any provision of this chapter may be charged with a criminal misdemeanor, or infraction, or, alternatively, may be charged with an administrative violation pursuant to section 1-4-4 of this code. (Ord. 2004-18, 6-21-2004)



### **3-3-9: SNOW STORAGE IN RESIDENTIAL AREAS:**

- A. **No Snow To Be Deposited On Other Property:** No person or business involved in removing or clearing snow off any private or public property shall cause any of the snow so removed to be deposited upon another piece of property which is a residential lot within the city, with or without the permission of the owner of the property.
  
- B. **No Snow Deposited On Residential Lot:** No landowner shall permit any person or business to deposit snow from another property onto a residential lot within the city.
  
- C. **Residential Lots:** For purposes of this section, residential lots shall include all lots within the city zoned R-1, R-1A, R-1B, and R-2.
  
- D. **Normal Snow Removal:** The prohibitions set forth in this section do not include normal snow removal on private or public property which may incidentally result in snow being deposited or blown onto a neighboring residential lot.
  
- E. **Separate Offense:** It shall be a separate offense if a person violating a provision of this section does not remove the snow deposited within forty eight (48) hours of receiving written notice from the city to do so. Each day thereafter in which the snow is not removed shall be a separate offense.
  
- F. **Penalty:** Any person convicted of violating any provision of this section shall be guilty of a petty misdemeanor and be subject to a fine not to exceed two hundred dollars (\$200.00) for each offense. (Ord. 96-4, 1-16-1996)

### **3-3-10: REMOVAL OF SNOW AND ICE:**

#### **A. From Sidewalks:**

- 1. **Duty Of Occupant:** The occupant of every building fronting upon any street or avenue, and the owner of any unoccupied lot fronting upon any street, shall clean the sidewalk in front of the building or unoccupied lot of snow and ice by nine o'clock (9:00) P.M. of each day, and cause the same to be kept clean of snow and ice. (Ord. 2005-31, 12-5-2005)

2. **City Removal:** In all cases where snow and ice are not removed from sidewalks within the time and in the manner as provided in this section, it may be removed by authorized city personnel, and the necessary expenses thereof, along with an administrative fee to be set by resolution of the city council, shall be chargeable against the abutting property. If timely payment is not forthcoming from the landowner, the bill shall be assessed against the property as provided by law. (Ord. 2007-19, 9-4-2007)
- B. **Depositing Snow On Streets:** No person engaged to move, blow or plow snow upon or off of any private property or city right of way within the city shall cause or permit any of the snow so removed, blown or plowed to be deposited upon any street within the city. The prohibition contained herein shall apply to the occupants of any such property, their agents, employees or independent contractors. The occupants of the premises or the persons requesting the snow to be removed or the persons who are actually removing the snow shall make suitable arrangements to deposit the removed snow in some place other than upon the city streets, and snow shall not be piled so as to interfere with the vision of motorists approaching any intersection. Other than from adjacent sidewalks and driveways, no snow shall be placed upon the boulevard.
- C. **Penalty:** Any person convicted of violating any provision of this section shall be guilty of a petty misdemeanor and be subject to a fine not to exceed two hundred dollars (\$200.00) or an administrative penalty pursuant to section 1-4-4 of this code. (Ord. 2005-31, 12-5-2005)

## **Chapter 4**

# **SOLID WASTE DISPOSAL REGULATIONS**

### **3-4-1: DEFINITIONS:**

**BUSINESS ESTABLISHMENT:** A building other than a residential dwelling, "multiple dwelling", "condominium" or "cooperative" as defined in this Section.

**CONDOMINIUM:** A multiple dwelling or development containing individually owned dwelling units and jointly owned and shared areas and facilities, which dwelling or development is subject to the provisions of the Minnesota Condominium Law, Minnesota Statutes section 515.A.1-101 to 515.A.4-118.

**COOPERATIVE:** A multiple-family dwelling owned and maintained by the residents and subject to the provisions of Minnesota Statutes sections 290.09 and 290.13. The entire structure and real property is under common ownership as contrasted to a condominium dwelling where individual units are under separate individual occupant ownership.

**GARBAGE:** All organic refuse from the preparation of food, and decayed or spoiled animal or

vegetable food from any source.

**MULTIPLE DWELLING:** A building designed with three (3) or more dwelling units exclusively for occupancy by three (3) or more families living independently of each other, but sharing hallways and main entrances and exits. A two-family dwelling (duplex) and separate rooming unit(s) shall be considered and classified as a multiple-family dwelling.

**RUBBISH:** All combustible inorganic refuse matter such as papers, sweepings, rags, grass, wood shavings or from any other source, etc., originating from ordinary household or business operations.

**WASTE MATERIAL:** All noncombustible inorganic refuse matter such as ashes, cinders, sand, earth, metal, concrete, building materials, tires and similar matter, originating from the ordinary household or business operations or from any other source that shall not include body wastes of human or animal origin. (Ord. 96-18, 10-21-1996)

### **3-4-2: DISPOSAL IN CONTAINERS REQUIRED:**

- A. Containers: It shall be unlawful for any person to deposit any garbage, rubbish or waste material in any park, street, alley or any other property within the City unless such refuse is deposited in containers, the type, size and location of which are herein provided. Notwithstanding the requirements of this Section, the City reserves the right to vary the type, size and location of containers required herein whenever the Public Works Department determines its ability to sanitarily or conveniently collect and dispose of garbage, rubbish or waste material would be impaired, whenever the City determines a nuisance condition exists, or whenever the Public Works Department determines that it would be in the public interest to do so.
- B. Dwellings: Any householders or occupants of any private dwellings shall provide themselves with one container or plastic bag to receive all refuse which may accumulate between the times of collection. All garbage and wet garbage shall be drained and wrapped before depositing into a container or plastic bag. All containers and plastic bags shall be maintained and kept clean in accordance with the City's public health and sanitation regulations in Title 3 of this Code as such regulations may be from time to time amended, supplemented or replaced. The containers or plastic bags shall be securely sealed and placed in a convenient place for collection by the City sanitation vehicles. Only one container or one plastic bag shall be set out for collection at each dwelling, which container or plastic bag shall not have a capacity in excess of thirty (30) gallons or thirty (30) pounds. If more than thirty (30) gallons or thirty (30) pounds are to be set out for collection, the excess must be placed in one or more prepaid refuse bags authorized by the City for collection of solid waste. Recycable materials placed out for collection pursuant to Section 3-4-9 of this Chapter or yard waste set out for collection pursuant to Section 3-4-11 of this Chapter do not count toward the initial thirty (30) gallon or thirty (30) pound limit nor do they need to be disposed of in special prepaid refuse bags. Containers or plastic bags placed out for collection shall be protected from animals or anyone who may want to tear the containers or

plastic bags, and shall be stored within the principal structure of the dwelling, within an accessory building to the dwelling, or, for exterior storage, stored in such a manner so as to: 1) not create a nuisance condition, 2) be out of sight from eye level view from the public right of way by locating the containers or plastic bags in the rear of the dwelling and 3) comply with all applicable setback requirements and easements.

- C. **Multiple Dwellings Other Than Condominiums And Cooperatives:** The City shall provide and rent to owners and operators of multiple dwellings within the City, other than a condominium or cooperative, containers for the purpose of disposal of garbage, rubbish or waste material. Said containers shall be the sole and exclusive means for owners and operators of multiple dwellings within the City to dispose of garbage, rubbish or waste material. The containers will not be allowed on streets or boulevards. The containers shall be maintained and kept clean in accordance with the City's public health and sanitary regulations in Title 3 of this Code as such regulations may be from time to time amended, supplemented or replaced. The containers shall be located so that they may be sanitarily and conveniently collected in City sanitation vehicles. The containers shall be further located so as to: 1) not create a nuisance condition, 2) be out of sight from eye level view from the public right of way by locating the containers in the rear of the multiple dwelling, and 3) comply with all applicable setback requirements and easements. The containers may be required to be kept and stored on a concrete or asphalt surface and fully screened from view of adjacent properties and the public right of way by a fence or wall of at least six feet (6') in height and a minimum opaqueness of eighty percent (80%) whenever the Public Works Department finds good cause exists to impose such requirements to protect the general health, safety and welfare of the public. Provided, however, the Public Works Department may grant exceptions to the above requirements, as well as exception to the zoning regulations relating to placement of dumpsters where existing physical conditions do not make compliance practical.
- D. **Condominiums And Cooperatives:** Subject to approval by the Department of Public Works, owners and operators of condominiums or cooperatives within the City shall have the option upon request of the condominium or cooperative association to either: 1) rent the containers provided by the City for the disposal of garbage, rubbish or waste material in accordance with subsection C of this Section and comply with the terms contained therein, or 2) to provide themselves with containers or plastic bags to receive and deposit for collection in accordance with subsection B of this Section and to comply with the terms therein.
- E. **Business Establishments:** The City shall provide and rent to owners and operators of restaurants, stores and business establishments within the City containers for the purpose of disposing of garbage, rubbish or waste material. Said containers shall be the sole and exclusive means for owners and operators of restaurants, stores or business establishments, within the City to dispose of garbage, rubbish or waste material except as may be otherwise permitted by the Department of Public Works. The containers will not be allowed on streets or boulevards. The containers shall be maintained and kept clean in accordance with the City's public health and sanitation regulations in Title 3 of this Code as such regulations may be from time to time amended, supplemented or replaced. The containers shall be located so that they may be



sanitarily and conveniently collected in City sanitation vehicles. The containers shall be located so as to: 1) not create a nuisance condition, 2) be out of sight from eye level view from the public right of way by locating the containers in the rear of the restaurant, store or business establishment, and 3) comply with all applicable setback requirements and easements. The containers may be required to be kept and stored on a concrete or asphalt surface and fully screened from view of adjacent properties and the public right of way by a fence or wall of at least six feet (6') in height and a minimum opaqueness of eighty percent (80%) whenever the public works department finds good cause exists to impose such requirements to protect the general health, safety and welfare of the public.

- F. Institutions Of Higher Learning: Four (4) year institutions of higher learning shall be permitted to provide collection services of garbage, rubbish and waste material utilizing the institution's equipment and personnel. (Ord. 96-18, 10-21-1996)

### **3-4-3: COLLECTION AND DISPOSAL OF SOLID WASTE:**

The city shall hereafter provide for the collection and disposal of garbage, rubbish, waste material, yard waste and recyclable material as deposited and stored as provided herein. Such refuse shall be collected from private dwellings as described in subsections 3-4-2B, C and D of this chapter and from business establishments as described in subsections 3-4-2E and F of this chapter as deemed necessary. The city shall further provide for the transportation and disposition of said refuse by such means and in such manner as to ensure the protection of public health and to avoid the establishment of a public nuisance and to render safe, sanitary service to all residences or businesses requiring such service.

Except as specifically permitted in this chapter, no person or firm shall engage in collection and disposal of garbage, rubbish, waste material, yard waste or recyclable material in the city other than as authorized by the public works director to assist with collection during times of natural disaster or emergencies as declared by the mayor. (Ord. 96-18, 10-21-1996)

### **3-4-4: COSTS OF COLLECTION:**

- A. The cost of the collection and disposal of refuse from private dwellings, as described in subsections 3-4-2B, C and D of this chapter, shall become a charge against the occupant of each dwelling, to be payable monthly together with other public service charges as defined by the city. A fair and reasonable charge for the collection of the contents of the containers at each regular collection time from each dwelling, single-family or apartment shall be determined by the council.

- B. The cost of the collection and disposal of refuse from business establishments, as described in subsections 3-4-2E and F of this chapter, shall become a charge against each and every establishment serviced, and a fair and just rate for each establishment shall be approved by the council. This rate is to be determined by the type and amount of refuse to be collected from the establishment and to be payable monthly to the city. (Ord. 96-18, 10-21-1996)

### **3-4-5: PERMIT FOR SOLID WASTE HAULERS:**

- A. Rules And Regulations Established: Any rules and regulations necessary to regulate special permit holders may be from time to time promulgated by the council, and failure of the special permit holder to abide by such rules and regulations shall be just cause for the denial, suspension or revocation of the special permit. (Ord. 96-18, 10-21-1996)
- B. Special Permit Required; Fee; Bond: The city council shall have the authority to issue a limited license for the sole purpose of hauling paper, loose cardboard, bailed cardboard materials, iron and metal material, recyclable materials or such other specific materials that the council may from time to time approve. The limited license may be granted only by the council upon payment of a fee as established by the city's fee schedule to the city. Failure of the licensee to abide by such rules and regulations to be issued by the city shall be cause for the revocation of the license. A special license approved herein shall be issued for a period of one year and will be renewable annually on the payment of an additional license fee as established by the city's fee schedule for each succeeding year the council approves the extension of the license. In the event the license is for a period of less than a year, the entire fee for that year shall be nonrefundable. The licensee, when authorized by the city, may provide roll-off container service. In addition, any person or entity having such a special license shall be required on a monthly basis to file a report with the director of public works for the city setting forth the type of material hauled for that month, the actual quantity of each type of material by tonnage weight and where the material was disposed. These reports shall be due on or before the fifteenth day of the following month. The city council shall also have the authority to require the license holders under this section to file a bond or similar security acceptable to the city in an amount set by the city by resolution. Provided, however, that if the license holder in question has a similar bond or financial security filed with the county or state in an amount equal to or greater than the amount set by the city by resolution, no city bond shall be required. (Ord. 96-18, 10-21-1996; amd. Ord. 2007-30, 1-7-2008, eff. retroactive to 1-1-2008)

### **3-4-6: DISPOSAL SITES:**

No garbage, rubbish, waste material, yard waste or recyclable material collected in the city shall be deposited in any place except such as shall be designated by the council. (Ord. 96-18, 10-21-1996)

### **3-4-7: PROHIBITED DEPOSITS:**

It shall be unlawful for any person to deposit or cause to be deposited any garbage, rubbish, waste material, yard waste or recyclable material upon any street, alley, gutter, boulevard, park or other public place, or to throw or deposit the same in or upon any street, alley, gutter, boulevard, park or other public place, or in or upon any vacant lot or back yard; and it shall be unlawful to have, store, deposit or keep such material where animals shall have access thereto or feed thereon. It shall be unlawful for any person to deposit any garbage, rubbish, or waste material in any container designated for use by another. (Ord. 96-18, 10-21-1996)

### **3-4-8: PENALTY FOR VIOLATION:**

Any person violating any of the provisions of this chapter, or violating any rule or regulation promulgated by the council and duly published, shall, upon conviction, be penalized in accordance with the provisions of section 1-4-2 of this code. Each day that a violation of this chapter or any rule or regulation promulgated hereunder, as aforesaid, continues shall be considered a separate offense punishable upon conviction as aforesaid. (Ord. 96-18, 10-21-1996)

### **3-4-9: RECYCLABLE MATERIAL:**

A. Purpose: The purpose of this section is to reduce the amount of waste generated in the city by voluntary separation of recyclable materials.

B. Separation: Residents of residential dwellings up to twelve-plex residential units, or other buildings as authorized by the director of public works, may participate in the city's plan of separation of recyclable materials. The following materials may be separated from the normal garbage, rubbish and waste material collection if the materials have not been contaminated:

1. Newsprint.
2. Rinsed glass bottles and jars and other glass containers without rings and caps.
3. Aluminum cans.
4. Tin and steel cans.
5. Rinsed HDPE and PET plastics without rings, caps or lids.
6. Flattened corrugated cardboard.

- C. **Collection Of Separated Materials:** The collection of separated materials shall be at such regular times as set by the city. Materials shall only be collected if set out in special recycling containers provided by the city and separated as follows: Within the special recycling container, glass, cans and acceptable plastics shall be separated and placed in separate paper bags. Newsprint and cardboard shall also be separated and placed within the special recycling container. The city, upon request, shall provide persons with the special recycling containers upon payment of an amount set by the city. (Ord. 96-18, 10-21-1996)
- D. **Rates:** Any additional fee or rate, or discount, if any, for garbage collection for persons who participate in the collection of recyclable materials under this section shall be as established by the city's fee schedule. (Ord. 96-18, 10-21-1996; amd. Ord. 2007-30, 1-7-2008, eff. retroactive to 1-1-2008)
- E. **Antiscavenging Clause:** Ownership of separated materials set out for collection by the city shall be vested in the city. It shall be unlawful and an offense against this section for any person, firm or corporation to pick up separated materials for his/her own use, except the owner, lessee or occupant of a residential dwelling may take back materials set out at that particular dwelling.
- F. **Corrugated Cardboard Recycling At Business Establishments:** Business establishments may participate in the city's corrugated cardboard recycling program. Business establishments shall contract directly with a private waste hauler/recycler to provide collection and disposal of corrugated cardboard.

The containers to be used for the corrugated cardboard recycling program at business establishments shall be rented from the city by private waste haulers/recyclers. Said containers shall be the only containers used by owners or operators of business establishments within the City to dispose of corrugated cardboard recyclable materials. The containers will not be allowed on streets or boulevards. The containers shall be maintained and kept clean in accordance with the City's public health and sanitary regulations in Title 3 of this Code as such regulations may be from time to time amended, supplemented or replaced. The containers shall be located so as to: 1) not create a nuisance condition, 2) be out of the sight from eye level view from the public right of way and 3) comply with all applicable setback requirements and easements.

The City will invoice the private waste hauler/recycler for rental of the corrugated cardboard container. Any charges or details concerning collection and disposal or rebates for corrugated cardboard materials shall be determined between the business establishment and private waste hauler/recycler.

All monthly reports as set forth in subsection 3-4-5B of this Chapter will be required of the private waste hauler/recycler. (Ord. 96-18, 10-21-1996)



### **3-4-10: COMPOSTING:**

- A. Composting, for purposes of this Section, is any aboveground microbial process that converts plant materials to organic soil amendment or mulch.
- B. Composting is permitted in residential zoned districts, provided the following regulations are complied with:
1. Composting shall be conducted within an enclosed container not exceeding two hundred fifty (250) cubic feet and four feet (4') in height. The container shall be of durable material, such as wood, plastic, fiberglass or metal fencing material.
  2. The compost container shall be located in the rear yard and placed no closer than twenty feet (20') to any habitable building and twenty feet (20') from the street on a corner lot.
  3. A compost area may consist of, but is not limited to, yard waste, fruit or vegetable waste, garden waste, eggshells, coffee grounds, soil, fertilizer, flowers, or small shrub trimmings or twigs ( $\frac{1}{4}$  inch diameter maximum) generated from the site on which the compost site is located. However, in no case are the following materials permitted in compost areas: meat, bones, grease, whole eggs, dairy products, and human or pet feces.
  4. A compost area must not be established or maintained in a manner such that it creates a nuisance to adjacent properties. As part of regular maintenance, the compost area must periodically be mixed to promote efficient biological deterioration.
- C. The City is authorized to maintain a composting site on City-owned property for the purpose of complying with the provisions of State law that provide that no yard waste may be disposed of in landfills. (Ord. 96-18, 10-21-1996)

### **3-4-11: YARD WASTE:**

- A. Purpose: The purpose of this Section is to reduce the amount of waste generated in the City by a separate collection of yard waste.
- B. Definition: Yard waste for purposes of this Section shall include grass clippings, leaves and garden waste.

- C. **Collection Of Yard Waste:** Yard waste will be collected and placed out for collection on the same day as regularly scheduled garbage collection provided that yard waste is to be put into clear plastic bags or nondisposable containers appropriately marked as yard waste.
- D. **Rates:** Any additional fee or rate, if any, for garbage collection for persons who participate in the collection of yard waste under this Section shall be set by resolution of the City Council. (Ord. 96-18, 10-21-1996)

## **Chapter 5**

# **HAZARDOUS SUBSTANCES AND RECOVERY OF CLEANUP COSTS**

### **3-5-1: DEFINITIONS:**

As used in this Chapter, the following terms shall be defined as follows:

**COSTS:** Those necessary and reasonable costs incurred by the City in connection with investigating, mitigating, minimizing, removing or abating discharges of hazardous substances, including but not limited to the following: actual labor costs of City personnel or its authorized agents; cost of equipment operation and rental; and cost of expendable items, including but not limited to firefighting foam, chemicals, extinguishing agents, absorbent material, sand, recovery drums, acid suits, acid gloves, goggles and protective clothing.

**DISCHARGE:** Any intentional or unintentional action or omission resulting in the releasing, spilling, pouring, pumping, emitting, emptying or dumping of a hazardous substance upon public or private property located within the City limits of the City.

**HAZARDOUS SUBSTANCES:** Any substances or materials in a quantity or form which, in the determination of the Fire Chief of the City or his authorized designee, poses an unreasonable and eminent risk to the life, health, safety or welfare of persons or property within the City and shall include but not be limited to those hazardous substances listed in the "N.F.P.A. Guide on Hazardous Materials" or the United States Environmental Protection Agency's list of extremely hazardous substances.

**PERSON:** One or more individuals, partnerships, corporations, joint ventures, associations or any other entities or combination thereof. (Ord. 92-21, 10-5-92)

### **3-5-2: AUTHORITY OF FIRE DEPARTMENT TO CLEANUP, REMOVE AND/OR ABATE HAZARDOUS SUBSTANCES:**

The Fire Department of the City is hereby authorized to take such steps as are necessary to investigate, mitigate, minimize, cleanup, remove or abate the effects of any hazardous substances discharged upon or into public or private property or facilities located within the City limits of the City. When engaged in the investigation, mitigation, minimization, cleanup, removal or abatement of the effects of the unauthorized discharge of hazardous substances, the Fire Department of the City shall keep a detailed record of the costs attributable thereto. However, the Fire Department of the City shall not include any costs (nor shall any individual be responsible for any costs pursuant to this Chapter) incurred for actual fire suppression services which are normally or usually provided by the City Fire Department or its authorized agents. (Ord. 92-21, 10-5-92)

### **3-5-3: RESPONSIBILITY FOR CLEANUP COSTS:**

Any person or persons responsible for causing or allowing an unauthorized discharge of hazardous substances that requires action of the Fire Department of the City or its authorized agents, in order to protect the public health, safety or welfare, shall be jointly and severally liable to the City for the costs incurred by the City in investigating, mitigating, minimizing, cleaning up, removing and/or abating any such discharge.

A. A responsible person, for purposes of this Section, is any person who:

1. Owns or operates a facility or property upon or from which a hazardous substance was discharged:
  - a. When the hazardous material was placed or came to be located in or on the facility or property;
  - b. When the hazardous material was located in or on the facility, but before the discharge of the hazardous substance; or
  - c. During the time of the discharge at the facility or property.
2. Owned or possessed the hazardous substance and arranged by contract, agreement or otherwise for the disposal, treatment or transport of the hazardous substance.
3. Knew or reasonably should have known that the substance the person accepted for transport, treatment or disposal contained a hazardous substance and either selected the facility to which it was transported or treated or disposed of in a manner contrary to law.

B. When a person who is responsible for the discharge is an employee who is acting within the scope of employment:

1. The employee is a responsible person only if the employee's conduct with respect to the hazardous substance was negligent under circumstances in which the employee knew or should have known that the substance was hazardous and that the conduct, if negligent, could result in a discharge of the substance.
  2. The employer is a responsible person regardless of the degree of care exercised by the employee.
- C. Any person or persons responsible for causing or allowing an unauthorized discharge of hazardous substances shall reimburse the City for the full amount of all costs, as defined herein, associated with the investigating, mitigating, minimizing, cleaning up, removing and/or abating any such discharge no later than thirty (30) days after receipt of an itemized bill for such costs from the City.
- D. Any person or persons responsible for causing or allowing an unauthorized discharge of hazardous substances and who fails to properly reimburse the City within the time period set forth in this Section shall be subject to a penalty payment equal to one and one-half percent (1.5%) of the total amount of the bill for each month that the bill for such costs remains unpaid.
- E. The remedies provided for in this Section shall be supplemental to and in addition to all other available remedies at law and equity. (Ord. 92-21, 10-5-92)

## **Chapter 6 SMOKING**

(Rep. by Ord. 2007-22, 9-17-2007)

## **Chapter 7 ANIMAL CONTROL**

### **3-7-1: DEFINITIONS:**

Terms used in this chapter have the following meanings:

**AT LARGE:** Off the premises of the owner or caretaker, and not under the control of the owner or caretaker by leash which a person has physical control over.



**OWNER:** Any person or persons, firm, association or corporation owning, keeping or harboring a dog or a cat.

**PROPER ENCLOSURES:** Shall have sidewalls with a minimum height of five feet (5') and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed two inches (2"). Support posts shall be one and one-fourth inch ( $1\frac{1}{4}$ " ) or larger steel pipe buried in the ground eighteen inches (18") or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of eighteen inches (18") in the ground. (Ord. 2005-1, 2-22-2005; amd. Ord. 2005-27, 10-17-2005; Ord. 2008-23, 11-24-2008)

### **3-7-2: LICENSE AND REGISTRATION REQUIREMENTS:**

- A. License And Registration: All dogs and cats over six (6) months of age kept, harbored, owned, or in any way possessed by any person within the city shall be annually licensed and registered by no later than February 15 of each year.
- B. Fees: Dog and cat licenses shall be issued by the city clerk, the police department, or an entity authorized by the city council to issue dog or cat licenses, upon payment of a license fee as established by the city's fee schedule annually for each dog and cat, except that the license fee for a neutered, spayed or desexed dog or cat shall be as established by the city's fee schedule annually.
- C. Application: The owner shall state at the time application is made for such license, upon printed forms provided for such purposes, their name and address and the breed, color and sex of the animal, date of rabies inoculation of the animal and whether or not the animal is neutered, spayed or desexed.
- D. Rabies Inoculation Required: All dogs or cats which are licensed by the city of Moorhead shall be inoculated against rabies. The police department may request that an owner provide proof that an animal has been inoculated for rabies. In the event that an owner is unable to provide proof of inoculation the animal's license shall be canceled.
- E. License Evidence: No license for a neutered, spayed or desexed dog or cat shall be issued unless satisfactory evidence of neutering, spaying or desexing is confirmed by a qualified veterinarian verbally or in writing.

F. Exemptions: The licensing provisions of this section shall not apply where the owners are nonresidents temporarily within the city, nor where dogs or cats are brought into the city for the purpose of participation in any dog or cat show, nor to dogs properly trained to assist blind or deaf persons when such dogs are actually being used by blind or deaf persons for the purpose of aiding them in going from place to place nor to dogs being used in law enforcement except any of the above animals shall be required to have their rabies inoculation.

G. Term Of License: The license herein provided for shall be in force from the date thereof until January 1 thereafter.

H. Presumption Of Ownership Of Dogs Or Cats: Licensing and registration of a dog or cat with the city shall establish a presumption that, at the time the dog or cat is licensed and registered, the owner of the dog or cat is the person receiving the license and listed on the registration. (Ord. 2008-23, 11-24-2008)

### **3-7-3: COLLAR AND TAGS:**

Upon payment of the license fee, the city clerk or designee shall issue to the owner a license certificate and a metallic tag for each dog and cat so licensed. The shape and color of the tag shall be changed every year and shall have stamped thereon the certificate number. Each owner shall provide each dog and cat with a collar to which the license tag must be affixed and shall see that the collar and tag are constantly worn. In case a tag is lost or destroyed, a duplicate will be issued by the city clerk upon presentation of a receipt showing the payment of the license fee for the current year and the payment of a fee as established by the city's fee schedule for such duplicate. Tags shall not be transferable from one animal to another and no refunds shall be made on any license fee because of the death of the animal or the owner leaving the city before expiration of the license period. The metal rabies inoculation tag shall also be kept affixed to the animal's collar at all times. (Ord. 2005-1, 2-22-2005; amd. Ord. 2007-30, 1-7-2008, eff. retroactive to 1-1-2008)

### **3-7-4: LIMITATION ON NUMBER OF DOGS AND CATS:**

It shall be unlawful to keep, harbor, own, or in any way possess four (4) or more dogs or four (4) or more cats over six (6) months of age upon or about the premises of any dwelling, or dwelling unit within the corporate limits of the city. Provided, a person may request a permit from the police department to keep, or harbor up to two (2) dogs or two (2) cats, but not both, as part of a qualified home used by organizations for rescue or sheltering of abandoned or lost animals. (For purposes of this section, a "qualified home" shall mean a home which has received written approval to house abandoned or lost animals by an organization involved in the rescue or sheltering of abandoned or lost animals, and which organization has been in existence and operating for at least 1 year.) The

permit shall allow up to two (2) such animals in addition to other dogs or cats already kept at the dwelling pursuant to the first sentence of this section. The permit shall be for a period of a year, and may be renewed annually provided there have been no violations of the provisions of this chapter resulting in an administrative penalty or criminal violation being imposed on the permit holder. The fee for the permit shall be as established by the city's fee schedule. (Ord. 2005-1, 2-22-2005; amd. Ord. 2007-30, 1-7-2008, eff. retroactive to 1-1-2008)

### **3-7-5: RUNNING AT LARGE:**

- A. No person having the custody or control of any dog or cat shall permit the same to be off the property limits of its owner or caretaker, or on any street, public park, public golf course, school grounds or public place in the city without being effectively restrained by a leash not exceeding six feet (6') in length or within a vehicle being driven or parked on the streets. Dogs, which are at a city designated "dog park" in accordance with subsection 6-1-4E of this code, are exempt from this section.
- B. The owner of every fierce, potentially dangerous, dangerous or vicious dog shall confine such animal within a building or proper enclosure and such dog shall not be taken out of such building or enclosure unless the dog is securely muzzled.
- C. Every female dog or cat in heat shall be kept confined in a building or secure enclosure or in a veterinary hospital or boarding kennel, in such manner that such animal cannot come in contact with another animal, except for breeding purposes.
- D. Any dog or cat found running at large, whose ownership is known to the city need not be impounded but the city at its discretion may order the owner to keep the animal in strict restraint as herein defined or the city may cite the owner of such animal to appear in court to answer charges of violation of this chapter.
- E. If such dog or cat is found running at large or otherwise in violation of this section, it may be taken up and impounded and shall not be released except after payment of the fees or due hearing before a court of law as to why the owner should not be required to pay the fees; provided, however, that if any dangerous, potentially dangerous, fierce or vicious dog so found at large cannot be safely taken up and impounded, such dog may be slain by any police officer or other authorized person.
- F. Any dog or cat found running at large or otherwise in violation of this section two (2) or more

times during a twelve (12) month period shall be impounded and shall not be released except after payment of a minimum fine as established by the city's fee schedule in addition to any hereinbefore prescribed fees or due hearing before a court of law as to why the owner should not be required to pay the fine and fees. (Ord. 2008-23, 11-24-2008)

### **3-7-6: IMPOUNDING DOGS, CATS, AND OTHER ANIMALS AT LARGE:**

A. Authority To Impound; Records: The city shall designate such persons as the city deems necessary to apprehend any dog, cat, or other animal found running at large contrary to the provisions of this chapter and to impound such dog, cat, or other animal in the city pound, if one is maintained, or any other suitable place for the impounding of animals as may be directed by the city. Licensed animals shall be separated from unlicensed animals. A complete registry shall be made upon impounding any dog, cat, or other animal including, with relation to the dog, cat, or other animal entering:

1. Its description by species, breed, sex, approximate age, and other distinguishing traits.
2. The location at which it was seized.
3. The date of its seizure.
4. The name and address of the person from whom any dog, cat, or other animal three (3) months of age or over was received.
5. The name and address of the person to whom any dog, cat, or other animal three (3) months of age or older was transferred.
6. Whether the dog, cat, or other animal is licensed for the current year.
7. If the dog, cat, or other animal is licensed, the name and address of its owner and the number of its tag.

B. Notice To Owner And Redemption: Not later than two (2) days after the impounding of any dog, cat, or other animal, the city shall attempt to notify the owner, if the owner is known to the city.

C. Impound And Redemption Fees:

1. The owner of any animal so impounded may reclaim such animal upon payment of an impound fee as established by the city's fee schedule for the first impound each year, a fee as established by the city's fee schedule for the second impound, a fee as established by the city's fee schedule for the third impound, and increasing thereafter a fee as established by the city's fee schedule for each additional impound.



2. Additional charges for maintenance and keeping of said dog or cat, giving proper notice, and the cost of any needed rabies inoculation shall be assessed in addition to the license fee and impound fee.
3. The owner of any dog or cat six (6) months of age or older impounded by the city which is not licensed for the current year or which has not been spayed or neutered shall be assessed an impound fee as established by the city's fee schedule in addition to the fees hereinbefore prescribed.
4. If the owner disputes the fees assessed or prescribed, the owner shall pay the fees and may appeal any disputed fees to conciliation court in Clay County for a refund.

D. Disposition Of Unclaimed Or Infected Dogs, Cats, And Other Animals: All animals shall be impounded for a period of at least five (5) regular business days. At the end of the five (5) day period, all animals, which remain unredeemed, must be made available to any registered, recorded, licensed, animal rescue organization. At the end of the five (5) day period, if no requests for animals have been filed with the city by any registered, recorded, licensed, animal rescue organization, all animals, which remain unredeemed, may be destroyed in the discretion of the city. Notwithstanding any provisions within this section, any animal which appears to be suffering from rabies or affected with hydrophobia, mange or other infectious or dangerous disease, as shall be determined by a qualified veterinarian, shall not be released but may be forthwith destroyed. (Ord. 2008-23, 11-24-2008)

### **3-7-7: MUZZLING REQUIREMENTS:**

Whenever it becomes necessary to safeguard the public from the dangers of rabies, the city may order all persons owning or keeping a dog or cat to confine it securely on their premises unless such dog shall have a muzzle of sufficient strength to prevent its biting any person. Any unmuzzled dog or cat running at large after the issuance of such an order shall be seized and impounded unless noticeably infected with rabies. All dogs or cats so noticeably infected with rabies and displaying vicious propensities shall be disposed of without notice to the owner. Dogs and cats impounded during the first two (2) days of such proclamation shall, if claimed within three (3) days, be released to the owner unless infected with rabies, upon payment of the impounding charges. If unclaimed after that period, such dog or cat may be destroyed. (Ord. 2005-1, 2-22-2005)

### **3-7-8: SUSPICION OF RABIES, NOTICE:**

- A. If a dog or cat is believed to have rabies or has been bitten by a dog or cat suspected of having rabies, such animal shall be placed under the observation of a veterinarian, at the expense of the owner(s) for a period of ten (10) days. The owner(s) shall notify the police department of the

fact that their dog or cat has been exposed to rabies and, at its discretion, the police department is empowered to have such animal removed from the owner's premises to a veterinary hospital and placed under observation for a period of ten (10) days at the expense of the owner.

- B. It shall be unlawful for any persons knowing or suspecting that a dog or cat has rabies to allow such dog or cat to be taken off their premises or beyond the limits of the city without the written permission of the police department. Every owner or other person, who suspects a dog or cat is rabid, shall immediately notify the police department who shall either remove the animal to the pound or destroy it.
- C. Upon request of any person who has been bitten by a dog or cat within the city limits, or upon request of the guardian of said person, the police department shall impound said animal and shall deliver said animal to a veterinarian to be placed under observation of a veterinarian, at the expense of the owner of said animal, for a period of ten (10) days thereafter. Owners wishing to appeal the impounding of their animal may request the chief of police to review the impound or may seek redress in the courts. (Ord. 2005-1, 2-22-2005)

### **3-7-9: PROHIBITED ACTS AND CONDITIONS:**

- A. Premises Kept Clean: Any person operating or maintaining a kennel for any number of dogs or cats, either commercially or privately, or maintaining a dog or cat on a leash, or chained in a back yard or elsewhere, or allowed to roam in a fenced in yard of any size, shall clean waste material daily. All waste material shall be stored in steel containers, covered fly and watertight and to prevent any noxious odor therefrom.
- B. Animal Wastes On Public And Private Property: No person shall allow a dog or cat owned by them or in their possession to deposit animal waste in city parks, on public property or on the property of other citizens or residents of the city. Any person charged and convicted of a violation of this subsection shall be subject to a fine or administrative penalty not to exceed ten dollars (\$10.00) for the first offense and thereafter not to exceed fifty dollars (\$50.00) for further offenses.
- C. Animals Disturbing The Peace<sup>1</sup>: No person shall keep or harbor any animal, which habitually barks, cries or howls. Any such animals, which habitually bark, cry or howl are hereby declared to be a public nuisance. "Habitually barking, crying or howling" shall be defined as barking, howling or crying for repeated intervals of at least five (5) minutes, with less than one minute of interruption. Such barking, crying or howling must be audible off of the owner's or keeper's premises. Any person desiring to make an administrative or criminal complaint against the

owner or keeper of a habitually barking, crying or howling animal must contact the police department and state facts supporting the alleged nuisance. The police department, upon receipt of a sufficient complaint, shall then notify the person owning, harboring or keeping the animal that a complaint has been received and that such nuisance must be abated, and remain abated for a period of two (2) months. Notice shall be sufficient for purposes of this section if the alleged violator is informed orally of the complaint or if notice of the complaint is posted upon a door of the residence where the alleged violation occurred. If the animal is not quieted within the above time period and for the above described time period, an administrative or criminal complaint may be made out against the alleged violator.

- D. **Feeding Of Deer Prohibited:** No person shall feed or allow the feeding of any deer within the city limits. For purposes of this section, "feeding" shall mean the provision of one-half ( $\frac{1}{2}$ ) cubic foot or more of grain, fruit, vegetables, nuts, hay or other edible material, either on the ground or at a height of less than five feet (5') above the ground, in a manner that attracts deer on a regular basis. Living food sources, such as fruit trees and other live vegetation, shall not be considered as deer feeding. This prohibition shall not apply to veterinarians, city animal control officers and park maintenance staff, or county, state or federal game officials who in the course of their duties have deer in their custody or under their management. (Ord. 2005-1, 2-22-2005)

### **3-7-10: ANIMALS PROHIBITED IN CITY:**

- A. **Livestock Prohibited In City Limits:** It shall be unlawful for an owner to keep chickens, ducks, geese, turkeys or other domestic fowl, cattle, horses, pigs, sheep, goats or other domestic livestock within the limits of the city, except that licensed veterinarians may keep such animals for the purposes of care and treatment necessary in the practice of their profession and except for temporary presence in connection with livestock or wildlife shows, exhibitions, zoos, circuses or auctions within the city. Any animals present in such a temporary livestock or wildlife event shall be caged, tethered or otherwise safely restrained to protect the public.

- B. **Pigeons:** It shall be unlawful for an owner to keep pigeons within the limits of the city except fancy or homing pigeons as hereinafter defined may be kept in accordance with the following regulations:

1. **Definitions:**

**AVIARY:** Any pen or run enclosed by wire immediately adjacent to a loft into which fancy or homing pigeons can only enter directly from the loft.

**FANCY PIGEON:** A pigeon which through selective past breeding has developed certain distinctive physical and/or performing characteristics as to be clearly identified as such, including, by way of example, but not limitation, rollers, frillbacks, and fantails.

**HOMING PIGEON:** A pigeon which through selective past breeding has developed the distinctive physical and/or mental characteristics to enable the pigeon to return to its home after having been released a considerable distance therefrom, including, by way of example but not limitation, carrier and racing pigeons.

**LOFT:** Any building, structure, or coop in which fancy or homing pigeons are housed or kept which meets the requirements of subsection B5 of this section.

**SUPERVISED EXERCISE:** Allowing fancy or homing pigeons in accordance with subsection B4 of this section to exercise outside of a loft and/or aviary with the owner of the pigeons present on the property where the loft and/or aviary is situated to ensure that the pigeons do not roost on the property of other persons nor otherwise interfere with the enjoyment of other persons' property.

2. **Confinement Of Pigeons:** The keeping of fancy or homing pigeons within the limits of the city shall only be allowed if such pigeons are kept confined in an aviary and/or loft, which shall be subject to inspection by the city for compliance with requirements set forth in subsection B5 of this section, and, if such pigeons are only allowed outside for the purposes set forth in subsection B3 of this section.
3. **Outside Flight Allowed:** Fancy or homing pigeons may be permitted to fly outside the loft or aviary for the purpose of supervised exercise to achieve and maintain the muscular condition necessary for shows or races in which the pigeons participate with homing pigeons further being allowed to fly outside the loft or aviary when returning to the loft from a supervised race or training flight.
4. **Outside Flight Regulations:** No one may fly fancy or homing pigeons within the limits of the city except in accordance with the following regulations:
  - a. Fancy or homing pigeons shall not be released or exercised on any day in which prior to release or exercise the pigeons have been fed.
  - b. No more than twenty (20) fancy or homing pigeons shall be flown in any one day by any owner except that young pigeons in numbers greater than twenty (20) may be flown providing they do not fly outside the boundaries of the owner's yard.
  - c. No fancy or homing pigeons shall be permitted by their owner to land, set, light, or gather on the property of another, be it public or private property.
  - d. All fancy or homing pigeons flown shall be banded with a brightly colored plastic or metal band with all pigeons flown together having the same color band.
  - e. The owner of any fancy or homing pigeons flown shall be responsible for maintaining a log book which shall be available and open for inspection by the city on the pigeons flown containing the following information:

Pigeon band number

Pigeon plastic band color

Date and time out or released

Date and time birds returned

### Type of domestic pigeon

5. Loft Requirements: No loft shall be allowed to be used to house or keep fancy or homing pigeons which does not meet the following requirements:
  - a. The complete exterior of the loft shall be painted and have a clean appearance. The exterior of the loft shall be disinfected at least two (2) times each year.
  - b. The exterior grounds surrounding the loft shall be maintained and have a clean appearance, free of papers, droppings, feathers, straw, boxes, and other nonusable materials.
  - c. The interior of the loft shall be maintained in a clean, sanitary, and wholesome manner at all times free from any filth, garbage, waste, nonusable articles, and/or other debris and shall be subject to periodic inspection by authorized city personnel.
  - d. A metal container with a metal cover shall be provided for each loft for the disposal of the above referenced garbage, waste, nonusable articles or other debris with the container to be regularly emptied and cleaned.
  - e. Any pigeon with a noncurable health condition shall be removed as soon as possible from the loft within a limited amount of time for study and research and/or treatment of pigeon's condition.
  - f. Training baskets, breeding cages, medical treatment cages, and any like or similar cage or enclosure within the loft shall be cleaned no less than three (3) times a year with an acceptable chemical spray or compound to maintain such baskets, cages, or enclosure in a safe and sanitary condition.
  - g. No loft for housing or keeping fancy or homing pigeons shall be maintained or operated or be permitted to exist within a distance of twenty five feet (25') from any building or structure or any accessory building or accessory structure thereto used for residential, commercial, or public purposes.
  - h. No loft shall be located in any structure not constructed in accordance with the zoning and building codes of the city.
  - i. No loft shall be kept in a condition contrary to the health or nuisance codes of the city.

### C. Keeping Of Wild Or Exotic Animals Prohibited:

1. Definitions: For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them:

**ANIMAL:** Shall include any live vertebrate creature, domestic or wild, not to include birds.

**PET:** Any animal kept for pleasure rather than utility.

**WILD OR EXOTIC ANIMAL:** Any live monkey (nonhuman primate), raccoon, skunk, wolf,



squirrel, fox, leopard, panther, tiger, lion, lynx or any other warm blooded animal, poisonous snake or tarantula which can normally be found in the wild state or any other member of crocodilian, including, but not limited to, alligators, crocodiles, caimans, and gavials, and including such other animal that cannot be effectively inoculated for rabies. Ferrets, nonpoisonous snakes, rabbits, and laboratory rats which have been bred in captivity and which have never known the wild shall be excluded from this definition. (Ord. 2005-1, 2-22-2005)

2. **Display Or Exhibition:** It shall be unlawful to keep within the city of Moorhead any wild or exotic animal for display or for exhibition purposes, whether gratuitously or for a fee. This section shall not be construed to apply to zoological parks, performing animal exhibitions, circuses, schools or colleges, or veterinary clinics, which are properly licensed by the federal government or state. (Ord. 2008-23, 11-24-2008)
3. **Keeping As A Pet:** No person shall keep or permit to be kept any wild or exotic animal as a pet.
4. **Notice Required At A Place Of Sale:** Any person who offers for sale a "wild or exotic animal" as defined by subsection C1 of this section shall post conspicuously at the place of sale or display the following notice:

*No person may lawfully keep or permit to be kept in the City of Moorhead any live monkey (nonhuman primate), raccoon, skunk, wolf, squirrel, fox, leopard, panther, tiger, lion, lynx or any other warm-blooded animal, poisonous snake or tarantula, crocodile or alligator, which can normally be found in the wild state or any other member of the crocodilian, including, but not limited to, alligators, crocodiles, caimans and gavials and including such other animal that cannot be effectively inoculated for rabies.*

5. **Notice Of Keeping:** Upon the written complaint of any person that a person owns or is keeping or harboring a wild or exotic animal in violation of this section in the city, the police department or their authorized designee shall forthwith cause the matter to be investigated; and if after investigation the facts indicate that such person named in the complaint is in fact the owner or is keeping or harboring any such animal in the city, they shall forthwith send written notice to the person requiring such person to safely remove the animal from the city within five (5) days of the date of the notice. Notice as herein provided shall not be required where such animal has previously caused serious physical harm or death to any person or has escaped and is at large, in which case the police department shall cause the animal to be immediately seized and impounded, according to the provisions of subsection C6 of this section, or killed if seizure and impoundment are not possible without risk or serious physical harm or death to any person.
6. **Seizure And Impounding:** The police department or their authorized designee shall forthwith cause to be seized and impounded any wild or exotic animal, where the person owning, keeping or harboring such animal has failed to comply with the notice sent pursuant to subsection C5 of this section. Upon a seizure and impoundment, the animal shall be delivered to a place of confinement, which may be with any organization which is authorized by law to accept, own, keep or harbor such animals.

If, during the course of seizing and impounding any such animal, the animal poses a risk of serious physical harm or death to any person, such person or persons authorized by the

police department may render the animal immobile by means of tranquilizers or other safe drugs; or if that is not safely possible, then the animal may be killed.

7. Enforcement: The provisions of this subsection C shall be enforced by the police department or the Minnesota department of natural resources, the animal damage control department of the United States department of agriculture, or any other person duly designated by the Moorhead chief of police.
8. Delayed Enforcement: Any person who has a wild or exotic animal in possession at the time of the effective date of this subsection C in contravention of this section, shall have thirty (30) days to dispose of the animal(s) by removal of the animal(s) from the city or by giving or selling the animal(s) to a zoological park or other entity exempt from this subsection C. (Ord. 2005-1, 2-22-2005)

### **3-7-11: LAW ENFORCEMENT DOGS AND ANIMALS:**

- A. Any person who assaults, hinders, harasses, teases, tortures, poisons, throws, shoots missiles at or harms any animal, dog or K-9 owned by or used by any local, county, state, or federal government body is guilty of a misdemeanor. It is not necessary that the animal be on duty at the time the action is taken, nor is it necessary that the person responsible for the action know that the animal is owned or used by a governmental entity in order for that person to be found guilty of a violation of this section. A violation of this section shall be punishable by imprisonment of not more than ninety (90) days and/or a fine of not more than seven hundred dollars (\$700.00) and such restitution to the owner of the animal for harm caused as the court may order.
- B. Any animal, police dog or K-9 used for law enforcement purposes, owned or used by any local, county, state or federal government body shall be exempt from any local laws pertaining to dogs, pets or animals within the city limits so long as the animals' vaccinations are kept up to date. (Ord. 2005-1, 2-22-2005)

### **3-7-12: PENALTIES:**

Any person violating any provision of this chapter may be charged with a criminal offense, and if convicted be penalized in accordance with the provisions of section 1-4-2 of this code, or alternatively may be charged with an administrative violation pursuant to section 1-4-4 of this code. (Ord. 2005-1, 2-22-2005)

### **3-7-13: POTENTIALLY DANGEROUS AND DANGEROUS DOGS:**

#### A. Designation:

1. Any dog inside the Moorhead city limits may be designated as a potentially dangerous dog if the dog:
  - a. When unprovoked, inflicted bites on a human or domestic animal on public or private property;
  - b. When unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or
  - c. Has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.
2. Any dog within the Moorhead city limits may be designated as a dangerous dog if the dog has:
  - a. Without provocation, inflicted substantial bodily harm on a human being on public or private property;
  - b. Killed a domestic animal without provocation while off the owner's property; or
  - c. Been found to be potentially dangerous, and after the owner has notice that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or domestic animals. (Ord. 2005-27, 10-17-2005)

#### B. Procedure For Designating A Dog As Potentially Dangerous Or Dangerous:

1. A Moorhead police department sergeant, or officer of higher rank, shall have the authority to designate a dog as potentially dangerous or dangerous as defined in subsection A of this section.
2. When a dog is designated to be potentially dangerous or dangerous, the owner shall be notified in writing of such designation.
3. This designation may be appealed to the Moorhead city manager, in writing, within ten (10) days of the owner and/or caretaker of the dog receiving notice of the designation. Upon receipt of a written appeal the city manager shall set an appeal hearing date within five (5) days. The appeal shall be held before the city manager, the chief of police or his designee, and a local dog trainer/behaviorist.
4. Any dog deemed dangerous or potentially dangerous by another jurisdiction and subsequently brought into the city shall be deemed a dangerous or potentially dangerous dog and abide by the provisions of this chapter to notify the police department and meet the registration requirements. (Ord. 2008-23, 11-24-2008)

C. **Registration Requirements:** No potentially dangerous dog or dangerous dog shall be kept in the city of Moorhead unless the owner, at his or her own cost, has implanted a microchip in the dog, containing the owner's address and home telephone number, work telephone number, and cellphone number, if applicable, and a backup contact name and telephone number and chip identification number and has completed an application to register the dog as a potentially dangerous or a dangerous dog and submitted said application to the Moorhead city police department. In addition, the owner shall be required to post a sign, satisfactory to the police department, at owner's residence notifying the public of the presence of a dangerous or potentially dangerous dog.

D. **Application Contents:**

1. The application to register the dog as a potentially dangerous dog shall include the following:

- a. The owner's address and home, work and cellphone telephone number and the implanted microchip identification number, as well as a backup contact person and number;
- b. Proof of continuing liability insurance in a single incident amount of three hundred thousand dollars (\$300,000.00) for bodily injury to or death of any person or persons or for damage to property owned by any persons, which may result from the ownership, keeping, or maintenance of dogs designated as potentially dangerous or dangerous;
- c. Proof that said dog has been sterilized and has current vaccinations; and (Ord. 2005-27, 10-17-2005)
- d. A yearly registration fee as established by the city's fee schedule. (Ord. 2005-27, 10-17-2005; amd. Ord. 2007-30, 1-7-2008, eff. retroactive to 1-1-2008)

2. The application to register the dog as a dangerous dog shall include the following:

- a. The owner's address and home, work and cellphone telephone number and the implanted microchip identification number, as well as a backup contact person and number;
- b. Proof of continuing liability insurance in a single incident amount of three hundred thousand dollars (\$300,000.00) for bodily injury to or death of any person or persons or for damage to property owned by any persons which may result from the ownership, keeping, or maintenance of dogs designated as potentially dangerous or dangerous;
- c. Proof that said dog has been sterilized and has current vaccinations; and (Ord. 2005-27, 10-17-2005)
- d. A yearly registration fee as established by the city's fee schedule. (Ord. 2005-27, 10-17-2005; amd. Ord. 2007-30, 1-7-2008, eff. retroactive to 1-1-2008)

E. **Yearly Registration Requirement:** All dogs designated as potentially dangerous dogs or dangerous dogs shall file a new application each year with an accompanying registration fee. (Ord. 2005-27, 10-17-2005)



**F. Additional Requirements For Dangerous Dogs:** In addition to filing a yearly application to register a dangerous dog and paying the accompanying yearly registration fee as established by the city's fee schedule, the owner of a dangerous dog shall keep the dog, while on the owner's property, in a proper enclosure. If the dog is outside an enclosure, the dog must be securely muzzled and restrained by a chain or leash and under the physical restraint of a competent adult. The owner of a dangerous dog shall also comply with the requirements of Minnesota statute 347.52 including the statute's sterilization requirements. (Ord. 2005-27, 10-17-2005; amd. Ord. 2007-30, 1-7-2008, eff. retroactive to 1-1-2008)

**G. Potentially Dangerous And Dangerous Dogs Brought Into The City:** Any dog designated as potentially dangerous or dangerous by another jurisdiction must be registered within twenty four (24) hours of being brought into the city limits of the city of Moorhead. Such registration shall be with the Moorhead police department. A dog declared potentially dangerous by another jurisdiction may be brought into the city limits of Moorhead for up to a fourteen (14) day period after notifying the Moorhead police department of: the dog's breed, location where the animal will be kept, microchip number, owner contact information, and length of stay. (Ord. 2005-27, 10-17-2005)

#### **H. Penalties:**

1. It shall be a misdemeanor offense to:

- a. Be an owner, or be in possession of a potentially dangerous dog in violation of the registration requirements set forth in this section;
- b. Allow a dangerous dog to "run at large". A dog designated as potentially dangerous must be leashed and be under the control of a competent adult at all times when off the owner's property.

2. Dogs in violation of registration requirements will be impounded immediately by the police department and held until brought into compliance if found running at large, or if in custody on a rabies hold. If a dog is not brought into compliance within fourteen (14) days of notification by the Moorhead police department of its designation as a potentially dangerous dog, the dog will be impounded and held until brought into compliance with this section. If not brought into compliance within five (5) working days after impoundment, the dog may be euthanized. The owner of said dog is responsible for boarding and expenses associated with this process.

3. No person may own a dog in the city of Moorhead if the person has been convicted of a third or a subsequent violation of this section. If any member of a household is prohibited from owning a dog pursuant to this section, unless specifically approved with or without restrictions by the Moorhead police department, no person in the household is permitted to own a dog. (Ord. 2008-23, 11-24-2008)

**Footnote 1:** See also subsection 4-4-2B5 of this code.

## Chapter 8

# STORM WATER MANAGEMENT

## ARTICLE A. GENERAL PROVISIONS

### 3-8A-1: PURPOSE:

A. This chapter sets forth uniform requirements for stormwater management systems within the city of Moorhead. In the event of any conflict between the provisions of this chapter or other regulations adopted by the city of Moorhead, Clay County, state or federal authorities, the more restrictive standard prevails.

B. The objectives of this chapter are as follows:

1. To promote, preserve, and enhance the natural resources within the city of Moorhead from adverse or undesirable impacts occasioned by development or other activities;
2. To protect and promote the health, safety, and welfare of the people and property through effective stormwater quantity and quality management practices;
3. To regulate land development activity, land disturbing activity, or other activities that may have an adverse and/or potentially irreversible impact on stormwater quantity, water quality and/or environmentally sensitive lands and to encourage compatibility between such uses;
4. To establish detailed review standards and procedures for land development activities throughout the city of Moorhead, thereby achieving a balance between urban growth and development and the protection of water quality; and
5. To provide for adequate stormwater system analysis and design as necessary to protect public and private property, water quality and existing natural resources.

C. This chapter applies in the city of Moorhead, Minnesota, and to persons outside the city who are, by contract or agreement with the city, users of the city stormwater management system. Except as otherwise provided herein, the city engineer shall administer, implement, and enforce the provisions of this chapter. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### 3-8A-2: DEFINITIONS:

For the purpose of this chapter, the following terms, phrases, and words, and their derivatives, shall

have the meanings as stated in this section. When inconsistent with the context, words used in the present tense include the future tense. Words in plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and the word "may" is always permissive.

**APPLICANT:** Any person or group that applies for a building permit, subdivision approval, zoning change, approach, excavation or special use permit, stormwater plan approval, stormwater permit or any other permit which allows land disturbing activities. "Applicant" also means that person's agents, employees, and others acting under this person's or group's direction. The term "applicant" also refers to the permit holder or holders and the permit holder's agents, employees, and others acting under this person's or group's direction.

**BASE FLOOD OR REGIONAL FLOOD OR 100-YEAR FLOOD<sup>1</sup>:** The flood having a one percent (1%) chance or probability of being equaled or exceeded in any given year (i.e., 100-year flood).

**BEST MANAGEMENT PRACTICES (BMP):** Erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing, and minimizing the degradation of surface water, including construction phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by federal, state, or designated areawide planning agencies or included in the "Minnesota Stormwater Manual".

**BMPs:** Measures designed to: a) prevent pollutants from leaving a specific area; b) reduce/eliminate the introduction of pollutants; c) protect sensitive areas; or d) prevent the interaction between precipitation and pollutants.

**BUFFER:** A protective vegetated zone located adjacent to a natural resource, such as a "water of the state" that is subject to direct or indirect human alteration. Such a buffer strip is an integral part of protecting an aquatic ecosystem through trapping sheet erosion, filtering pollutants, reducing channel erosion and providing adjacent habitat.

The buffer strip begins at the "ordinary high water mark" for wetlands and channel for rivers and streams. This start point corresponds to the Minnesota department of natural resources (DNR) definition of a "shoreline" in Minnesota rules 6115.0030.

**CITY:** The city of Moorhead or the city council of the city of Moorhead.

**CITY ENGINEER:** The city engineer of the city of Moorhead or authorized agent.

**COMMON PLAN OF DEVELOPMENT OR SALE:** A contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, or on different schedules, but under one proposed plan. This term is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land disturbing activities may occur.

**CONTROL MEASURE:** A practice or combination of practices to control erosion and attendant pollution, see also definition of Best Management Practices (BMP).

**COUNCIL:** The city council of the city of Moorhead.

**DETENTION FACILITY:** A natural or manmade structure, including wetlands used for the temporary storage of runoff and which may contain a permanent pool of water, or may be dry during times of no runoff.

**DEVELOPER:** A person, firm, corporation, sole proprietorship, partnership, federal or state agency, or political subdivision thereof engaged in a land disturbance and/or land development activity.

**DEVELOPMENT:** Any land disturbance activity that changes the site's runoff characteristics in conjunction with residential, commercial, industrial or institutional construction or alteration.

**DISCHARGE:** The release, conveyance, channeling, runoff, or drainage, of stormwater, including snowmelt.

**DRAINAGE EASEMENT:** A right to use the land of another for a specific purpose, such as a right of way for the movement of water across or under the land surface or the storage of water.

**EROSION:** Removing the surface of the land by the action of water, wind, ice, or gravity. Erosion can be accelerated by the activities of man and nature.

**EROSION AND SEDIMENT CONTROL PLAN (E&S CONTROL PLAN):** A written description and/or plan indicating the number, locations, sizes, and other pertinent information about best management practice methods designed to reduce erosion of the land surface and the deposition of sediment within a waterway. An "E&S control plan" is required as part of a stormwater management plan. Both the stormwater management plan and E&S control plans are used in developing the state mandated stormwater pollution prevention plan (SWPPP). An E&S control plan may be required for certain projects not requiring a full stormwater management plan, as outlined in this chapter or determined necessary by the city engineer.

**EROSION CONTROL:** Refers to methods employed to prevent erosion. Examples include soil stabilization practices, horizontal slope grading, temporary or permanent cover, and construction phasing.

**EXPOSED SOIL AREAS:** All areas of the construction site where the vegetation (trees, shrubs, brush, grasses, etc.) or impervious surface has been removed, thus rendering the soil more prone to erosion. This includes topsoil stockpile areas, borrow areas and disposal areas within the construction site. It does not include temporary stockpiles or surcharge areas of clean sand, gravel, concrete or bituminous, which have less stringent protection. Once soil is exposed, it is considered "exposed soil" until it meets the definition of "final stabilization".

**FINAL STABILIZATION:** All soil disturbing activities at the site have been completed, and a uniform (evenly distributed, e.g., without large bare areas) perennial vegetative cover with a density of seventy percent (70%) of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures have been employed. Simply sowing grass seed is not considered final stabilization. Where agricultural land is involved, such as when pipelines are built on crop or range land, final stabilization constitutes returning the land to its preconstruction agricultural use or as required by the "Minnesota Stormwater Manual".

**FLOODWAY:** The channel of the watercourse and those portions of the adjoining floodplains which

are reasonably required to carry and discharge the regional flood determined by the use of the 100-year flood profile and other supporting technical data in the flood insurance study (as described in section 10-2-2 of this code).

**HYDRIC SOILS:** Soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile.

**HYDROPHYTIC VEGETATION:** Macrophytic (large enough to be observed by the naked eye) plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

**IMPERVIOUS AREA:** A constructed hard surface that either prevents or retards the entry of water into the soil, and causes water to run off the surface in greater quantities and at an increased rate of flow than existed prior to development. Examples include rooftops, sidewalks, patios, driveways, storage areas; and concrete, asphalt, or gravel parking lots and roads.

**LAND DEVELOPMENT ACTIVITY:** The act of subdivision or platting properties for personal use, adding value or for the purposes of resale. This includes the construction and/or demolition of buildings, structures, roads, parking lots, paved storage areas, and similar facilities.

**LAND DISTURBING ACTIVITY:** Any land change that may result in soil erosion from water or wind and the movement of sediments into or upon waters or lands within the city's jurisdiction, including construction, clearing and grubbing, grading, excavating, transporting and filling of land. Within the context of this chapter, "land disturbance activity" does not mean:

- A. Minor land disturbance activities such as home gardens and an individual's home landscaping, repairs, and maintenance work, which will not result in sediments entering the stormwater system.
  
- B. Additions or modifications to existing single-family structures that result in creating under five thousand (5,000) square feet of exposed soil or impervious surface and will not result in sediments entering the stormwater system.
  
- C. Construction, installation, and maintenance of trees, fences, signs, posts, poles, and electric, telephone, cable television, utility lines or individual service connections to these utilities, which result in creating under five thousand (5,000) square feet of exposed soil or impervious surface and will not result in sediments entering the stormwater system.
  
- D. Tilling, planting, or harvesting of agricultural, horticultural, or silvicultural (forestry) crops.
  
- E. Emergency work to protect life, limb, or property and emergency repairs, unless the land



disturbing activity would have otherwise required an approved erosion and sediment control plan, except for the emergency. If such a plan would have been required, then the disturbed land area shall be shaped and stabilized in accordance with the city's requirements as soon as possible.

**LANDOWNER:** Any person holding title to or having a divided or undivided interest in land.

**LOCAL DETENTION:** Detention intended to serve only the developing area in question and no areas outside of the development boundaries. As such it is under the control of one owner or group of owners. This is also known as on site detention.

**LOCAL DRAINAGE SYSTEM:** The storm drainage system which transports the minor and major stormwater runoff to the major stormwater system and serving only the property within the development boundaries, under the control of one owner or group of owners. This is also known as the on site drainage system.

**MANAGEMENT PRACTICE:** A practice or combination of practices to control erosion and water quality degradation.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT:** Any permit or requirement enforced pursuant to the clean water act as amended for the purposes of regulating stormwater discharge.

**NATURAL WATER:** A river, stream, pond, channel or ditch.

**NONCOMPLIANCE FEE:** The administrative penalty, or fee, for reinspection of a property which may be assessed to a permittee, landowner, developer or their contractor(s) for noncompliance with the provisions and/or conditions of an approved stormwater plan and/or permit or the violation of any other provisions contained in this chapter.

**ON SITE DETENTION:** Also known as local detention system.

**ON SITE DRAINAGE SYSTEM:** Also known as local drainage system.

**OUTLET:** Any discharge point, including storm sewers, into a watercourse, pond, ditch, lake or other body of surface or ground water.

**OWNER OR OCCUPANT:** Any person owning or using a lot, parcel of land, or premises connected to and discharging stormwater into the stormwater system of the city, and who pays for and is legally responsible for the payment of stormwater rates or charges made against the lot, parcel of land, building or premises, if connected to the stormwater system or who would pay or be legally responsible for such payment.

**PERMANENT COVER:** Means "final stabilization". Examples include grass, gravel, asphalt, and concrete. See also definition of Final Stabilization.

**PERMANENT DEVELOPMENT:** Any buildings, structures, landscaping and related features constructed as part of a development project approved for construction or constructed prior to the

passage date hereof.

**PERMANENT FACILITIES:** Those features of a stormwater management plan which are part of any natural or constructed stormwater system that requires periodic maintenance to retain their operational capabilities. This includes, but is not limited to, storm sewers, infiltration areas, detention areas, channels, streets, etc.

**PERMIT:** Within the context of this rule a "permit" is a written warrant or license granted for construction, subdivision approval, or to allow land disturbing activities.

**PERMITTEE:** Any person who applies for and receives approval of stormwater plan and/or permit from the city.

**PERSON:** Any developer, individual, firm, corporation, partnership, franchise, association, owner, occupant of property, or agency, either public or private.

**PROHIBITED DISCHARGE:** A nonstormwater discharge into the stormwater system or a natural water, including, but not limited to:

- A. Debris or other materials such as grass clippings, vegetative materials, tree branches, earth fill, rocks, concrete chunks, metal, other demolition or construction materials, or structures.
- B. The disposal or misuse of chemicals or any other materials that would degrade the quality of waters within the system, including, but not limited to, chemicals (fertilizers, herbicides, pesticides, etc.) or petroleum based products (gasoline, oil, fuels, solvents, paints, etc.).
- C. Erosion and sediment originating from a property and deposited onto city streets, private properties or into the stormwater conveyance system, including those areas not specifically covered under an approved stormwater management plan or stormwater permit.
- D. Failure to remove sediments transported or tracked onto city streets by vehicles or construction traffic by the end of each working day.
- E. For the purposes of this chapter, prohibited discharges do not include the following, unless information is available to indicate otherwise:

- Air conditioning condensate
- Dechlorinated swimming pool discharges
- Discharges from potable water sources
- Diverted stream flows

- Flows from riparian habitats and wetlands
- Footing drains
- Foundation drains
- Individual residential car washing
- Irrigation water
- Landscape irrigation
- Lawn watering
- Rising groundwater
- Springs
- Street wash water
- Uncontaminated groundwater infiltration
- Uncontaminated pumped groundwater
- Water from crawl space pumps
- Water line flushing

**PUBLIC STORM SEWER:** A storm sewer located entirely within publicly owned land or easements.

**REGIONAL DETENTION:** Detention facilities provided to serve an area outside the development boundaries. A "regional detention" site generally receives runoff from multiple stormwater sources and serves an area of approximately one quarter section.

**REGIONAL FLOOD:** Also known as base flood or 100-year flood (as described in section 10-2-2 of this code).

**RETENTION FACILITY:** A natural or manmade structure that provides for the storage of all or a portion of stormwater runoff.

**RUNOFF:** The rainfall, snowmelt, dewatering, or irrigation water flowing over the ground surface and into open channels, underground storm sewers, and detention or retention ponds.

**SEDIMENT:** Solid material or organic material that, in suspension, is being transported or has been moved by air, water, gravity, or ice, and deposited at another location.

**SEDIMENT CONTROL:** The methods employed to prevent sediment from leaving the development site. Examples of sediment control practices include, but are not limited to, silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, and temporary or permanent sedimentation basins.

**SIGNIFICANT REDEVELOPMENT:** Alterations of a property that changes the "footprint" of a site or building in such a way that results in the disturbance of over one acre of land. This term is not intended to include activities, which would not be expected to cause adverse stormwater quality impacts and offer no new opportunity for stormwater controls, such as exterior remodeling.

**SITE:** The entire area included in the legal description of the parcel or other land division on which the land development or land disturbing activity is proposed in the stormwater plan or permit application.

**STABILIZE:** To make the site steadfast or firm, minimizing soil movement by mulching and seeding,

sodding, landscaping, placing concrete, gravel, or other measures.

**STABILIZED:** The exposed ground surface after it has been covered by sod, erosion control blanket, riprap, pavement or other material that prevents erosion. Simply sowing grass seed is not considered stabilization. Ground surfaces may be temporarily or permanently stabilized (see also definition of Final Stabilization).

**STATE:** The state of Minnesota.

**STORM SEWER:** A pipe or conduit for carrying stormwater, surface runoff, and drainage, excluding sewage and industrial wastes.

**STORMWATER:** Precipitation runoff, stormwater runoff, snowmelt runoff, and any other surface runoff and drainage. "Stormwater" does not include construction site dewatering.

**STORMWATER DETENTION:** Temporary storage of stormwater runoff in ponds, parking lots, depressed grassy areas, rooftops, buried underground tanks, etc., for future or controlled release. Used to delay and attenuate flow.

**STORMWATER MANAGEMENT:** The planned set of public policies and activities undertaken to regulate runoff and reduce erosion, and maintain or improve water quality under various specified conditions within various portions of the drainage system. It may establish criteria for controlling peak flows and/or runoff volumes, for runoff detention and retention, or for pollution control, and may specify criteria for the relative elevations among various elements of the drainage system. Stormwater management is primarily concerned with limiting future flood damages and environmental impacts due to development, whereas flood control aims at reducing the extent of flooding that occurs under current conditions.

**STORMWATER MANAGEMENT CRITERIA:** Specific guidance provided to the engineer/designer to carry out drainage and stormwater management policies. An example might be the specification of local design hydrology and use of the design storm.

**STORMWATER MANAGEMENT PERMIT:** A permit issued by the city in accordance with this chapter after the approval and acceptance of the stormwater management plan. A permit must be acquired prior to initiating land development, land disturbing, or other activities which result in an increase in stormwater quantities, degradation of stormwater quality, or restriction of flow in any storm sewer system, open ditch or natural channel, stormwater easement, water body or wetland outlet within the city's jurisdiction.

**STORMWATER MANAGEMENT PLAN:** A document containing the requirements identified by the city in article B of this chapter, that when implemented will provide solutions to stormwater management problems that may occur as a result of the proposed development or land disturbing activity. A stormwater management permit is not required as part of, but may be included in a stormwater management plan.

**STORMWATER MANAGEMENT SYSTEM:** Physical facilities that collect, store, convey, and treat stormwater runoff in urban areas. These facilities normally include detention and retention facilities, streets, storm sewers, inlets, open channels, and special structures, such as inlets, manholes, and energy dissipaters.

**STORMWATER POLLUTION PREVENTION PLAN (SWPPP):** A joint stormwater and erosion and sediment control plan that is written as a prerequisite to obtaining an NPDES stormwater permit for construction activity, that when implemented will decrease soil erosion on a parcel of land and off site nonpoint pollution. It involves both temporary and permanent controls. The SWPPP, which draws its information from a stormwater management plan and is typically condensed, must be incorporated into the construction grading plans for the project.

**STORMWATER RETENTION:** Storage designed to eliminate or reduce the frequency of subsequent surface discharge. Wet ponds are the most common type of retention storage (though wet ponds may also be used for detention storage).

**STRUCTURE:** Anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas.

**SUBDIVISION:** Any tract of land divided into building lots for private, public, commercial, industrial, etc., development for the purpose of sale, rent, or lease, including planned unit development.

**SYSTEM CHARGE OR ASSESSMENT:** A charge for connecting an outlet to a regional stormwater management facility, typically a pond. The charge is normally assessed to recover the proportional cost of constructing a regional pond or stormwater treatment facility.

**TEMPORARY PROTECTION:** Short term methods employed to prevent erosion. Examples of such protection are straw, mulch, erosion control blankets, wood chips, and erosion netting.

**UNDEVELOPED LAND:** Land that in its current state has not been impacted by significant land disturbance activities, annexed into the city or subdivided into multiple ownership lots and is typically zoned agricultural.

**URBAN AREA:** Land associated with, or part of, a defined city or town. This chapter applies to urban or urbanizing, rather than rural areas.

**USER:** Any person who discharges, causes, or permits the discharge of stormwater into the city's stormwater management system.

**VIOLATION:** The wilful or negligent act of noncompliance with the conditions attached to an approved stormwater plan and/or permit, or any other provisions contained in this chapter, subject to enforcement and penalty or noncompliance fees.

**WATERCOURSE:** The natural path for the flow of water where there is sufficient natural and accustomed runoff to form and maintain a distinct and defined channel or an open channel facility that has been constructed for such purpose. This shall include any easements obtained for the purposes of runoff conveyance.

**WATERS OF THE STATE:** All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.



**WATERSHED DISTRICT:** The Buffalo Red River watershed district.

**WATERSHED MASTER PLAN:** The plan that an engineer/designer formulates to manage urban stormwater runoff for a particular project or drainage area. It typically addresses such subjects as characterization of the existing and future site development, land use, and grading plan, peak rates of runoff, flow duration, runoff volumes for various return frequencies, locations, criteria and sizes of detention or retention ponds and conveyances; runoff control features; land parcels, easement locations, opinions of probable costs, measures to enhance runoff quality, salient regulations, and how the plan addresses them, and consistency with secondary objectives such as public recreation, aesthetics, public safety, and groundwater recharge. It may be submitted to regulatory officials for their review for adoption.

**WET POND:** A retention facility which includes a permanent pool of water used for the purposes of providing for the treatment of stormwater runoff.

**WETLANDS:** Lands transitional between terrestrial and aquatic systems (excluding drainage ditch bottoms) where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three (3) attributes:

- A. A predominance of hydric soils;
- B. Are inundated or saturated by the surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- C. Under normal circumstances support the prevalence of such vegetation. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8A-3: SCOPE:**

- A. **Prohibited Discharges:** It shall be considered an offense for any person to cause or allow a prohibited discharge into waters of the state, including the city stormwater system, or any natural water.
- B. **Land Disturbing Activity Requiring A Stormwater Management Plan:** Any person, firm, sole proprietorship, partnership, corporation, state agency, or political subdivision proposing subdivision or plat approval, a building permit or any land disturbance activity within the city

must submit a stormwater management plan and/or a stormwater permit application to the city engineer unless a waiver is provided in accordance with this section.

No subdivision or plat approval shall be issued until a stormwater management plan or a waiver of the approval requirements has been obtained in strict conformance with the provisions of this chapter. No building permit shall be issued until approval of a stormwater permit or a waiver of the permit requirements has been obtained in strict conformance with the provisions of this chapter. No land shall be disturbed until the permit is approved by the city and conforms to the standards set forth herein.

A stormwater management plan may also be required in some situations as determined by the city engineer (i.e., development within an existing subdivision with documented flooding problems associated with stormwater runoff, or development occurring on a large lot within a subdivision where a watershed master plan was previously developed).

Exemptions to the stormwater management plan and/or stormwater permit requirements of this section include any part of a subdivision that is included in a plat that has been approved by the city council and recorded with the register of deeds on or before the effective date of this article. A stormwater permit for land disturbing activities on such properties may still be required, as determined by the city engineer, and such activities are still subject to other compliance requirements in accordance with this article:

1. A stormwater management plan is not required for individual lots or properties located within a subdivision or plat for which a stormwater management plan has already been approved or in areas included within a watershed master plan area. This exemption is subject to the city engineer's consideration and approval. Stormwater permits, however, are required subject to the other exemptions noted in this section;
  2. A parcel for which a building permit has been approved on or before the effective date of this chapter and an NPDES/SDS permit was not required;
  3. The installation of any of the following: a fence, sign, trees or shrubs, telephone and electric poles and other kinds of posts or poles, except where such uses are prohibited by easement or stormwater conveyance requirements;
  4. Any land disturbance activity not associated with building construction that will affect less than five thousand (5,000) square feet of undeveloped land. A stormwater permit will not be required unless the proposed project will result in sediments entering the stormwater system;
  5. Emergency work to protect life, limb, or property.
- C. Land Disturbing Activity Involving The Construction Of A Single-Family Or Two-Family Dwelling: Construction of single-family or two-family dwellings must comply with in place BMPs and any existing permitted SWPPP for the subdivision, including NPDES/SDS permit requirements. A stormwater permit and compliance with the single-family residential construction erosion/sediment control standards is also required.

#### D. Installation And Repair Of Utility Service Lines:

1. At project sites that require permit coverage where a utility contractor is not the site owner or operator, each utility contractor must comply with the provisions of the stormwater pollution prevention plan (SWPPP) for the project their construction activities will impact. Each utility contractor must ensure that their activities do not render ineffective, the erosion prevention and sediment control best management practices (BMPs) for the site. Should a utility contractor damage or render ineffective any temporary BMPs for the site, the utility contractor must repair or replace such BMPs within twenty four (24) hours upon discovery of the damaged BMP. Should a utility contractor damage or render ineffective any permanent BMPs for the site, the utility contractor must repair or replace such BMPs within seven (7) days of completion of utility installation on the site. The utility contractor will be responsible for a BMP that includes mulch with seed or sod and must provide maintenance, including any watering necessary to ensure the establishment of the sod or mulch with seed. The establishment period for a BMP that includes sod or mulch with seed shall be thirty (30) days, after which, if the area does not have an acceptable level of establishment, the utility contractor must resod or reseed until satisfactory establishment is achieved.
2. At project sites where a utility contractor is the site owner or operator, and the utility company disturbs one or more acres of soil for the purpose of installation of utility service lines, including, but not limited to, residential electric, gas, telephone and cable lines, the utility company must apply for permit coverage from the city and state prior to commencement of construction.
3. Utility contractors working in a street right of way to repair existing or install new utilities and disturbing less than one acre shall obtain an excavation stormwater permit before commencing work. The utility contractor is required to provide appropriate inlet protection and sediment control during the course of the work so as to ensure the storm sewer system is protected from pollution. The utility contractor is also required to provide street sweeping as necessary to ensure that sediments resulting from their activity do not enter the stormwater system following construction. The street shall be swept within one working day of completion of utility installation on the site. All disturbed vegetation shall be replaced with mulch with seed or sod within seven (7) days of completion of utility installation on the site. The city will provide guidance regarding acceptable temporary protection BMPs for inlets and methods to stabilize the exposed soil areas until they meet the definition of "final stabilization".

E. Waivers: The city engineer may waive any requirement of this article upon making a finding that compliance with the requirement will involve an unnecessary hardship, and the waiver of such requirement is not contrary to the objectives in this article. The city engineer may require as a condition of the waiver, such dedication or construction, or agreement to dedicate or construct, as may be necessary to adequately meet the said standards and requirements. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

#### **3-8A-4: MANAGEMENT OF SITE VEGETATION:**

Any landowner shall provide for the installation and maintenance of vegetation on their property in accordance with the following criteria, regardless as to whether or not a stormwater management plan or stormwater permit has been approved or is necessary under this chapter:

- A. Use Of Impervious Surfaces: No person shall apply items included in the definition of "prohibited discharge" on impervious surfaces or within stormwater drainage systems with impervious liners or conduits.
- B. Unimproved Land Areas: Except for driveways, sidewalks, patios, areas occupied by structures, landscaped areas, or areas that have been otherwise improved, all areas shall be covered by plants or vegetative growth.
- C. Use Of Pervious Surfaces: No person shall deposit grass clippings, leaves, or other vegetative materials, with the exception of normal mowing or weed control, within natural or manmade watercourses, wetlands, or within wetland buffer areas. No person shall deposit items included in the definition of "prohibited discharge" except as noted above.

Failure to comply with this section shall constitute a violation and subject the landowner to the enforcement provisions, penalties and noncompliance fees outlined in article F of this chapter. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

## **ARTICLE B. STORMWATER MANAGEMENT PLAN; APPLICATION AND REVIEW**

### **3-8B-1: APPLICATION AND CONTENT:**

A written stormwater management plan application shall be filed with the city engineer as required by this article. The application shall include a statement indicating the grounds upon which the approval is requested, that the proposed use is permitted in the underlying zoning district, and adequate evidence showing the proposed use will conform to the standards set forth in this article and the "Minnesota Stormwater Manual" (manual). Prior to applying for approval of a stormwater management plan, it is recommended that the applicant have the stormwater management plan reviewed by any affected public agencies. While it is not necessary it is desirable in some cases to combine the stormwater management plan and stormwater permit submittals in a single application.

Two (2) sets of legible copies of the drawings and required information shall be submitted to the city engineer and shall be accompanied by a receipt from the city to document the payment of all required fees for processing and approval as set forth in section 3-8B-2 of this article. Plans shall

be prepared to a scale appropriate to the site of the project and suitable for performing the review.

At a minimum, the stormwater management plan shall contain the information outlined in the manual. A written stormwater management report discussing the pre- and postdevelopment hydrologic and hydraulic analysis, erosion and sedimentation control during and after construction, protective measures for proposed and existing structures, and water quality concerns shall also be provided. The contents of this report shall be in accordance with the recommended format in the manual. For additional information refer to article C of this chapter. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8B-2: APPLICATION FEE:**

A processing and approval fee adopted by the city council shall accompany all applications for stormwater management plan approval. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8B-3: PROCESS:**

A stormwater management plan meeting the requirements of this article shall be submitted to the city engineer for review and to determine its compliance with the standards as outlined in article C of this chapter. The city engineer shall approve, approve with conditions, or deny the stormwater management plan. If a particular stormwater management plan involves a complex application or has the potential for significant controversy, the city engineer may bring the proposed stormwater management plan before the city council for consideration and public comment. Prior to initiating construction as outlined in the stormwater management plan, the applicant must also obtain a stormwater permit. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8B-4: DURATION:**

Approval of any plan submitted under the provisions of this chapter shall expire one year after the date of approval unless construction has commenced in accordance with the plan. However, if prior to the expiration of approval, the applicant makes a written request to the city engineer for an extension of time to commence construction setting forth the reasons for the requested extension, the city engineer may grant one extension of not greater than one year. The city engineer shall acknowledge receipt of any request for an extension within fifteen (15) days. The city engineer shall make a decision on the extension within thirty (30) days of receipt. Any plan may be revised following the same procedure for an original approval. Provided, the city engineer may waive all or part of the application fee if the revision is minor. Any denied or expired application may be resubmitted with additional information addressing the concerns contained within the denial or the reason why the original plan was allowed to expire. The resubmitted application shall be subject to

all applicable fees and review time lines as if it were a new application. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8B-5: CONDITIONS OF APPROVAL:**

A stormwater management plan may be approved subject to compliance with conditions reasonable and necessary to ensure that the requirements contained in this chapter are met. Such conditions may, among other matters, limit the size, kind or character of the proposed development, require the construction of structures, drainage facilities, storage basins and other facilities, require replacement of vegetation, establish required monitoring procedures, stage the work over time, require alteration of the site design to ensure proper buffering, require the acquisition or dedication of certain lands or easements, and require the conveyance to the city of Moorhead or other public entity of certain lands or interests therein for stormwater system facilities. The city engineer may specify special requirements or conditions for specific major or minor watersheds within the city and its extraterritorial jurisdiction. The nature of these requirements will be subject to the unique environmental and natural resource environment of each subwatershed. Approval of a plan shall bind the applicant to perform and comply with all the requirements and conditions of the plan prior to commencing or concurrent with any land disturbing activities. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

## **ARTICLE C. STORMWATER MANAGEMENT PLAN; APPROVAL STANDARDS**

### **3-8C-1: GENERAL:**

This article describes the approval standards used to evaluate a proposed stormwater management plan. The city engineer shall not approve a stormwater management plan which fails to meet these standards. Other applicable standards, such as state and federal standards, shall also apply. If the standards of different agencies conflict, the more restrictive standards shall apply.

It shall be the applicant's responsibility to obtain any required permits from other governmental agencies having any jurisdictional authority over the work to be performed. Typically, such agencies include, but are not limited to, the Buffalo Red River watershed district (BRRWD), Clay County, the Minnesota department of natural resources (DNR), the Minnesota department of transportation (MnDOT), the Minnesota pollution control agency (MPCA), the state historic preservation office (SHPO), the U.S. army corps of engineers, the U.S. environmental protection agency (EPA), federal emergency management agency (FEMA), and others. The city may choose to obtain some of the required permits. The applicant will be notified which permits are to be obtained by the city. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)



### **3-8C-2: STORMWATER MANUAL:**

The "Minnesota Stormwater Manual" (manual) contains the principal standards and design criteria for developing an effective and acceptable stormwater management plan. The manual contains detailed criteria for hydrologic evaluations, the design of stormwater management system facility components, water quality protection standards, and instructions for the development of an erosion and sedimentation control plan. Upon request the city will provide requirements for easements and rights of way, standard forms to be used, and standard construction details approved by the city. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8C-3: MODELS/METHODOLOGIES/COMPUTATIONS:**

Other than those outlined in the manual, any hydrologic models and/or design methodologies used to determine runoff conditions and to analyze stormwater management structures and facilities, shall be approved in advance by the city engineer. All stormwater management plans, drawings, specifications, and computations for stormwater management facilities submitted for review shall be signed by a professional engineer registered in the state of Minnesota. This requirement will be met as part of a properly completed stormwater management plan. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8C-4: STORMWATER MANAGEMENT CRITERIA FOR PERMANENT FACILITIES:**

Stormwater control facilities included as part of the final design for a permanent development shall be addressed in the stormwater management plan and shall meet the following criteria:

- A. Pre- Versus Posthydrological Response Of Site: An applicant shall install or construct, on or for the proposed land disturbing activity or development activity, all stormwater management facilities necessary to manage runoff such that increases in flow under the design conditions will not occur that could exceed the capacity of the outlet, or the stormwater management system, into which the site discharges or that would cause the stormwater management system to be overloaded or accelerate channel erosion as a result of the proposed land disturbing activity or development activity. Under no circumstances shall the 2-, 10-, or 100-year developed peak flow exceed the 2-, 10-, or 100-year existing peak flow without prior written approval by the city engineer. For regional detention or stormwater management system, the city engineer shall recommend a proposed system charge or assessment to be approved by the city council based upon an approved watershed master plan and an analysis of required drainage systems, projected costs and flood protection benefits provided to those properties directly or indirectly impacted by the regional detention or stormwater management system.

- B. Natural Features Of Site:** The applicant shall give consideration to reducing the need for stormwater management system facilities by incorporating the use of natural topography and land cover such as wetlands, ponds, natural swales and depressions as they exist before development to the degree that they can accommodate the additional water flow without compromising the integrity or quality of these natural features.
- C. Stormwater Management Strategies:** The following stormwater management practices shall be investigated when developing a stormwater management plan:
1. Natural infiltration of precipitation and runoff on site, if suitable soil profiles can be created during site grading. The purpose of this strategy is to encourage the development of a stormwater management plan that encourages natural infiltration. This includes providing as much natural or vegetated area on the site as possible, minimizing impervious surfaces, and directing runoff to vegetated areas rather than onto adjoining streets, storm sewers and ditches;
  2. Flow attenuation by use of open vegetated swales and natural depressions;
  3. Stormwater detention facilities; and
  4. Stormwater retention facilities (on a case by case basis).
  5. Other facilities requested by the city engineer.

A combination of successive practices may be used to achieve the applicable minimum control requirements specified. Justification shall be provided by the applicant for the method selected.

- D. Adequacy Of Outlets:** The adequacy of any outlet used as a discharge point for proposed stormwater management system must be assessed and documented to the satisfaction of the city engineer. To the extent practicable, hydraulic capacities of downstream natural channels, storm sewer systems, or streets shall be evaluated to determine if they have sufficient conveyance capacity to receive and accommodate postdevelopment runoff discharges and volumes without causing increased property damages or any increase in the established base flood elevation. If a floodplain or floodway has not been established by the federal emergency management agency (FEMA), the applicant shall provide a documented analysis and estimate of the base flood elevation as certified by a professional engineer registered in the state of Minnesota. In addition, projected velocities in downstream natural or manmade channels shall not exceed that which is reasonably anticipated to cause erosion unless protective measures acceptable to the city engineer are approved and installed as part of the stormwater management plan. The assessment of outlet adequacy shall be included in the stormwater management plan.

E. Stormwater Detention/Retention Facilities: Stormwater detention or retention facilities proposed to be constructed in the stormwater management plan shall be designed according to the most current technology as reflected in the manual. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8C-5: OPERATION, MAINTENANCE AND INSPECTION:**

All stormwater management systems shall be designed to minimize the need for maintenance, to provide easy vehicle (typically 8 feet or wider) and personnel access for maintenance purposes, and to be structurally sound. All stormwater management systems shall have a plan of operation and maintenance that assures continued effective removal of pollutants carried in stormwater runoff. The city engineer may inspect all public and private stormwater management systems at any time. Inspection records will be kept on file at the city engineer's office. It shall be the responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the stormwater management system for inspection and maintenance purposes. The city engineer shall retain enforcement powers for assuring adequate operation and maintenance activities through permit conditions, penalties, noncompliance orders and fees.

The city engineer or his/her designated representative shall inspect all stormwater management systems during construction, during the first year of operation and at least once every five (5) years thereafter. The city will keep all inspection records on file for a period of three (3) years beyond the NPDES permit period. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8C-6: EASEMENTS:**

Easements may be required as conditions to the approval of a stormwater management plan and/or permit. If a stormwater management plan involves directing some or all of the site's runoff to a drainage easement, the applicant or his designated representative shall obtain from the property owners any necessary easements or other property interests concerning the flowing of such water. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8C-7: PLAN APPLICABILITY:**

A stormwater management plan approval issued under this chapter runs with the land and is a condition of plat or development approval. Any landowner or subsequent landowner of any parcel within the plat or development area must comply with the plan or any approval, condition, revision or modification of the plan. Failure to comply with this plan shall constitute a violation and subject the permittee, developer, and/or landowner to the enforcement provisions, penalties and noncompliance fees. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8C-8: PLAN AMENDMENTS:**

Stormwater management plans may be amended only by a written request submitted to the city engineer. This request shall contain the reason for the change and documentation related to any additional change in projected impacts, which may result from amendment approval. Amendment requests submitted prior to final approval of a plan application shall be considered part of the original submittal. Amendment requests filed after plan approval shall be considered following the same procedures as if it were a new application and subject to all applicable fees and review periods. Provided, the city engineer may waive all or part of the fees if the amendment is minor. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

## **ARTICLE D. STORMWATER PERMITS**

### **3-8D-1: PERMITS REQUIRED:**

It is unlawful to initiate any land development activity, land disturbing activity, or other activities which may result in an increase in stormwater quantities, degradation of stormwater quality, or restriction of flow in any storm sewer system, open ditch or natural channel, stormwater easement, water body, or wetland outlet within the jurisdiction of the city, without having first complied with the terms of this chapter. Other activities include those outlined in section 3-8A-3 of this chapter.

- A. **Permit Application:** All persons subject to meeting the requirements and needing to obtain a stormwater permit shall complete and file with the city engineer an application in the form prescribed by the city engineer and accompanied by a fee established by the city council. The permit application may need to be accompanied by a stormwater management plan as prescribed under article B of this chapter, if such a plan has not been previously approved. Permit applications may be denied if the applicant is not in compliance on another stormwater permit currently in effect.
- B. **Stormwater Permit:** A stormwater permit must be issued from the city engineer for any land disturbing projects greater than five thousand (5,000) square feet. Activities that disturb one acre of land or more must also obtain a Minnesota pollution control agency NPDES/SDS general stormwater permit for construction activity. Commencing earthwork on a project prior to plan or permit approval is considered a violation of this chapter.
- C. **Permit Delays:** The city engineer may withhold granting approval of a stormwater permit until all issues associated with the site are resolved to the satisfaction of the city engineer. Permits may

be conditioned with delays such that work cannot begin until a specified date or until after the site is inspected.

- D. **Permit Conditions:** Permits issued are subject to all provisions of this article and all other applicable regulations, user charges and fees established by the city council. Permits may contain, but are not limited to, any of the following conditions:
1. A system charge or assessment for a stormwater outlet utilizing a regional stormwater management system in accordance with a cost determined by the city engineer and approved by the city council for said outlet;
  2. Limits on the maximum rate of allowable stormwater discharge;
  3. Requirements for water quality of stormwater discharge;
  4. Requirements for the installation, operation and maintenance of stormwater facilities including detention/retention or other treatment facilities;
  5. Requirements for erosion and sediment control, including measures to be implemented and other procedures necessary to protect the stormwater system;
  6. Compliance schedule;
  7. Requirements for notification to and acceptance by the city engineer of any land disturbing activities which have the potential for increasing the rate of stormwater discharge resulting in degradation of stormwater quality;
  8. Easements as outlined in section 3-8C-6 of this chapter; and
  9. Other conditions as deemed appropriate by the city engineer to ensure compliance with this chapter.
- E. **Permit Duration:** Permits must be issued for a time period specified by the city engineer. The applicant, if necessary, shall apply for permit renewal a minimum of ninety (90) days prior to the expiration of the applicant's existing permit. The terms and conditions of a permit are subject to modification by the city engineer during the term of the permit as set forth in subsection F of this section. Any denied or expired application may be resubmitted with additional information addressing the concerns contained within the denial or the reason why the original permit was allowed to expire. The resubmitted application shall be subject to all applicable fees and review time lines as if it were a new application.
- F. **Permit Modification:** The city engineer for just cause upon thirty (30) days' notice may modify stormwater permits. Just cause shall include, but not be limited to:
1. Promulgation of new federal, state or local regulatory requirements;

2. Changes in the requirements of this chapter;
3. Changes in the process used by the permittee or changes in discharge rate, volume, or character; and
4. Changes in the design or capability of receiving stormwater systems.

The applicant must be informed of any proposed changes in the permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

- G. **Permit Amendments:** Stormwater permits may be amended (by applicant) only by a written request submitted by the permittee to the city engineer. This request shall contain the reason for the change and documentation related to any additional impacts which may result from amendment approval. Amendment requests submitted prior to issuance of a stormwater permit shall be considered part of the original submittal. Amendment requests filed after permit approval shall be considered and reviewed under the same procedures and guidelines used for the stormwater permit applications under this article. Depending on the extent of the amendment, the city engineer may waive any additional fees for a permit amendment review.
- H. **Permit Transfer:** A permit runs with the property it covers, until the permitted activities are completed, and is transferable to new landowners in its entirety or by parcel, with each parcel being subject to the permit and any conditions which apply to that parcel. Land transfers must be reported to the city engineer within seven (7) days of the transfer. This section refers to city issued permits and does not release the applicant or owner from transfer requirements of an NPDES/SDS permit including, but not limited to, a notice of termination/permit modification.
- I. **Monitoring Facilities:** The city engineer may require the applicant to provide and operate at the applicant's expense a monitoring facility to allow inspection, sampling, and flow measurements of each stormwater system component. Where at all possible, the monitoring facility shall be located on the applicant's property as opposed to being located on public rights of way. Ample room must be allowed for accurate flow measuring and sampling and the facility shall be kept in a safe and proper operating condition.
- J. **Inspection:** The city engineer may inspect the stormwater management system of any permittee to determine compliance with the requirements of this chapter. The applicant shall promptly allow the city and their authorized representatives, upon presentation of credentials to:
1. Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations, inspections or surveys.
  2. Bring such equipment upon the permitted site as is necessary to conduct such inspections, surveys and investigations.



3. Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of this permitted site.
4. Inspect the stormwater pollution control measures.
5. Sample and monitor any items or activities pertaining to stormwater pollution control measures.

Any temporary or permanent obstruction to the safe and easy access of such an inspection shall be promptly removed upon the inspector's request. The cost of providing such access shall be borne by the permittee.

- K. Inspections Of The Stormwater Pollution Prevention Plan's Measures: At a minimum, such inspections shall be done weekly by the permittee (general contractor, developer or the developer's designated representative), and within twenty four (24) hours after every storm or snowmelt event large enough to result in runoff from the site (approximately 0.5 inch or more in 24 hours). At a minimum, these inspections shall be done during active construction. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8D-2: CONSTRUCTION PLANS AND SPECIFICATIONS:**

- A. The plans and specifications prepared for the construction of the stormwater management system must be:
1. Consistent with the stormwater management plan approved by the city engineer, including any special provisions or conditions.
  2. In conformance with the requirements of the city of Moorhead's municipal specifications, "Minnesota Stormwater Manual" and any other necessary permits required and issued by other governmental agencies.
  3. Signed by a professional engineer registered in the state of Minnesota.
  4. Submitted to the city engineer for approval.
  5. Approved by the city engineer prior to commencing construction.
- B. The construction grading and erosion/sediment control plans, in a format acceptable to the city engineer, shall contain a drawing or drawings delineating the features incorporated into the stormwater pollution prevention plan (SWPPP) including details of perimeter protection, construction phasing, storm drain inlet protection, erosion control measures, temporary and final stabilization measures, including all BMPs. In addition the construction specifications shall contain technical provisions describing erosion, sedimentation, and water control measures to

be utilized during and after construction as well as to define the entities responsible for the installation and maintenance of the BMPs. The project SWPPP must be incorporated into the construction specification documents. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8D-3: CONSTRUCTION ACTIVITIES:**

Construction operations must at a minimum comply with any applicable federal or state permit and SWPPP in addition to the following best management practices:

- A. **Site Dewatering:** Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydrocyclones, soil concentrators or other appropriate controls as deemed necessary. Water may not be discharged in a manner that causes erosion, sedimentation, or flooding on the site, on downstream properties, in the receiving channels, or in any wetland.
  
- B. **Waste And Material Disposal:** All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, petroleum based products, paints, toxic materials, or other hazardous materials) shall be properly disposed of off site and shall not be allowed to be carried by runoff into a receiving channel, storm sewer system, or wetland.
  
- C. **Tracking Management:** Each site shall have roads, access drives and parking areas of sufficient width, length and surfacing to minimize sediment from being tracked onto public or private roadways. Any material deposited by vehicles or other construction equipment onto a public or private road shall be removed (not by flushing) before the end of each working day.
  
- D. **Water Quality Protection:** The construction contractor, including the general contractor and all subcontractors, shall be required to control oil and fuel spills and chemical discharges to prevent such spills or discharges from entering any watercourse, sump, sewer system, water body, or wetland.
  
- E. **Site Erosion And Sedimentation Control:** Construction operations must include erosion and sedimentation control measures meeting accepted design criteria, standards and specifications contained in the "Minnesota Stormwater Manual" or other standards determined by the city engineer.
  
- F. **Concrete Washout Area:** All liquids and solid waste generated by concrete washout operations

must be contained in a leakproof containment facility or impermeable liner. A compacted clay liner that does not allow washout liquids to enter groundwater is considered an impermeable liner. A sign must be installed adjacent to each washout facility to inform concrete equipment operators to utilize the proper facilities. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8D-4: FINAL STORMWATER MANAGEMENT PLAN:**

Upon completion of all required construction activities, the permittee shall submit to the city engineer a final stormwater management plan to document any changes or material modifications to the original stormwater management plan concept. The final stormwater management plan shall contain record drawings showing the final configuration for all improvements as constructed. A professional engineer registered in the state of Minnesota shall certify the final stormwater management plan and record drawings. If no significant or material changes occurred between the approved plan and final construction, the record drawings need not be submitted to the city engineer. The permittee, however, is responsible to retain copies of said drawings and provide them to the city engineer upon request. Failure to provide these drawings upon written request constitutes a violation of this chapter. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

## **ARTICLE E. SUSPENSIONS, REVOCATIONS AND STOP WORK ORDERS**

### **3-8E-1: STORMWATER VIOLATIONS AND REPORTING:**

- A. Stormwater management plan, stormwater permit, and nonpermit related stormwater violations include, but are not limited to:
1. Commencing site grading or preparation work without first having obtained an NPDES/SDS stormwater permit for construction activity, or a city stormwater permit.
  2. Noncompliance with the requirements or conditions attached to an approved SWPPP of an NPDES/SDS stormwater permit for construction activity, stormwater management plan, a city stormwater permit, or other standards established by the city engineer, under authority of the city.
  3. The causing or allowing of a prohibited discharge in the city stormwater system, a natural watercourse, stormwater easement, stream or river.
  4. Failure to remove sediments transported or tracked onto city streets by vehicles or construction traffic by the end of each working day.

5. Failure to install and maintain the erosion control measures (BMPs) on a construction site as outlined in the approved stormwater permit, SWPPP and its amendments, or other standards established by the city engineer, under authority of the city engineer.
  6. Other violations or issues as noted or described throughout this chapter.
- B. The city engineer shall document the reporting of a violation in writing. Such violations may be obtained via a site inspection or a public complaint followed by a site inspection. At a minimum the complaint file shall contain the name and address of the owner, date, time and nature of the violation as well as other information as deemed necessary to document site conditions, including photos and personal conversation records. In the case of a public complaint the file shall also, if voluntarily provided, contain the name, address and phone number of the individual filing the complaint. In addition, the complaint file shall contain records documenting subsequent site inspections, compliance actions and a memo outlining the determination of the city engineer and any enforcement action taken and/or any noncompliance fees levied. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8E-2: EMERGENCY SUSPENSION:**

The city engineer may for cause order the suspension of a stormwater management plan, or a stormwater permit when the city engineer determines that an actual or threatened discharge presents or may present an imminent or substantial danger to the health or welfare of persons downstream, or substantial danger to the environment. If such permits are suspended, all work in the area covered by the permit shall cease immediately. If any person is notified of such suspension and then fails to comply voluntarily with the suspension order, the city shall commence whatever steps are necessary to obtain compliance. The city engineer may reinstate the stormwater management plan, or stormwater permit upon proof of compliance with all plan or permit conditions. The city engineer may also order the immediate suspension of all work if a person or entity is conducting an activity for which a permit is needed without first obtaining the appropriate permit. The suspension shall remain in effect until the required permit(s) is obtained.

Whenever the city engineer orders the suspension of a plan or permit and/or orders all work to stop pursuant to the emergency provisions of this section, the city engineer shall serve notice on the landowner and/or permittee personally, or by registered or certified mail. The landowner and/or permittee has the right to an informal hearing before the city engineer upon request made in writing and filed with the city engineer. The informal hearing must be held within five (5) days of the request. Following the hearing, the city engineer may affirm, modify or rescind the order.

Any person dissatisfied with an order the city engineer issued pursuant to this section may request a hearing pursuant to section 3-8E-5 of this article by filing a written request for a hearing with the city engineer, within fifteen (15) days of receipt of the order. The hearing must be held within ten (10) days of receipt of the request. A request for a hearing filed pursuant to this section does not stay the order while the hearing is pending. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8E-3: NONEMERGENCY REVOCATION OF A PERMIT:**

- A. A stormwater management plan or stormwater permit may be revoked following notice. An opportunity for a hearing in accordance with sections 3-8E-4 and 3-8E-5 of this article will be provided. The city engineer may revoke a plan or permit for cause, including, but not limited to:
1. Violation of any terms or conditions of the applicable plan or permit;
  2. False statements on any required reports and applications;
  3. Obtaining a plan or permit by misrepresentation or failure to disclose fully all relevant facts; or
  4. Any other violation of this chapter or related ordinance.
- B. The city engineer may revoke a stormwater management plan or stormwater permit and order a temporary work stoppage to bring a project into compliance. Notice of such an order shall be given and a hearing opportunity provided in accordance with sections 3-8E-4 and 3-8E-5 of this article. Under a revoked plan or permit no additional permit approvals (i.e., excavation, etc.) shall be issued for any properties within the area included within the plan or permit boundaries until approved by the city engineer. In addition the city may deny new permits (i.e., stormwater, excavation, etc.) to the permittee or landowner in violation for projects in other locations until current permits are brought into compliance. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8E-4: NOTIFICATION:**

Whenever the city engineer finds that any person has violated or is violating this article, stormwater management plan or stormwater permit and/or its conditions, or any prohibition, limitation or requirement contained herein, the city engineer shall serve upon such person a written notice stating the nature of the violation. Within seven (7) days of the date of the notice, unless a shorter time frame is set by the city engineer due to the nature of the violation, a plan satisfactory to the engineer for correction thereof must be submitted to the city engineer. If a satisfactory plan is not submitted in a timely manner, or the terms of such plan are not followed, the city engineer may order all work in the affected area to cease until submittal of such a plan and compliance with the plan is happening. If a person disagrees with the determination of the city engineer, that person, within fifteen (15) days of the order of the city engineer, may request a hearing as provided in section 3-8E-5 of this article. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8E-5: HEARING:**

If a person requests a hearing to contest the order of the city engineer, a notice of hearing must be served on the person appealing the order, specifying the time and place of a hearing to be held regarding the order of the city engineer, and directing the person appealing to show cause why the order of the city engineer should not be upheld. Unless the engineer has suspended the permit or ordered work to stop pursuant to section 3-8E-2 of this article, any order stopping all work shall be stayed until after the hearing. The notice must be served personally or by registered or certified mail at least five (5) days before the hearing. The evidence submitted at the hearing shall be considered by the city manager or his/her designee, who then shall either uphold, modify or rescind the order of the city engineer. An appeal of the decision may be taken to the district court according to law. Provided, that if the city manager or his/her designee upholds the order stopping work, such work suspension shall not be stayed as a result of the appeal to the district court. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8E-6: LEGAL ACTION:**

The discharge of deposited or eroded materials onto public rights of way or public storm sewer systems within the city of Moorhead shall be considered an offense and may result in an order to remove such materials. Removal of such materials shall be at the landowner's and/or permittee's expense based on the properties from which they originated. The landowner and/or permittee shall have three (3) days after receiving the notice to remove these materials. If such materials are not removed, others may remove them under the city engineer's direction and any associated costs shall be the responsibility of the landowner or permittee and, if unpaid within ninety (90) days, may be recommended for assessment action by the city council against property of the violator.

If any person commences any land disturbing activities which result in increased stormwater quantity or stormwater quality degradation into the city's stormwater management system contrary to the provisions of this chapter, federal or state requirements or any order of the city engineer, the city attorney may commence action for appropriate legal and/or equitable relief including administrative or criminal penalties. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

## **ARTICLE F. ENFORCEMENT**

### **3-8F-1: ENFORCEMENT, PENALTY AND NONCOMPLIANCE FEES:**

Any person who is found to have violated an order of the city engineer made in accordance with this chapter, or who has failed to comply with any provision of this chapter and the orders, rules, regulations and permits issued hereunder, is guilty of an offense. Each day on which a violation occurs or continues to exist shall be deemed a separate and distinct offense. All land use and stormwater permits may be suspended until the applicant has corrected the violation. A schedule for noncompliance and reinspection fees, which may be imposed for violation of this chapter, shall



be approved by the city council. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8F-2: COSTS OF DAMAGE:**

Any person violating any of the provisions of this chapter or who initiates an activity which causes a deposit, obstruction, or damage or other impairment to the city's stormwater management system is liable to the city for any expense, loss, or damage caused by the violation or the discharge. The city may bill the person violating this chapter the costs for any cleaning, repair or replacement work caused by the violation of stormwater discharge, and if unpaid within ninety (90) days may result in assessment of such costs against the violator's property. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8F-3: CITY ATTORNEY FEES AND COSTS:**

In addition to the civil penalties provided herein, the city may recover reasonable attorney fees, court costs, court reporter fees, and other expenses of litigation by appropriate action against the person found to have violated this chapter or the orders, rules, regulations and permits issued hereunder. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8F-4: FALSIFYING INFORMATION:**

Any person who knowingly makes any false statements, representations, or certification in any applicable record, report, plan, permit or other document filed or required to be maintained pursuant to this chapter, or who knowingly falsifies, tampers with, or knowingly renders inaccurate any monitoring devices or method required under this chapter shall be guilty of an offense. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8F-5: PENALTIES:**

Any person violating any provision of this chapter, in addition to other sanctions set forth above, may be charged with a criminal misdemeanor, and if convicted may be penalized in accordance with the provisions of section 1-4-2 of this code, or alternatively, may be charged with an administrative violation pursuant to section 1-4-4 of this code. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

## **ARTICLE G. STORMWATER UTILITY AND STORMWATER MANAGEMENT FEE SYSTEM**

### **3-8G-1: FINDINGS:**

- A. The city maintains a system of underground and surface stormwater management facilities including, but not limited to, inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, and other components as well as natural waterways.
  
- B. The stormwater system in the city needs regular maintenance and improvements.
  
- C. Water quality of the Red River of the north can be degraded due to erosion and the discharge of nutrients, metals, oil, grease, toxic materials, and other substances into and through the stormwater system.
  
- D. The public health, safety, and welfare can be adversely affected by periodic poor water quality within the Red River of the north and flooding that results from inadequate management of both the quality and quantity of stormwater.
  
- E. All real property in the city either uses or benefits from the maintenance of the stormwater system.
  
- F. The extent of use of the stormwater system by each property is dependent on factors that influence runoff, including land use and the amount of impervious surface on the property.
  
- G. The costs of improving, maintaining, operating, and monitoring the stormwater system should be allocated, to the extent practicable, to all property owners based on the impact of runoff from the impervious areas of their property on the stormwater management system.
  
- H. Management of the stormwater system to protect the public health, safety, and welfare requires adequate revenues, and it is in the interest of the public to finance stormwater management adequately with a user charge system that is reasonable and equitable so that each user of the system pays to the extent to which he contributes to the need for it. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8G-2: ADMINISTRATION AND BUDGET:**

The city engineer, under the supervision and authority delegated by the city manager, shall advise the city manager and city council on matters related to the stormwater management program and to make recommendations to the city manager and city council concerning the adoption of ordinances, resolutions, policies, guidelines and regulations in furtherance of the objectives of the stormwater management program. The city engineer shall undertake the following activities to implement a stormwater management program:

- A. Prepare studies, acquire data, prepare master plans, analyze policies or undertake such other planning and analyses as may be needed to address concerns related to stormwater within the city and to further the objectives of the stormwater management program, and to undertake activities designed to communicate, educate and involve the public and citizens in addressing these issues or in understanding and abiding by the elements of the stormwater management program.
- B. Design, construct, operate, maintain, expand, or replace any element or elements of the public storm sewer system, including recommending the acquisition of easements by eminent domain, and recommending acquisition of title or easements other than by eminent domain, over any real or personal property that is part of, will become part of, or will protect the public storm sewer system, or is necessary or convenient for the implementation of the stormwater management program.
- C. Regulate, establish standards, review, inspect the design, construction or operation and maintenance of any stormwater management system that is under the control of private owners, whether or not such systems are required or intended for dedication to the public sewer system, when such systems have the potential to impact, enhance, damage, obstruct or affect the operation and maintenance of the public storm sewer system or the implementation of the stormwater management program.
- D. Regulate, establish standards, review and inspect land use or property owner activities when such activities have the potential to affect the quantity, timing, velocity, erosive forces, quality, environmental value or other characteristics of stormwater which would flow into the stormwater management system or in any way affect the implementation of the stormwater management program.
- E. Undertake any activities related to stormwater management when such activities are recommended by applicable federal, state or local agencies or when such activities are required by any permit, regulation, ordinance, or statute governing stormwater or water quality concerns.

- F. Analyze the cost of services and benefits provided by the stormwater utility and the structure of fees, service charges, credits, and other revenues on an annual basis and make recommendations to the city council regarding same.
- G. Undertake authorized expenditures as required to implement these activities, including all costs of capital improvements, operations and maintenance, debt services, and other costs as required.

The city council shall, as part of its annual budget process, adopt capital and operating budgets for the stormwater utility. The operating budget shall conform with state law, city policy and generally accepted accounting practices. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8G-3: DEFINITIONS:**

For the purposes of this article, the following words and phrases shall have the meanings indicated:

**BASE RATE:** The cost of service charge on a base unit. The monthly cost of service charge for a single-family residential property in the city equals the base rate.

**BASE UNIT:** The sample based average impervious surface area associated with a single-family residential property in the city.

**CHARGE OR COST OF SERVICE CHARGE OR STORMWATER MANAGEMENT FEE:** The monthly charge established under this chapter and charged to owners of parcels or pieces of real property to fund the costs of stormwater management and of operating, maintaining, and improving the stormwater system in the city.

**CITY ENGINEER:** The city engineer for the city of Moorhead, Minnesota, or his or her designee.

**DEVELOPED PROPERTY:** Real property altered from its natural state by the addition of any improvements such as buildings, structures, or other impervious area.

**IMPERVIOUS SURFACE:** A surface which receives rainfall or other precipitation and is compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, compacted, or other surface which impedes the natural infiltration of surface water.

**IMPERVIOUS SURFACE AREA:** The number of square feet of horizontal surface covered by buildings and other impervious surfaces. All building measurements shall be made between exterior faces of walls, foundations, columns or other means of support or enclosure.

**MULTIPLE-FAMILY DWELLING:** A multiple-family dwelling consisting of two (2) or more dwelling units including manufactured homes. Multiple-family dwellings service multiple-family tenants with a common water meter(s).

**MULTIPLE-FAMILY TENANT:** Any single-family dwelling unit within a multiple-family dwelling consisting of two (2) or more family dwelling units including manufactured homes in manufactured home parks.

**OTHER DEVELOPED PROPERTY:** Metered nonresidential, nonmultiple-family, nonmultiple-family tenant, industrial and nonindustrial business enterprises, schools, parks, government and public customers. Nonmetered commercial tenant units are considered to be an integral part of the metered customer and are not considered individually.

**PROPERTY OWNER:** The property owner of record as listed in Clay County records. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.

**SINGLE-FAMILY DWELLING:** Any single-family dwelling or multiple-family tenant with an individual water meter.

**STORMWATER MANAGEMENT:** The planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, floodplains, flood control, grading erosion, tree conservation, and sediment control.

**STORMWATER SYSTEM:** The system or network of storm and surface water management facilities including, but not limited to, inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basin, and other components as well as all natural waterways.

**STORMWATER UTILITY FUND OR FUND:** The fund created by this article to operate, maintain, and improve the city's stormwater management program.

**UNDEVELOPED PROPERTY:** Any property, including forest or agricultural land, which has one-third ( $\frac{1}{3}$ ) or less of the base unit of impervious surface area.

**WATER:** Any stormwater, surface water, snowmelt or groundwater. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8G-4: ESTABLISHMENT OF STORMWATER UTILITY FUND:**

A. The stormwater management program is established and the stormwater system is provided to protect the waterways and land in the city by controlling flooding and to protect the natural environment. The costs of designing, developing, improving, operating, maintaining, and monitoring the stormwater system required in the city should, therefore, be allocated, to the extent practicable, to all property owners based on their impact on the stormwater system. In

order to provide revenue to fund those costs and to fairly allocate those costs, a stormwater utility fund ("the fund") is established.

- B. All revenues collected from the cost of service charge, grants, permit fees and other charges collected under this chapter shall be deposited to the fund. The city council may make additional appropriations to the fund. All disbursements from the fund shall be for the purposes of the fund as set forth in section 3-8G-5 of this article. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8G-5: PURPOSES OF THE FUND:**

The fund shall be used for the following purposes:

- A. The acquisition by gift, purchase or condemnation of real and personal property, and interests therein, necessary to construct, operate, and maintain stormwater control facilities.
- B. All costs of administration and implementation of the stormwater management program, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements.
- C. Engineering and design, debt service and related financing expenses, construction costs for new facilities and enlargement or improvement of existing facilities.
- D. Operation and maintenance of the stormwater system.
- E. Monitoring, surveillance, and inspection of stormwater control devices.
- F. Water quality monitoring and water quality programs.
- G. Retrofitting developed areas for pollution control.



H. Inspection and enforcement activities.

I. Billing and administrative costs.

J. Other activities, which are reasonably required. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8G-6: STORMWATER COST OF SERVICE CHARGE:**

A monthly cost of service charge is imposed upon all real property in the city to fund stormwater management programs. This service charge shall be known as the stormwater cost of service charge or stormwater management fee. The charge is based on: a) the extent to which each property creates a need for the stormwater management program; b) the amount of impervious area on each property; and c) the cost of implementing a stormwater management program. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8G-7: CLASSIFICATION OF PROPERTY FOR PURPOSES OF DETERMINATION OF SERVICE CHARGE:**

A. Classifications: For purposes of determining the stormwater cost of service charge all properties in the city are classified into one of the following classes:

1. Single-family dwelling;
2. Multiple-family dwelling;
3. Other developed property; or
4. Undeveloped property.

B. Single-Family Dwelling Stormwater Cost Of Service Charge: The intensity of development of most parcels of real property in the city classified as single-family dwelling is similar and it would be excessively and unnecessarily expensive to determine precisely the square footage of the improvements (such as buildings, structure, and other impervious area) on each such parcel. Therefore, all single-family dwelling properties in the city shall be charged a flat stormwater cost of service charge, equal the base rate, regardless of the size of the parcel or the improvements.

- C. **Multiple-Family Dwelling Stormwater Cost Of Service Charge:** The charge for multiple-family dwelling property in the city shall be the base rate multiplied by the numerical factor obtained by dividing the total impervious area (square feet) of the property by one base unit. That result will then be indexed to a fee schedule, recommended by the city engineer and adopted by the city council, that groups properties with similar ranges of impervious area together. The impervious surface area of multiple-family dwelling property may be determined through site examination, mapping information, aerial photographs, and other available information. The minimum stormwater cost of service charge for multiple-family dwelling property shall equal the base rate for single-family dwelling property.
- D. **Other Developed Property Stormwater Cost Of Service Charge:** The charge for other developed property in the city shall be the base rate multiplied by the numerical factor obtained by dividing the total impervious area (square feet) of the property by one base unit. That result will then be indexed to a fee schedule, recommended by the city engineer and adopted by the city council, that groups properties with similar ranges of impervious area together. The impervious surface area of other developed property may be determined through site examination, mapping information, aerial photographs, and other available information. The minimum stormwater cost of service charge for other developed property shall equal the base rate for single-family dwelling property.
- E. **Undeveloped Property:** Undeveloped property shall be exempt from the stormwater cost of service charge. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8G-8: BASE RATE:**

The city council shall, by the city's fee schedule, establish the monthly base rate and charge schedule for the stormwater cost of service charge. The base rate shall be calculated to ensure adequate revenues to fund the costs of stormwater management and to provide for the operation, maintenance, and capital improvements of the stormwater system in the city. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8G-9: CHARGES FOR TAX EXEMPT PROPERTIES; EXEMPTIONS:**

- A. The council finds that all real property in the city contributes to runoff and either uses or benefits from the maintenance of the stormwater system. Therefore, except as otherwise provided in this section, all real property in the city, including property that is tax exempt from property tax, shall be charged the monthly stormwater cost of service charge.

- B. Other developed property which is owned by the city shall not be exempt from the charge. However, public rights of way, public trails, public streets, public alleys, public sidewalks, and public lands and/or easements in or upon which public storm or sanitary sewers are constructed and/or located shall be exempt from the charge. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8G-10: STORMWATER COST OF SERVICE CHARGE CREDITS:**

The city council may, by resolution, establish a system of credits recommended by the city engineer, which may reduce the stormwater cost of service charge for approved stormwater runoff reduction or treatment. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8G-11: REQUESTS FOR CORRECTION OF THE STORMWATER COST OF SERVICE CHARGE:**

- A. A property owner may request correction of the charge by submitting the request in writing to the city engineer. Grounds for correction of the charge include:
1. Incorrect classification of the property for purposes of determining the charge;
  2. Errors in the square footage of the impervious surface area of the property;
  3. Mathematical errors in calculating the charge to be applied to the property;
  4. Errors in the identification of the property owner of a property subject to the charge; and
  5. Mathematical errors in calculating credits pursuant to section 3-8G-10 of this article.
- B. The city engineer shall make a determination within thirty (30) days after receipt of the property owner's completed written request for correction of the charge. The city engineer's decision on a request for correction of the charge shall be final.
- C. A property owner must comply with all rules and procedures adopted by the city when submitting a request for correction of the charge and must provide all information necessary for the city engineer to make a determination on a request for correction of the charge. If a property owner alleges an error under subsection A2 of this section, the request for correction must include a certification by a registered engineer or professional land surveyor of the impervious surface area of the property. Failure to comply with the provisions of this subsection shall be grounds for denial of the request. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

### **3-8G-12: RATE STRUCTURE EFFECTIVE DATE:**

The rate structure set forth within this article shall be effective January 1, 2006. All other provisions shall be effective immediately. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

## **ARTICLE H. PRIVATE CONNECTION TO A PUBLIC STORM SEWER**

### **3-8H-1: STORM SEWER CONNECTIONS:**

- A. **Permit, General:** No unauthorized persons shall uncover, make any connections with or opening into, use, alter or disturb any public storm sewer or appurtenance thereof without first obtaining an excavation and stormwater permit from the city.
- B. **Permit Application:** The owner or an agent of the owner shall make application on a form furnished by the city. The permit application shall be supplemented by any plans, specifications or other information considered pertinent. A permit and inspection fee shall be paid to the city at the time the application is filed.
- C. **Connection Costs:** All costs and expense incident to the installation and connection of the private storm sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the storm sewer.
- D. **Construction:** The size, slope, alignment, materials of construction of a storm sewer and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench shall all conform to the requirements of the building and plumbing codes (section 9-1-1 of this code) or other applicable rules and regulations of the city and the current regulations of the state of Minnesota. In the absence of code provisions or in application thereof, the materials and procedures set forth in appropriate specifications of the American Society of Testing and Materials (ASTM) as approved by authorized city personnel shall apply. All connections must be locatable in accordance with title 8, chapter 4 of this code and Minnesota rules section 7560. Upon completion, the owner must provide record drawings of the installation.

- E. Inspection:** The applicant for the excavation permit shall notify the city when the private storm sewer is ready for inspection and connection to the public storm sewer. The connection shall be made under the supervision of authorized city personnel.
- F. Erosion Control:** All excavations must use best management practices (BMP) to prevent sediment from entering the storm sewer system.
- G. Safety And Restoration:** All excavations for storm sewer installations shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored to their original condition or to a better condition in a manner satisfactory to the city (title 8, chapter 4 of this code). An excavation permit shall be required for all excavations made in the areas of city streets, sidewalks, parkways and other paved areas.
- H. Maintenance Responsibility:** It shall be the responsibility of the owner to maintain the private storm sewer from their property line up to and including the point where it connects or discharges to the city storm sewer system, whether it is a direct connection to a storm sewer or discharges directly to a stormwater pond. This includes, but is not limited to, damaged pipe and appurtenances, bank erosion, sinkholes around the private storm sewer pipe, and the removal of any erodible materials that have entered the city storm sewer system from the private sewer connection. If the maintenance of the storm sewer requires excavation of the public right of way, the owner shall notify the engineering department and obtain an excavation permit prior to excavating. The contractor hired by the owner to repair the storm sewer shall follow the other requirements of subsection D of this section.
- I. Payment For Costs As Special Assessment:**
1. Although the cost of maintaining a private storm sewer is that of the owner, the city will allow the owner to pay for the cost of the maintenance of a private storm sewer as a special assessment under the following conditions:
    - a. The maintenance involves excavation of a public street.
    - b. The owner's maintenance cost is in excess of five hundred dollars (\$500.00).
    - c. The engineering department has reviewed and approved the invoice from the contractor hired by the owner.
    - d. The owner petitions the city to assess the cost within seven (7) days of the completion of the repair work.
  2. If the above conditions are met, the city will initially pay the costs and spread as an assessment the principal amount of the owner's costs over ten (10) equal annual installments, with the interest rate on the assessment being set in the year the work is

completed at the rate set for similar special assessments in that calendar year. (Ord. 2009-8, 7-27-2009, eff. retroactive to 4-1-2009)

## **Chapter 9 POOLS**

### **3-9-1: DEFINITIONS:**

**POOL:** Any structure, basin, chamber or tank containing an artificial body of water for swimming, diving, relaxation, or recreational use including special purpose pools and wading pools.

**PRIVATE RESIDENTIAL POOL:** Any pool connected with a single-family residence or owner occupied duplex located on private property under the control of the homeowner, the use of which is limited to swimming or bathing by members of a family or their invited guests.

**PUBLIC POOL:** Any pool other than a private residential pool, that is: a) open to the public generally, whether for a fee or free of charge; b) open exclusively to members of an organization and their guests; c) open to residents of a multi-unit apartment building, apartment complex, residential real estate development, or other multi-family residential area; d) open to patrons of a hotel or lodging or other public accommodation facility; or e) operated by a person in a park, school, licensed childcare facility, group home, motel, camp, resort, club, condominium, manufactured home park, or political subdivision with the exception of swimming pools at family daycare homes licensed under section 245A.14, subdivision 11, paragraph (2) of the Minnesota Statutes Annotated. (Ord. 2010-6, 7-12-2010)

### **3-9-2: PERMITS REQUIRED:**

A. No person shall begin construction of a public pool or shall substantially alter or reconstruct any public pool without first having submitted plans and specifications to the state of Minnesota for review and approval. The state will not issue such approval to construct, alter, remodel or license to operate a public pool unless the pool conforms with regulations adopted by section 144.1222, Minnesota Statutes Annotated, and Minnesota rules 4717.15 through 4717.3975, as such regulations may be from time to time amended, supplemented or replaced.

B. No persons shall operate or maintain a public pool unless they have obtained a permit to operate such pool from the city. Such permits shall be obtained by January 1 and shall be valid

for one year, unless otherwise revoked for cause. Only persons who comply with this chapter shall be entitled to receive and retain such a permit. Such permits are not transferable.

- C. All persons required by this chapter to obtain an annual permit to conduct, operate and maintain a public pool shall make application to the city in writing and shall pay an annual permit fee as set by the Moorhead city council in its fee schedule. (Ord. 2010-6, 7-12-2010)
- D. A permit shall be required for all new and existing private residential pools which meet or exceed both five thousand (5,000) gallons and twenty four inches (24") in depth. Private residential pools shall be completely enclosed by a fence or wall measuring a minimum of five feet (5') in height. The opening between the bottom of the fence or wall and the ground or other surface shall be not more than four inches (4").
1. Belowground Private Residential Pools: Belowground private residential pools which are equipped with a walkable, hard surface cover which must be utilized when pool is not in use are exempt from the requirement for a fence or wall. Application for a permit to construct a belowground private residential pool shall be accompanied by plans of sufficient detail to show:
    - a. The proposed location and its relationship to other principal buildings on the lot.
    - b. The size of the pool.
    - c. Fencing, if applicable, and other fixtures existing on the lot, including utility location and trees.
    - d. The location, size and types of equipment to be used in connection with the pool, including, but not limited to, filter unit, pump, fencing, and the pool itself.
  2. Aboveground Or Portable Private Residential Pools: Aboveground or portable private residential pools which are equipped with a detachable or retractable ladder which can be removed or retracted when said pool is not in use are exempt from the requirement for a fence or wall. Said ladder shall be removed or retracted when pool is not being attended. Failure to remove or retract ladder access shall constitute a violation of this subsection and be subject to the penalties contained in section 3-9-5 of this chapter. Aboveground or portable private residential pools for which access to a ladder can be completely blocked by a fence, gate or other means, are exempt from the requirement for a fence or wall around the pool. Failure to block the ladder access during nonuse shall constitute a violation of this subsection and be subject to the penalties contained in section 3-9-5 of this chapter. (Ord. 2010-9, 8-23-2010)

### **3-9-3: INSPECTIONS:**

The city is authorized to conduct such inspections as it deems necessary to ensure compliance



with all provisions of this chapter and any and all applicable Minnesota department of health regulations, as such regulations may be from time to time amended, supplemented or replaced, and shall have right of entry at any reasonable hour to the swimming pool for this purpose.

## **Chapter 11**

# **TZ TRANSITIONAL DISTRICT**

### **10-11-1: PURPOSE:**

The transitional zone district is established primarily for those annexed unplatted areas within the city that have not been zoned for development and are undergoing a transition from, in most cases, agricultural to urban uses. The urban transition is contingent upon development plans, proper timing, availability of public utilities and services and compatibility with the comprehensive land use plan and applicable growth area plans. As these criteria take place a more conventional urban zoning district will replace the transitional district zoning regulation. (Ord. 2004-40, 1-3-2005)

### **10-11-2: PERMITTED USES:**

The following are permitted uses in a TZ district:

Daycare facilities serving twelve (12) or fewer persons and residential care facilities serving six (6) or fewer persons.

Essential services as defined herein.

Farming and agricultural related uses subject to Minnesota pollution control standards, but not including livestock operations.

Hobby farms.

Nurseries, greenhouses, tree farms and landscape material operations including retail and wholesale sales operations.

Public parks, playgrounds, recreational areas, wildlife areas and game refuges.

Residential dwellings. (Ord. 2004-40, 1-3-2005)

### **10-11-3: ACCESSORY USES:**

The following are permitted accessory uses in a TZ district:

Boarding or renting of rooms to not more than two (2) persons.

Fences, walls and hedges as regulated by chapter 19 of this title.

Home occupations as regulated by subsection 10-18-2H of this title.

Living quarters of persons employed on the premises.

Noncommercial greenhouses and conservatories.

Operation and storage of such vehicles, equipment and machinery which are incidental to permitted or conditional uses allowed in this district.

Private garages, parking spaces and carports for licensed and operable passenger cars and trucks.

Private swimming pools, tennis courts and other recreational facilities which are operated for the enjoyment and convenience of the residents of the principal use and their guests.

Recreational vehicles and equipment.

Temporary, seasonal stands for the sale of agricultural products provided said products are primarily raised on the premises.

Tool houses, sheds and similar buildings for storage of domestic supplies and noncommercial recreational equipment.

Towers supporting amateur radio antennas and which meet the requirements of chapter 17, article D of this title. (Ord. 2004-40, 1-3-2005)

#### **10-11-4: CONDITIONAL USES:**

The following are conditional uses in a TZ district: (Requires a conditional use permit based upon procedures set forth in and regulated by chapter 4 of this title.)

Cemeteries, provided that:

A. The site accesses on a minor arterial.

B. The site is landscaped in accordance with chapter 19 of this title.

C. The provisions of subsection 10-4-3E of this title are considered and satisfactorily met.

Commercial recreational areas including golf courses and country clubs, swimming pools, ice arenas and similar facilities, provided that:

- A. The principal use, function or activity is recreational in character.
- B. Not more than forty percent (40%) of the land area of the site be covered by buildings or structures.
- C. When abutting a residential use and a residential use district, the property is screened and landscaped in compliance with chapter 19 of this title.
- D. The land area of the property containing such use or activity meets the minimum established for the district.
- E. The provisions of subsection 10-4-3E of this title are considered and satisfactorily met.

Commercial riding stables, dog kennels, animal hospitals with overnight care and similar uses, provided that:

- A. Any building in which animals are kept, whether roofed shelter or enclosed structure, shall be located a distance of three hundred feet (300') or more from any lot line.
- B. The animals shall, at a minimum, be kept in an enclosed pen or corral of sufficient height and strength to retain such animals. Said pen or corral may not be located closer than three hundred feet (300') from a lot line.
- C. The provisions of Minnesota pollution control agency regulations SW 53.(2) as may be amended are complied with.
- D. All other applicable state and local regulations pertaining to nuisance, health and safety conditions, etc., are complied with.

E. The provisions of subsection 10-4-3E of this title are considered and satisfactorily met.

Farm buildings within three hundred feet (300') of an existing residence or residential platted lot, provided that the provisions of subsection 10-4-3E of this title are considered and satisfactorily met.

Governmental and public regulated utility buildings and structures necessary for the health, safety and general welfare of the city, provided that:

A. Compatibility with the surrounding neighborhood is maintained and required setbacks and side yard requirements are met.

B. Adequate screening from neighboring uses and landscaping is provided in compliance with chapter 19 of this title.

C. The provisions of subsection 10-4-3E of this title are considered and satisfactorily met.

Towers which meet the requirements of chapter 17, article D of this title. (Ord. 2004-40, 1-3-2005)

### **10-11-5: LOT REQUIREMENTS AND SETBACKS:**

The following minimum requirements shall be observed in a TZ district subject to the additional requirements, exceptions and modifications set forth in this title:

A. Lot Area: Two and one-half ( $2\frac{1}{2}$ ) acres.

B. Lot Width: One hundred fifty feet (150').

C. Lot Depth: Three hundred feet (300').

D. Setbacks:

1. Front Yard: Not less than twenty five feet (25').

2. Side Yard:

a. Single-Family And Two-Family:

- (1) Interior lots: Eight feet (8').
- (2) Corner lots: Twelve feet (12').

b. All Other Permitted And Conditional Uses: Ten feet (10').

3. Rear Yard:

a. Principal building: Twenty five feet (25').

b. Accessory structures: Three feet (3'), except on corner lots, which shall not be less than twelve feet (12') on the side abutting the street. (Ord. 2004-40, 1-3-2005)

**10-11-6: MAXIMUM BUILDING HEIGHT:**

A. Dwelling units or principal buildings: Thirty five feet (35').

B. Accessory buildings: As governed by section 10-18-3 of this title.

C. Farm buildings: None. (Ord. 2004-40, 1-3-2005)

**10-11-7: MAXIMUM LOT COVERAGE:**

No structure or combination of structures shall occupy more than ten percent (10%) of the lot. (Ord. 2004-40, 1-3-2005)

**ARTICLE B. FLOODWAY (FW) AND FLOOD FRINGE (FF) OVERLAY DISTRICTS**

**10-17B-1: STATUTORY AUTHORIZATION AND PURPOSE:**

A. **Statutory Authorization:** The legislature of the state of Minnesota has, in Minnesota statutes chapters 103F and 462 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses.

B. **Purpose:** The special flood hazard areas of the city of Moorhead are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. It is the purpose of this article to promote the public health, safety, and general welfare and to minimize those losses described above by provisions contained herein.

This article is adopted to comply with the rules and regulations of the national flood insurance program codified as 44 code of federal regulations parts 59 - 78, as amended, so as to maintain the community's eligibility in the national flood insurance program. (Ord. 2012-1, 2-27-2012)

## **10-17B-2: FW AND FF GENERAL PROVISIONS:**



- A. **Study And Map Adopted By Reference:** The flood insurance study for Clay County, Minnesota and incorporated areas, the flood insurance rate maps therein numbered 27027C0308E, 27027C0309E, 27027C0316E, 27027C0317E, 27027C0318E, 27027C0319E, 27027C0328E, 27027C0338E, 27027C0340E, 27027C0456E, 27027C0457E, 27027C0458E, 27027C0459E, 27027C0470E, 27027C0480E, 27027C0481E, 27027C0484E and the flood insurance rate map index numbered 27027CIND2A and 27027CIND1A, all dated April 17, 2012, and prepared by the federal emergency management agency, are hereby adopted by reference and are hereby declared to be a part of this title. The maps covering the city boundaries of the city of Moorhead and any maps of property annexed into the city of Moorhead are declared to be part of the official zoning map. The floodway district shall comprise those areas shown as floodway on the flood insurance rate map. The flood fringe shall comprise those areas within the 100-year floodplain (i.e., zone AE) shown on the flood insurance rate map located outside of the floodway.
- B. **Boundaries:** The boundaries of the floodway and flood fringe (the floodplain) shall be determined by use of the 100-year flood profile, the ground elevations that existed on the date of the first national flood insurance program map showing the area in the floodplain (dated July 1, 1974) and other supporting technical data in the flood insurance study and by scaling distances off the official zoning map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the official zoning map or other appropriate maps, as for example, where there appears to be a conflict between a mapped boundary and actual field conditions, the city shall make the necessary interpretation based on the criteria stated above. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the board of adjustment and to submit technical evidence.
- C. **Warning And Disclaimer Of Liability:** This title does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This title will not create liability on the part of the city of Moorhead or any officer or employee thereof for any flood damages that result from reliance on this title or any administrative decision lawfully made thereunder.
- D. **Abrogation And Greater Restrictions:** It is not intended by this article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article imposes greater restrictions, the provisions of this article shall prevail. All other regulations in this title inconsistent with this article are hereby repealed to the extent of the inconsistency only.
- E. **Severability:** If any section, clause, provision, or portion of this article is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected thereby.

F. Flood Insurance Rate Map Panels: The flood insurance rate map panels adopted by reference into subsection A of this section may include floodplain areas that lie outside of the corporate boundaries of the city of Moorhead at the time of adoption of this article. If any of these floodplain land areas are annexed into the city of Moorhead after the date of adoption of this article, the newly annexed floodplain lands shall be subject to the provisions of this article immediately upon the date of annexation into the city of Moorhead. (Ord. 2012-1, 2-27-2012)

### **10-17B-3: ESTABLISHMENT OF FLOODWAY AND FLOOD FRINGE ZONING OVERLAY DISTRICTS:**

A. The use districts lying within the floodplain areas under the jurisdiction of this title are hereby divided into two (2) additional districts: floodway district (FW) and flood fringe district (FF) as follows:

Floodway District: The floodway district shall include those areas designated as floodway on the flood insurance rate map adopted in subsection 10-17B-2A of this article.

Flood Fringe District: The flood fringe district shall include those areas designated as floodway fringe. The flood fringe district shall include those areas shown on the flood insurance rate map as adopted in subsection 10-17B-2A of this article as being within zone AE but being located outside of the floodway.

B. The boundaries of these districts shall be shown on the official zoning map. Within these districts, all uses not allowed as permitted uses or as conditional uses shall be prohibited. No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, or structurally altered without full compliance with the terms of this title and other applicable regulations which apply to uses within the jurisdiction of this title.

C. Removal of lands from the designated floodplain shall require the following: an amendment to the official zoning map as outlined in chapter 3 of this title; adoption of the approved FEMA case number within this article; and shall be in compliance with Minnesota rules 6120.5800 subpart 2. (Ord. 2012-1, 2-27-2012)

### **10-17B-4: FW FLOODWAY OVERLAY DISTRICT:**

#### **10-17B-4-1: FW PERMITTED USES:**

The following uses must have a low flood damage potential, must be permissible in the underlying zoning district if one exists, must not obstruct flood flows or increase flood elevations, and must not involve structures, fill, obstructions, excavation, or storage of materials or equipment.

General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.

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, fishing areas, bicycle and pedestrian trails.

Residential, commercial and industrial lawns, gardens, plant nurseries, parking and loading areas and play areas. (Ord. 2012-1, 2-27-2012)

#### **10-17B-4-2: FW CONDITIONAL USES:**

Structures accessory to those uses listed in section 10-17B-4-1 of this article and the uses listed below:

Circuses, carnivals and similar transient amusement enterprises.

Drive-in theaters, new and used car lots, roadside stands, signs and billboards.

Extraction of sand, gravel, dirt or other materials provided such materials are not piled and/or stored in the floodway.

Fences that obstruct flood flows.

Kennels.

Marinas, boat rentals, docks, piers, wharves and water control structures.

Placement of fill.

Railroads, streets, bridges, utility transmission lines, utility boxes, and pipelines.

Recreational vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provisions of subsection 10-17B-6C of this article.

Storage yards for equipment, machinery or materials.

Structural works for flood control such as dams, diversion channels, levees and floodwalls constructed to any height where the intent is to protect individual structures and levees and dikes where the intent is to protect agricultural crops.

Uses or structures accessory to passive or active open space areas. (Ord. 2012-1, 2-27-2012)

### **10-17B-4-3: FW STANDARDS FOR CONDITIONAL USES:**

All such uses require a conditional use permit based upon the procedures set forth in and regulated by chapter 4 and section 10-18-2 of this title.

- A. Fill: Any fill proposed to be deposited in the floodway must be shown to have some beneficial purpose and the amount thereof must not exceed that necessary to achieve the intended purpose, as demonstrated by a plan submitted by the owner showing the uses to which the filled land will be put and final dimensions of the proposed fill or other materials. Such fill shall not increase the designated 100-year flood elevation by more than 0.00 feet and shall be protected from erosion by vegetative cover, mulching, riprap, or other acceptable method.
- B. Accessory Structures (Temporary Or Permanent):
1. Structures shall not be designated for human habitation.
  2. Structures shall have a low flood damage potential.
  3. The structure or structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of floodwaters.
    - a. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow, and
    - b. So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
  4. Structures shall be adequately anchored to prevent flotation which may result in damage to other structures and/or restriction of bridge openings and other narrow sections of the stream or river.
  5. Utilities and facilities such as gas, electrical, sewer and water systems to be located in the floodway shall be floodproofed in accordance with the Minnesota state building code or elevated to above the regulatory flood protection elevation.
  6. Structures shall be elevated on fill or floodproofed to the FP-1 or FP-2 floodproofing classifications as defined by the Minnesota state building code. As an alternative, an accessory structure may be floodproofed to the FP-3 or FP-4 floodproofing classification in the Minnesota state building code provided the accessory structure constitutes a minimal investment, does not exceed five hundred seventy six (576) square feet in size at its largest projection, and for a detached garage, the detached garage must be used solely for parking

of vehicles and limited storage. All floodproofed accessory structures must meet the following additional standards:

- a. The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls;
- b. Utilities and facilities such as gas, electrical, sewer and water systems to be located in the floodway shall be floodproofed in accordance with the Minnesota state building code or elevated to above the regulatory flood protection elevation; and
- c. To allow for the equalization of hydrostatic pressure, there must be a minimum of two (2) "automatic" openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. There must be openings on at least two (2) sides of the structure and the bottom of all openings must be no higher than one foot (1') above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.

**C. Storage Of Material And Equipment:**

1. The storage or processing of materials that are, in time of flooding, buoyant, flammable, explosive or could be injurious to human, animal or plant life is prohibited.
2. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or readily removable from the area within the time available after flood warning.

**D. Garbage And Solid Waste Disposal: No conditional use permits for garbage and waste disposal sites shall be issued for floodway areas.**

**E. Permanent Structural Works For Flood Control:**

1. Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters shall be subject to the provisions of Minnesota statutes, chapter 103G.
2. Communitywide structural works for flood control intended to remove areas from the regulatory floodplain shall not be allowed in the floodway.
3. Structural works for flood control constructed in the floodway shall not cause an increase to the 100-year or regional flood unless the federal emergency management agency has issued a conditional and final letter of map revision pursuant to 44 code of federal regulations 65.12 authorizing the stage increase to the 100-year flood elevation in the floodway. The technical analysis must assume equal conveyance or storage loss on both sides of a stream.

4. Levees constructed to protect agricultural crops shall cause no stage increase to the 100-year flood for any portion of the levee in the floodway. (Ord. 2012-1, 2-27-2012)

## **10-17B-5: FF FLOOD FRINGE OVERLAY DISTRICT:**

### **10-17B-5-1: FF PERMITTED USES:**

Any conditional use or permitted use in the floodway overlay district unless otherwise identified in section 10-17B-5-2 of this article.

All structures, including accessory structures, constructed on fill so that the lowest floor is at or above the regulatory flood protection elevation. The finished fill elevation shall be no lower than the base flood elevation for the particular area and shall extend to such elevation at least fifteen feet (15') beyond the limits of any structure or building erected thereon. As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed five hundred seventy six (576) square feet at its largest projection may be internally floodproofed in accordance with subsection 10-17B-4-3B6 of this article.

The storage of any materials or equipment elevated on fill to the regulatory flood protection elevation.

Lots and subdivisions or otherwise legally described areas that have an approved letter of map revision - based on fill (LOMR-F) as described in and officially adopted by section 10-17B-8 of this article, which have been filled to an elevation at or above the regulatory flood protection elevation per Minnesota rules 6120.5800, subpart 2, and are contiguous to other lands lying outside the flood fringe district and which are in compliance with the following standards are herein permitted:

- A. Residential basements may be constructed below the regulatory flood protection elevation if in compliance with the FP-1 floodproofing classification (i.e., a W1 space) of the Minnesota state building code and in accordance with the following minimum requirements, consistent with 44 code of federal regulation 60.6(c) and the city of Moorhead "basement" exception from the federal emergency management agency, or the federal emergency management agency technical bulletin 10-01, as amended:
  1. Flood Depth: Flood depths shall not be more than five feet (5') for developable lots that are contiguous to land above the base flood elevation (100-year flood) or three feet (3') for other lots.
  2. Flood Velocity: Flood velocity shall be limited to five feet (5') per second.
  3. Flood Warning Time: Flood warning time shall be at least twelve (12) hours. Flood warning times of two (2) hours or greater may be approved if the community demonstrates that it has

a flood warning system and an emergency plan in operation that is adequate to ensure safe evacuation of affected residents.

**4. Basement Structural Requirements:**

- a. Basements shall be designed and constructed so that any basement area, utilities and sanitary facilities below the floodproofed level are floodproofed in accordance with the FP-1 floodproofing classification (e.g., watertight with walls impermeable to the passage of water without human intervention).
- b. Basement walls shall be built with the capacity to resist the hydrostatic and hydrodynamic loads as well as the effects of buoyancy resulting from flooding to the floodproofed design level, and shall be designed so that minimal damage will occur from floods exceeding that level.
- c. Floodproofing design level shall be an elevation no lower than the regulatory flood protection elevation where the difference between the 100-year flood and the 500-year flood levels is three feet (3') or less and two feet (2') above the 100-year flood level where the difference between the 100-year flood and 500-year flood levels is greater than three feet (3').

**5. Basement Floor:** The top of basement floor shall be no lower than five feet (5') below the 100-year flood level.

**6. Fill:**

- a. The area surrounding the structure must be filled to an elevation no lower than the base flood elevation for the particular area and shall extend to such elevation at least fifteen feet (15') beyond the limits of any structure or building erected thereon;
- b. Fill must be compacted to at least ninety five percent (95%) of standard laboratory maximum dry density (standard proctor), according to the American Society For Testing And Materials (ASTM) standard D-698, or as otherwise directed by the city. Fill soils must be fine grained soils of low permeability, such as those classified as CH, CL, SC, or ML according to the ASTM standard D-2487, "Classification Of Soils For Engineering Purposes"; and
- c. Slopes must be protected by a vegetative cover.

**7. Develop/Review Of Structural Design Of Building:** A registered professional engineer or architect shall develop or review the building's structural design, specifications, and plans, including consideration of depth, velocity, and duration of flooding and type and permeability of soils at the building site, and inspect and certify that the basement design, as constructed, is in accordance with accepted standards of practice for meeting the provisions of this paragraph; and

**8. Inspection Of Structure:** The community building official is authorized to inspect the structure to verify that it meets the provisions of this section. (Ord. 2012-1, 2-27-2012)



### **10-17B-5-2: FF PROVISIONAL USES:**

The following uses require a provisional use permit based upon procedures and regulated by chapter 6 of this title. The city planner and zoning administrator, or designee, will provide a copy of the provisional use permit to the commissioner of natural resources within ten (10) days of its issuance.

A. Lots and subdivisions or otherwise legally described areas that have an approved letter of map revision - based on fill (LOMR-F) as described in section 10-17B-8 of this article and which are in compliance with the following:

1. Residential basements may be constructed below the regulatory flood protection elevation if in compliance with the FP-1 floodproofing classification (i.e., a W1 space) of the Minnesota state building code and in accordance with the requirements in subsection 10-17B-5-1A of this article, consistent with 44 code of federal regulations 60.6(c) and the city of Moorhead "basement" exemption from the federal emergency management agency, or the federal emergency management agency technical bulletin 10-01 as amended, and only upon compliance with this article and the provisions of chapter 6 of this title. (Ord. 2012-1, 2-27-2012)

### **10-17B-5-3: FF CONDITIONAL USES:**

Requires a conditional use permit based upon procedures and regulated by chapter 4 of this title. The following uses may be allowed in the FF flood fringe overlay district only upon compliance with this article and section 10-17B-7-3 of this article and the provisions of chapter 4 and section 10-18-2 of this title:

A. Residential Basements: Residential basements may be constructed below the regulatory flood protection elevation if in compliance with the FP-1 floodproofing classification (i.e., a W1 space) of the Minnesota state building code and in accordance with the requirements in subsection 10-17B-5-1A of this article, consistent with 44 code of federal regulations 60.6(c) and the city of Moorhead "basement" exemption from the federal emergency management agency, or the federal emergency management agency technical bulletin 10-01 as amended.

B. Storage Of Materials And Equipment:

1. The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
2. Storage of other materials or equipment may be allowed if readily removable from the area

within the time available after a flood warning and in accordance with a plan approved by the city.

C. **Nonresidential Structures:** All areas of nonresidential structures, including basements to be placed below the regulatory flood protection elevation, shall be floodproofed in accordance with the structurally dry floodproofing classifications in the Minnesota state building code. Structurally dry floodproofing must meet the FP-1 or FP-2 floodproofing classification in the Minnesota state building code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures floodproofed to the FP-3 or FP-4 classification shall not be permitted.

D. **Alternative Elevation Methods:**

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

a. **Design And Certification:** The structure's design and as built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the Minnesota state building code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent floodwater from entering or accumulating within these components during times of flooding.

b. **Specific Standards For Above Grade, Enclosed Areas:** Above grade, fully enclosed areas must be designed to internally flood and the design plans must stipulate:

(1) A minimum area of openings in the walls where internal flooding is to be used as a floodproofing technique. There shall be a minimum of two (2) openings on at least two (2) sides of the structure and the bottom of all openings shall be no higher than one foot (1') above grade. The automatic openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters without any form of human intervention; and

(2) That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the Minnesota state building code and shall be used solely for building access, parking of vehicles or storage. (Ord. 2012-1, 2-27-2012)

#### **10-17B-5-4: STANDARDS FOR ALL FLOOD FRINGE USES:**

- A. Commercial uses: Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a floodplain development permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four (4) upon occurrence of the 100-year flood.
- B. Manufacturing and industrial uses: Measures shall be taken to minimize interference with normal plant operations especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in subsection A of this section. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in floodplain areas.
- C. Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method.
- D. The federal emergency management agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements may incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- E. All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over the top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.
- F. Standards for recreational vehicles are contained in subsection 10-17B-6C of this article. (Ord. 2012-1, 2-27-2012)

#### **10-17B-6: ADDITIONAL STANDARDS FOR ALL FLOOD FRINGE AND FLOODWAY USES:**

A. **Floodplain Developments:** Floodplain developments shall not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the official zoning map. No use shall affect the capacity of the channels or floodways of any tributary to the main stream, drainage ditch or any other drainage facility or stream.

B. **Public Utilities, Railroads And Bridges:**

1. **Public Utilities:** All public utilities and facilities such as gas, electrical, sewer and water supply systems to be located in the floodplain shall be designed to prevent floodwater from entering or accumulating within during times of flooding or floodproofed in accordance with the Minnesota state building code or elevated to above the regulatory flood protection elevation.
2. **Public Transportation Facilities:** Railroad tracks, roads, and bridges shall comply with this article and the zoning title. Elevation to the regulatory flood protection elevation shall be provided where failure and interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary railroad tracks, roads or bridges may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety and as long as such construction is in accordance with the rules and regulations of the department of natural resources, state of Minnesota, and the federal emergency management agency.

C. **Manufactured Homes And Manufactured Home Parks And Placement Of Recreational Vehicles:**

1. New manufactured home parks and expansions to existing manufactured home parks shall be subject to the provisions placed on subdivisions by section 11-7-3 of this code.
2. The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record that are located in floodplain districts will be treated as a new structure and may be placed only if elevated in compliance with section 10-17B-5 of this article. If vehicular road access for preexisting manufactured home parks is not provided in accordance with section 10-17B-5-2 of this article, then replacement manufactured homes will not be allowed until the property owner(s) develops a flood warning emergency plan acceptable to the city.
  - a. All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over the top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.
3. Recreational vehicles that do not meet the exemption criteria specified in subsection C3a of this section shall be subject to the provisions of this title and as specifically spelled out in subsections C3c and C3d of this section.

- a. **Exemption:** Recreational vehicles are exempt from the provisions of this article if they are placed in any of the areas listed in subsection C3b of this section and further they meet the following criteria:
- (1) Have current licenses required for highway use.
  - (2) Are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks and the recreational vehicle has no permanent structural type additions attached to it.
  - (3) The recreational vehicle and associated use must be permissible in any preexisting, underlying zoning use district.
- b. **Areas Exempted For Placement Of Recreational Vehicles:**
- (1) Individual lots or parcels of record.
  - (2) Existing commercial recreational vehicle parks or campgrounds.
  - (3) Existing condominium type associations.
- c. **Loss Of Exemption:** Recreational vehicles exempted in subsection C3a of this section lose this exemption when development occurs on the parcel exceeding five hundred dollars (\$500.00) for a structural addition to the recreational vehicle or exceeding five hundred dollars (\$500.00) for an accessory structure such as a garage or storage building. The recreational vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation requirements and the use of land restrictions specified in this article. There shall be no development or improvement on the parcel or attachment to the recreational vehicle that hinders the removal of the recreational vehicle to a flood free location should flooding occur.
- d. **New Commercial Recreational Vehicle Parks Or Campgrounds:** New commercial recreational vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five (5) units or dwelling sites shall be subject to the following:
- (1) Any new or replacement recreational vehicle will be allowed in the floodway or flood fringe districts provided said recreational vehicle and its contents are placed on fill above the regulatory flood protection elevation and proper elevated road access to the site exists in accordance with section 10-17B-5-1 of this article. No fill placed in the floodway to meet the requirements of this section shall increase flood stages of the 100-year or regional flood.
  - (2) All new or replacement recreational vehicles not meeting the criteria of subsection C3d(1) of this section may, as an alternative, be allowed as a conditional use if in accordance with the following provisions and the provisions of chapter 4 of this title. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100-year flood. Said plan shall be prepared by a registered engineer or other qualified individual, shall demonstrate that adequate time and personnel exist to carry out the evacuation, and shall demonstrate the provisions of subsections C3a(1) and

C3a(2) of this section will be met. All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding. (Ord. 2012-1, 2-27-2012)

## **10-17B-7: ADMINISTRATION OF FLOODWAY AND FLOOD FRINGE OVERLAY DISTRICTS:**

### **10-17B-7-1: PERMITS:**

- A. Application For Building Permits And Floodplain Development Permits: Application for a building permit and floodplain development permit shall be made in accordance with city regulations and the Minnesota state building code. Additional information for properties located in the floodway district or flood fringe overlay district shall include plans drawn to scale; elevations of the lot; existing or proposed structures, fill or storage of materials; and the location of the foregoing in relation to the channel.
- B. Construction And Use To Be As Provided In Applications, Plans And Permits: Additional requirements beyond those provided elsewhere in this title for properties in the floodway or flood fringe overlay district include the requirement to submit certification by a registered professional engineer, architect or land surveyor as appropriate, that the finished fill and building floor elevations, floodproofing or other flood protection measures were designed and constructed in compliance with the provisions of this title.
- C. State And Federal Permits: Prior to granting a building permit, floodplain development permit, conditional use permit or variance it shall be determined that the applicant has obtained all necessary state and federal permits, if required.
- D. Permits Required: Permits, when required, shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building, structure or portion thereof in the floodway and flood fringe overlay districts; prior to the use or change of use of a building, structure or land; prior to the construction of a dam, fence, or on site septic system; prior to the change or extension of a nonconforming use; prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source; and prior to the placement of fill or excavation of materials within the floodway and/or flood fringe overlay districts.

- E. **Record Of First Floor Elevation:** The city shall maintain a record of the elevation of the first floor and basement floor (if applicable) of all new structures or alterations or additions to existing structures in the floodway and flood fringe district. The city shall also maintain a record of the elevation to which structures, alterations, or additions to structures are floodproofed.
- F. **Notifications For Watercourse Alterations:** The zoning administrator, or designee, shall notify, in riverine situations, adjacent communities and the commissioner of the department of natural resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to Minnesota statutes, chapter 103G, this shall suffice as adequate notice to the commissioner of natural resources. A copy of said notification shall also be submitted to the Chicago regional office of the federal emergency management agency (FEMA).
- G. **Notification To FEMA When Physical Changes Increase Or Decrease The 100-Year Flood Elevation:** As soon as is practicable, but not later than six (6) months after the date such supporting information becomes available, the zoning administrator, or designee, shall notify the Chicago regional office of FEMA of the changes by submitting a copy of said technical or scientific data. (Ord. 2012-1, 2-27-2012)

## **10-17B-7-2: VARIANCES, BOARD OF ADJUSTMENT AND APPEALS ACTION:**

- A. **Procedures:** All variance requests are subject to the procedures set forth in and regulated by chapter 5 of this title.
- B. **Variances:** No variance shall have the effect of allowing any district uses prohibited therein, permit a lesser degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.
- C. **Hearings:** For properties within the floodway or flood fringe overlay district, the board shall submit to the commissioner of natural resources a copy of the application for proposed variances sufficiently in advance so that the commissioner will receive at least ten (10) days' notice of the hearing.
- D. **Decisions:** A copy of all decisions granting variances for properties in the floodway or flood fringe shall be forwarded to the commissioner of natural resources within ten (10) days of such action.

E. **Additional Criteria:** The following additional variance criteria of the federal emergency management agency must be satisfied:

1. Variances shall not be issued by a community within any designated regulatory floodway if any increase by more than 0.00 feet in flood levels during the base flood discharge would result.
2. Variances shall only be issued by a community upon: a) a showing of good and sufficient cause, b) a determination that failure to grant the variance would result in exceptional hardship and practical difficulties to the applicant, and c) a determination that the granting of a variance will not result in increased flood heights by more than 0.00 feet, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

F. **Flood Insurance Notice And Recordkeeping:** The zoning administrator, or designee, shall notify the applicant for a variance that:

1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage, and
2. Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the administrator of the national flood insurance program. (Ord. 2012-1, 2-27-2012)

### **10-17B-7-3: CONDITIONAL USE PERMITS; PLANNING COMMISSION AND COUNCIL ACTION:**

A. **Permit Requests:** All conditional use permit requests are subject to the procedures set forth in and regulated by chapter 4 and section 10-18-2 of this title.

B. **Application Requirements:** Upon receiving an application for a conditional use permit in the floodway or flood fringe district, the planning commission, in formulating its recommendation to the council, may prior to rendering its recommendation thereon:

1. Require the applicant to furnish the following information if deemed necessary by the planning commission to determine the suitability of the particular site for the proposed use:



- a. Plans in triplicate drawn to scale showing the nature, location, dimensions and elevation of the lot, existing or proposed structures, fill, storage of materials, floodproofing measures and the relationship of the above to the location of the channel.
  - b. A typical valley cross section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross sectional areas to be occupied by the proposed development and high water information.
  - c. Plan (surface view) showing elevations or contours of the ground, pertinent structure, fill or storage elevations; size, location and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities; photographs showing existing land uses and vegetation upstream and downstream; and soil types.
  - d. Profile showing the slope of the water surface of the stream.
  - e. Specifications for building construction and materials, floodproofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
  - f. Additional information as requested.
2. Transmit one copy of the information described in subsection B1 of this section to a designated engineer or other expert person or agency selected by the planning commission for technical assistance, where necessary, to evaluate the proposed project in relation to flood heights and velocities, potential flood damage to the use, the adequacy of the plans for protection and other technical matters. The fees of such expert shall be paid by the applicant.
  3. Based upon the technical evaluation of the designated engineer or expert, the planning commission shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.
- C. Hearings: For properties within the floodway or flood fringe overlay district, the planning commission shall submit to the commissioner of natural resources a copy of the application for proposed conditional use permits sufficiently in advance so that the commissioner will receive at least ten (10) days' notice of the hearing.
- D. Decisions: A copy of all decisions granting conditional use permits for properties in the floodway and flood fringe shall be forwarded to the commissioner of natural resources within ten (10) days of such action.
- E. Factors Upon Which Decisions To Issue Conditional Use Permit Shall Be Based: In passing upon conditional use permits, the following shall be considered in addition to other applicable factors that may be required to be considered elsewhere in this title (including chapter 4 of this title):
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 onto other lands or downstream to the injury of others or that may block bridges, culverts, or other hydraulic structures.
  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 services provided by the proposed facility to the community.
  6. The requirements of the facility for a waterfront location.
  7. The availability of the alternative locations not subject to flooding for the proposed uses.
  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 floodplain management program of 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 floodwaters expected at the site.
  12. Such other factors which are relevant to the purposes of this title.
- F. Conditions Attached To Conditional Use Permits: Upon consideration of the factors listed above and the purposes of this title, the following conditions may be attached to the granting of conditional use permits or variances within the floodway or flood fringe overlay districts to fulfill the purposes of this title. Such conditions may include, but are not limited to, the following:
1. Modification of waste disposal and water supply facilities.
  2. Limitations on period of use and operation.
  3. Imposition of operational controls, sureties and deed restructures.
  4. Requirements for construction of channel modifications, compensatory storage, dikes, levees and other protective measures.
  5. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area as well as floodproofing measures, in accordance with the Minnesota state building code and this title. (Ord. 2012-1, 2-27-2012)

**10-17B-7-4: AMENDMENTS:**

The floodplain designation on zoning maps shall not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to an elevation at or above the regulatory flood protection elevation and is contiguous to other lands lying outside the floodplain district. Special exceptions to this rule may be permitted by the commissioner of natural resources if it is determined that, through other measures, lands are protected adequately for the intended uses. All amendments, including amendments to the floodway or flood fringe districts on the official zoning map, must be submitted to and approved by the commissioner of natural resources prior to adoption. Changes in the official zoning map must meet the federal emergency management agency's (FEMA) technical conditions and criteria and must receive prior FEMA approval before adoption. The commissioner of natural resources must be given ten (10) days' written notice of all hearings to consider an amendment to this article, flood related definitions in section 10-2-2 of this title, and any floodway or flood fringe related sections of this title and said notice shall include a draft of the amendment or technical study under consideration. (Ord. 2012-1, 2-27-2012)

**10-17B-8: PROPERTIES WITH AN APPROVED LETTER OF MAP REVISION - BASED ON FILL (LOMR-F):**

The city zoning administrator, or designee, shall maintain a master list of letters of map revision - based on fill (LOMR-F) approved by the federal emergency management agency. That master list, consisting only of approved LOMR-Fs, is hereby adopted by this article. (Ord. 2012-1, 2-27-2012)

## Title 11 SUBDIVISIONS

### Chapter 1 GENERAL SUBDIVISION PROVISIONS

**11-1-1: PURPOSE:**

All divisions of land hereafter submitted to the city must fully comply with the regulations to:

- A. Provide for and guide the orderly, economic and safe development of land, urban services and facilities.

- B. Encourage well planned, efficient and attractive subdivisions by establishing adequate and impartial standards for design and construction.
- C. Provide for the health, safety and general welfare of residents by requiring the necessary services such as properly designed streets and adequate wastewater and water service.
- D. Place the cost of improvements against those benefitting from their construction.
- E. Secure the rights of the public with respect to public lands and waters.
- F. Set the minimum requirements necessary to protect the public health, safety and general welfare. (Ord. 2004-41, 1-3-2005)

#### **11-1-2: SCOPE OF LEGAL AUTHORITY:**

- A. The rules and regulations governing plats and subdivision of land contained herein will apply within the boundaries of the city and within all unincorporated areas within the state from the city's boundary for a distance of two (2) miles as permitted by Minnesota Statutes Annotated section 462.358. In the event of overlapping jurisdiction within the prescribed area, the extent of overlapping jurisdiction will be determined and agreed upon between the city and the other municipality or municipalities concerned. This title is not intended to repeal, annul or in any way impair or interfere with existing provisions of other laws, ordinances or with restrictive covenants running with the land except those specifically repealed by or in conflict with this title.
- B. The city has the power and authority to review, amend and approve subdivisions of land already recorded in the office of the county recorder if such plats are entirely or partially undeveloped.
- C. The plat will be considered to be entirely or partially undeveloped if it meets one or both of the following criteria:
  - 1. The plat has been recorded with the county recorder without prior approval by the city where approval was required. This applies to all plats within the corporate limits and all plats filed after February 21, 1973, that fall within Moorhead's two (2) mile subdivision jurisdiction.

2. The plat has been approved by the city and the approval has been granted more than three (3) years prior to granting a building permit on the partially or entirely undeveloped land and the subdivision or zoning regulations for the district in which the subdivision is located have been changed subsequent to the original final subdivision approval. (Ord. 2004-41, 1-3-2005)

### **11-1-3: COVERAGE AND APPLICATIONS:**

The standards set forth in this title will be generally held as the minimum applied to developments occurring after its enactment. The city council has the option, however, to deviate from the standards set forth herein as part of a preplanned, coordinated development project processed as a planned unit development as governed by title 10 of this code. Moreover, as specified herein, developer's agreements approved by the city and the applicant may be utilized to accommodate special situations. (Ord. 2004-41, 1-3-2005)

### **11-1-4: CONFLICT:**

Whenever there is a difference between minimum standards or dimensions specified herein and those contained in other official regulations, resolutions or city code provisions, the most restrictive standards will apply. (Ord. 2004-41, 1-3-2005)

### **11-1-5: DEFINITIONS:**

A. Rules Of Word Construction: For the purpose of this title, certain terms or words used herein will be interpreted as follows:

1. The word "person" includes an owner or representative of the owner, firm, association, organization, partnership, trust company or corporation as well as an individual.
2. The singular word includes the plural, and the plural the singular.

B. Words Defined: Except for those words and phrases defined below, the words and phrases used in this title will be interpreted to be given the meaning in common usage, so as to give this title its most reasonable application.

**ALLEY:** A public or private right of way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on a street.

**APPLICANT:** The owner, their agent or person having legal control, ownership and/or interest in the land proposed to be subdivided.

**ATTORNEY:** The attorney employed or retained by the city unless otherwise stated.

**BWSR:** State of Minnesota board of water and soil resources or its successor.

**BIKEWAY:** A public right of way or easement across a block or within a block to provide access for bicyclists and in which a path or trail is installed.

**BLOCK:** An area of land within a subdivision that is bounded by streets, or by a combination of streets and public parks, cemeteries, railroad right of way, shorelines of waterways or boundary lines of municipalities.

**BOULEVARD:** The portion of the street right of way between the curb line and the property line.

**BUILDING:** Any structure built for the support, shelter or enclosure of persons, animals or movable property of any kind, and includes any structure.

**CERTIFICATE OF SURVEY:** A document prepared by a registered land surveyor which precisely describes area, dimensions and location of a parcel of land.

**CITY:** The city of Moorhead.

**CLERK:** The Moorhead city clerk.

**COMPREHENSIVE LAND USE PLAN:** A comprehensive plan approved by the city, including a compilation of policy statements, goals, standards, fiscal guidelines and maps indicating the general locations recommended for the various functional classes of land use, places and structures, and for the general physical development of the city, including any unit or part of such plan separately adopted and any amendment to such plan or parts thereof.

**CONTOUR MAP:** A map on which irregularities of land surface are shown by lines connecting points of equal elevations. "Contour interval" will mean the vertical height between contour lines.

**COPY:** A print or reproduction made from an original.

**COUNCIL:** The city council of Moorhead, Minnesota.

**COUNTY:** Clay County, Minnesota.

**DESIGN STANDARDS:** Specifications that applicants proposing to subdivide land must follow when preparing plats, both preliminary and final, indicating among other things, the optimum, minimum or maximum dimensions of such items as rights of way, blocks, easements and lots.

**DEVELOPMENT:** The act of building structures and installing site improvements.

**DOUBLE FRONTAGE LOT:** A lot other than a corner lot which has a property line abutting on one street and an opposite property line abutting another nonintersecting street.

**DRAINAGE COURSE:** A watercourse or indenture for the drainage of surface water.

**DWELLING:** A building or portion thereof, designated exclusively for independent residential occupancy, including one-family, two-family, and multiple-family dwellings, but not including hotels, motels or boarding houses.

**DWELLING, MULTIPLE-FAMILY:** A building designed with three (3) or more dwelling units exclusively for occupancy by three (3) or more families living independently of each other. A two-family dwelling (duplex) with an additional separate rooming unit(s) must be considered and classified as a multiple-family dwelling.

**DWELLING, SINGLE-FAMILY:** A dwelling unit designed exclusively for occupancy by one family.

**Attached:** A dwelling which is joined to another at one or more sides by the sharing of a common wall(s) and which occupies its own lot.

**Detached:** A dwelling unit not attached to another dwelling or structure or entirely surrounded by open space.

**DWELLING, TOWNHOME:** A building of more than two (2) units, each unit extending from ground to sky and having at least two (2) exposed sides.

**DWELLING, TWO-FAMILY:** A residence designed for or occupied by two (2) families only, with separate housekeeping and cooking facilities for each. A two-family dwelling (duplex) with an additional separate rooming unit(s) shall be considered and classified as a multi-family dwelling.

**EASEMENT:** A right granted by the owner of land to another party for specific limited use of that land.

**ENGINEER:** The registered engineer employed or retained by the city unless otherwise stated.

**FINAL PLAT:** A drawing or map of a subdivision, meeting all of the requirements of the city and in such form as required by Clay County for the purpose of recording.

**FLOOD RELATED:** All flood related definitions in title 10 of this code shall apply to this title.

**GOVERNING BODY:** The Moorhead city council.

**KEY MAP:** A small or large scale map which definitively shows the area proposed to be platted in relation to known geographical features (e.g., town centers, lakes and streets).

**LOT:** A parcel or portion of land of at least sufficient size to meet minimum zoning

requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required. Such lot must have frontage on an improved public street or approved private street.

**LOT, AREA:** The total land area of a horizontal plane within the lot lines.

**LOT BASE:** Lots meeting all specifications in the zoning district prior to being subdivided into a two-family dwelling.

**LOT, CORNER:** A lot situated at the intersection of two (2) streets, the interior angle of such intersection not exceeding one hundred thirty five degrees (135°).

**LOT, DOUBLE FRONTAGE:** An interior lot having frontage on two (2) streets.

**LOT IMPROVEMENT:** Any building, structure, place, work of art, or other object, or improvement of the land on which they are situated constituting a physical betterment of real property, or any part of such betterment.

**LOT, INTERIOR:** A lot, other than a corner lot, including through or double frontage lots.

**LOT, WIDTH:** The minimum required horizontal distance between the side lot lines measured at right angles to the lot depth, at the minimum building setback line. If no setback line is established, the distance between the side lot lines measured along the public right of way.

**METES AND BOUNDS DESCRIPTION:** A description of real property which is not described by reference to a lot or block shown on a map, but is described by starting at a known point and describing the bearings and distances of the lines forming the boundaries of the property or delineating a fractional portion of a section, lot or area by described lines or portions thereof.

**NATURAL WATERWAY:** A natural passageway on the surface of the earth, so situated and having such a topographical nature that surface water flows through it from other areas before reaching a final ponding area.

**OUTLOT:** A lot remnant or parcel of land left over after platting, which is intended as open space or other future use, for which no building permit will be issued.

**OWNER:** An individual, association, syndicate, partnership, corporation, trust or any other legal entity holding an equitable or legal ownership interest in the land sought to be subdivided.

**PARCEL:** An individual lot or tract of land.

**PARKS AND PLAYGROUNDS:** Public land and open space in the city dedicated or reserved for recreational purposes.

**PEDESTRIANWAY:** A public right of way or easement across or within a block to provide access for pedestrians and which may be used for the installation of paths or trails.



**PERCENTAGE OF GRADE:** Along a centerline of a street, the change in vertical elevation in feet and tenths of a foot for each one hundred feet (100') of horizontal distance, expressed as a percentage.

**PERSON:** Any individual or legal entity.

**PLANNER:** The Moorhead city planner.

**PLANNING COMMISSION:** The Moorhead planning commission.

**PRELIMINARY PLAT:** A detailed drawing or map of a proposed subdivision, meeting the requirements of this title and in compliance with the comprehensive plan, submitted to the planning commission and governing body for their consideration.

**PRIVATE STREET:** A street serving as vehicular access to two (2) or more parcels of land which is not dedicated to the public and is owned by one or more private parties.

**PUBLIC IMPROVEMENT:** Any drainage ditch, roadway, parkway, street, sanitary sewer, storm sewer, water system, sidewalk, pedestrianway, tree, lawn, off street parking area, lot improvement or other facility for which the city may ultimately assume ownership, responsibility for maintenance and operation, or which may affect an improvement, for which local government responsibility is established.

**RESTRICTIVE COVENANTS:** Contracts entered into between all owners and holders of mortgage constituting a restriction on the use of property within a subdivision for the benefit of the property owners, and providing mutual protection against undesirable aspects of property value and economic integrity of any given area.

**RIGHT OF WAY:** Land acquired by reservation, dedication, or otherwise intended for public use, and intended to be occupied or occupied by a street, trail, railroad, utility lines, oil or gas pipeline, water line, sanitary sewer, storm sewer or other similar uses.

**SETBACK:** The distance between a building and the nearest property line.

**SKETCH PLAN:** A conceptual plan to facilitate discussion between the applicant and city staff regarding a proposed subdivision. The sketch plan may show the proposed layout of streets, lots, proposed playgrounds and parks, the 100-year flood contour line, zoning, approximate lot sizes, and as much relevant information as possible.

**STATE:** State of Minnesota.

**STREET:** A public right of way for vehicular traffic, whether designated as a highway, thoroughfare, arterial, parkway, collector, throughway, road, avenue, boulevard, lane, place, drive, court or otherwise designated, which has been dedicated or deeded to the public for public use and which affords principal means of access to abutting property.

**STREET, WIDTH:** The shortest distance between the lines delineating the face to face of curb.

**STREETS, COLLECTOR:** Those streets intended to provide a balance between mobility and access, serve moderate traffic volumes, and provide for collection and distribution of traffic from local streets to streets of higher classification. Collector streets provide access to neighborhoods and important travel generators. A limited degree of direct land access is acceptable for safe and efficient operation.

**STREETS, CUL-DE-SAC:** A local street with only one outlet and having an appropriate terminal or terminals for the safe and convenient reversal of traffic movement.

**STREETS, LOCAL:** Those streets intended to provide direct access to various land uses. Local streets provide low mobility and serve the lowest traffic volumes. Typically, the local street is a two (2) lane road.

**STREETS, LOCAL COLLECTOR:** Those streets intended to provide a balance between mobility and access and provide for collection and distribution to traffic from local streets to streets of higher classification. The local collector designation is reserved for those streets that function as a collector street but are projected to serve lower traffic volumes than a typical collector street based on long term forecasts. A greater degree of direct access is acceptable for safe and efficient operation. Direct driveway access to individual properties is discouraged and may be prohibited.

**STREETS, MARGINAL ACCESS (FRONTAGE ROAD):** Those local streets which are parallel and adjacent to high volume arterial street and highways; and which provide access to abutting properties and protection from through traffic.

**STREETS, MINOR ARTERIAL:** Those streets intended to provide high mobility, serve large traffic volumes and act as links between various subareas of the city. Minor arterial streets provide for collection and distribution of traffic between principal arterials and streets of lower classification. Regulation of direct access to property is critical to promoting safe and efficient operation.

**STREETS, PRINCIPAL ARTERIAL:** Those streets intended to provide very high mobility, regional connectivity, and serve the largest traffic volumes. Regulation of direct access to property is critical to promoting safe and efficient operation.

**STRUCTURE:** Anything which is built, constructed or erected; an edifice or building of any kind; or any piece of work artificially built up and/or composed of parts joined together in some definite manner whether temporary or permanent in character. Among other things, structures include buildings, manufactured homes, walls, fences, swimming pools, billboards, and poster panels.

**SUBDIVIDING:** The process of dividing land.

**SUBDIVISION:** The dividing of an area, parcel or tract of land into two (2) or more parcels, tracts, lots or long term leasehold interests where the creation of the leasehold interest necessitates the creation of streets, roads or alleys for residential, commercial, industrial or other use or any combination thereof. This term includes resubdivision and where appropriate to the context, will relate to the process of subdividing or to the land subdivided. Subdivision will apply as outlined herein except for these separations:

1. Where the resulting parcels, tracts, lots or interests will be twenty (20) acres or larger in size and five hundred feet (500') in width for residential uses and five (5) acres or larger in size of commercial and industrial uses;
2. Creating cemetery lots;
3. Resulting from court orders or the adjustment of a lot line by the relocation of a common boundary.

**SURVEYOR:** A land surveyor registered under Minnesota state laws.

**TRACING:** A plat or map drawn on transparent paper, film or cloth which can be reproduced by using regular reproduction procedure.

**USGS:** United States geological service.

**ZONING ORDINANCE:** Title 10 of this code or resolution controlling the use of land as adopted by the city. (Ord. 2004-41, 1-3-2005; amd. Ord. 2012-1, 2-27-2012; Ord. 2012-10, 5-29-2012)

## **Chapter 2 ADMINISTRATION AND ENFORCEMENT**

### **11-2-1: ADMINISTRATION:**

This title will be administered by the city council or its designee. (Ord. 2004-41, 1-3-2005)

### **11-2-2: AMENDMENTS:**

The provisions of this title may be amended by the city council following a public hearing before the planning commission. (Ord. 2004-41, 1-3-2005)

### **11-2-3: UNAPPROVED SUBDIVISIONS:**

No conveyance of land to which these regulations are applicable should be filed or recorded if the land is described in the conveyance by metes and bounds or by reference to an unapproved registered land survey made after April 21, 1961, or to an unapproved plat made after such

regulations become effective. The foregoing provision does not apply to a conveyance if the land described:

- A. Was a separate parcel of record on April 1, 1945, or the date of adoption of subdivision regulations under laws 1945, chapter 287, whichever is the later, or of the adoption of subdivision regulations pursuant to a home rule charter; or
- B. Was the subject of a written agreement to convey entered into prior to such time; or
- C. Was a separate parcel of not less than two and one-half ( $2\frac{1}{2}$ ) acres in area and one hundred fifty feet (150') in width on January 1, 1966; or
- D. Was a separate parcel of not less than five (5) acres in area and three hundred feet (300') in width on July 1, 1980; or
- E. Is a single parcel of commercial or industrial land of not less than five (5) acres and having a width of not less than three hundred feet (300') and its conveyance does not result in the division of the parcel into two (2) or more lots or parcels, any one of which is less than five (5) acres in area or three hundred feet (300') in width; or
- F. Is a single parcel of residential or agricultural land of not less than twenty (20) acres and having a width of not less than five hundred feet (500') and its conveyance does not result in the division of the parcel into two (2) or more lots or parcels, any one of which is less than twenty (20) acres in area or five hundred feet (500') in width.

In any case in which failure to comply does not interfere with the purposes of the subdivision regulations the city may waive such compliance pursuant to the provisions of section 11-3-1 of this title. (Ord. 2004-41, 1-3-2005)

#### **11-2-4: BUILDING PERMITS:**

No building permit may be issued for any construction, enlargement, alteration, repair, demolition or moving of any building or structure on any lot or parcel until all the requirements of these regulations have been fully met. (Ord. 2004-41, 1-3-2005)

## **11-2-5: VIOLATIONS AND PENALTY:**

- A. **Sale Of Lots From Unrecorded Plats:** It is a misdemeanor to sell, trade, or otherwise convey any lot or parcel of land as a part of, or in conformity with, any plan, plat or replat of any subdivision or area located within the jurisdiction of this title unless the plan, plat or replat has first been recorded in the office of the county recorder.
  
- B. **Recording Unapproved Plats:** It is unlawful for a person to record in any public office any plans, plats of land laid out in building lots and streets, alleys or other portions of the same intended to be dedicated to public or private use, or for the use of purchasers or owners of lots fronting on or adjacent thereto, and located within the jurisdiction of this chapter, unless the same bear thereon, by endorsement or otherwise, the approval of the city council.
  
- C. **Penalty:** Any person violating any of the provisions of this title may be guilty of a misdemeanor. Each day during which compliance is delayed or such violation continues or occurs will constitute a separate offense and may be prosecuted as such. (Ord. 2004-41, 1-3-2005)

## **Chapter 3 PROCEDURES FOR FILING AND REVIEW**

### **11-3-1: ADMINISTRATIVE AND MINOR SUBDIVISIONS:**

When in the best interest of the city and in cases of administrative or minor subdivisions, the platting procedures of this title may be waived in accordance with the following:

A. Administrative Subdivisions: The planning and zoning administrator may waive the platting requirement and administratively approve a subdivision in the following instances:

1. A boundary adjustment relocating a property line between adjoining parcels, provided the subdivision does not create a new tax parcel and each parcel retains sufficient lot size required by title 10 of this code.
2. A split of an existing platted lot to accommodate the separate ownership of each unit in a single-family attached dwelling, provided the subdivision does not increase the density beyond the maximum number of units allowed for that parcel by the zoning ordinance or a developer's agreement approved by the city council.
3. A combination of two (2) or more contiguous tax parcels into one parcel of record.

B. Minor Subdivisions: The city council may waive the platting requirement and approve by resolution a minor subdivision in the following instances:

1. A subdivision, other than a division of a single-family attached dwelling, that contains not more than three (3) splits.
2. A subdivision by metes and bounds description which would increase the density of a tax parcel beyond what is allowed by its zoning classification.
3. Any other subdivision of property by metes and bounds description which is not defined as an administrative subdivision by subsection A of this section.

C. Approval: Administrative and minor subdivisions may be approved provided that:

1. There is no need for public improvements as a result of the subdivision;
2. The subdivision does not violate any provision of the zoning ordinance, comprehensive plan, or any other state or local ordinance;
3. The subdivision does not adversely affect public health, safety, and general welfare;
4. The subdivision is not part of a continuing scheme of lot splitting for a particular area;
5. Any platted lot may be split up to four (4) times through administrative or minor subdivision;
6. A completed city of Moorhead application form, legal description of the proposed parcels, drawing of the existing and proposed parcels, setback of existing structures to the proposed property lines, and an explanation of any encroachments are provided to the city of Moorhead

planning and zoning division. (Ord. 2004-41, 1-3-2005)

### **11-3-2: PRELIMINARY PLAT:**

- A. **Application Requirements:** After the preapplication meeting(s), the applicant must prepare and file with the city an electronic version and three (3) large size copies twenty two inches by thirty four inches (22" x 34"), three (3) eleven inch by seventeen inch (11" x 17") copies, and one reduced scale, eight and one-half inch by eleven inch (8<sup>1</sup>/<sub>2</sub>" x 11") copy of a preliminary plat and supportive information which is in conformity with the requirements of section 11-4-1 of this title, complete a city action request form and pay the appropriate review fee as established by city council, at least fifteen (15) working days prior to the regularly scheduled or special planning commission meeting at which it is proposed to be heard.
- B. **Official Application:** The applicant must include any city action request form necessary to zone or rezone the proposed subdivision plat or development area, and for any anticipated variance(s) from the provisions of this chapter, as set out in section 11-2-3 of this title. The plat will be considered as being officially submitted when all of the information requirements are complied with and the appropriate review fee(s) paid.
- C. **Subdivision Jurisdiction:** If the subdivision lies outside the city limits and within Moorhead's two (2) mile subdivision jurisdiction and there are no immediate plans to annex, the city must refer one copy of the preliminary plat to the appropriate township planning commission or township board and one copy of the preliminary plat to the county planning commission for their review and comment. The applicant or owner may be required to appear at the township planning commission or town board and county planning commission. The township planning commission or town board and county planning commission are requested to forward their written comments to the city planner within forty five (45) days of receipt of the preliminary plat.
- D. **Public Hearing:** Upon receipt of the completed application as outlined in subsection A of this section, the city planner will set a public hearing for public review of the preliminary plat by the planning commission. The hearing will be held within forty five (45) days of the completed filing of the application. The applicant and/or their representative(s) must appear at the public hearing. Notice of the hearing may be a legal or display advertisement and will consist of a legal property description, description of request and must be published in the official newspaper at least ten (10) days prior to the hearing.
- E. **Review By Other Commissions, Jurisdictions And/Or Utility Companies:** The applicant will refer copies of the preliminary plat to county, state, or other municipal jurisdictions, as well as utility

companies, for their review and comment, where appropriate and when required.

F. **Planning Commission Action:** The planning commission will report its findings and make its recommendation to the city council no later than forty (40) days after the close of public hearing described in subsection D of this section. If the planning commission has not acted upon the preliminary plat within forty (40) days following the close of public hearing on such and in compliance with this chapter, the council may act on the preliminary plat without the planning commission's recommendation.

G. **Preliminary Plat Approval:** The planning commission's approval of the preliminary plat will not constitute approval of the final plat. Rather, it will be deemed an expression of approval of the layout submitted on the preliminary plat as a guide to the preparation of the final plat, which will be submitted to the planning commission, at a future date, and subsequent recommendation forwarded to the city council for final plat approval and recording with the county recorder, upon fulfillment of the requirements of these regulations and the conditions of conditional approval, if any.

H. **City Council Action:**

1. The council will approve or disapprove the preliminary plat within one hundred twenty (120) days following the recommendation and report from the planning commission.
2. If the preliminary plat is not approved by the city council, the reasons for such action must be recorded in the proceedings of the council and must be transmitted to the applicant. If the preliminary plat is approved, such approval will not constitute final acceptance of the design and layout. Subsequent approval will be required of the engineering proposals and other features and requirements as specified by this chapter to be indicated on the final plat. The city council may impose such conditions and restrictions as it deems appropriate or require such revisions or modifications in the preliminary plat or final plat as it deems necessary to protect the health, safety, comfort, general welfare and convenience of the city.
3. The city council reserves the right to decline approval of a preliminary plat if due regard is not shown for the preservation of all natural features, such as topography, trees and watercourses.
4. Following city council approval of a preliminary plat, the applicant must submit a final plat to the city planner, to be reviewed and a recommendation made by the planning commission to the city council, within ninety (90) days of preliminary plat approval by the city council unless a request for time extension is submitted in writing and approved by the city council. If an extension is not made and the ninety (90) day time line passes, then approval of the preliminary plat will be considered void.
5. If substantial modifications are necessary on an approved preliminary plat, the plat must be resubmitted for preliminary plat approval. However, if only minor modifications are necessary, the plat may be submitted as a final plat. (Ord. 2004-41, 1-3-2005)



### 11-3-3: FINAL PLAT:

- A. Submittal: After the preliminary plat has been approved, a final plat must be submitted for review as set forth in the subsections which follow. The final plat, which must be prepared by a certified land surveyor, will incorporate all minor corrections, modifications and revisions required by the city and associated utility agencies, and conform to the approved preliminary plat. The applicant must complete a city action request form for final plat approval attaching the appropriate review fee.
- B. Compliance: All final plats must comply with the provisions of Minnesota state statutes and requirements of this chapter.
- C. Review Of A Final Plat:
1. The applicant must prepare and file with the city an electronic version and three (3) large size copies twenty two inches by thirty four inches (22" x 34"), three (3) eleven inch by seventeen inch (11" x 17") copies, and one reduced scale eight and one-half inch by eleven inch ( $8\frac{1}{2}$ " x 11") copy of a final plat and supportive information which is in conformity with the requirements of section 11-4-2 of this title, complete a city action request form and pay the appropriate review fee as established by city council, at least fifteen (15) working days prior to the regularly scheduled or special planning commission meeting at which it is proposed to be heard.
  2. Upon receipt of the completed application as outlined in subsection C1 of this section, the city planner must set a public hearing for public review of the final plat by the planning commission. The hearing will be held within forty five (45) days of the completed filing of the application. The applicant and/or their representative(s) must appear at the public hearing. Notice of the hearing may be a legal or display advertisement and will consist of a legal property description, description of request and will be published in the official newspaper at least ten (10) days prior to the hearing.
  3. The applicant will refer copies of the final plat to county, state or municipal jurisdictions, as well as utility companies, for their review and comment, where appropriate and when required.
  4. Prior to recording of a final plat, the city must have approved the developer's agreement with the property owner, which controls the installation of all municipal improvements utility systems, sidewalks and boulevard trees, and other development issues. Said agreement will require all improvements to comply with approved engineering standards and applicable regulations.
  5. The planning commission will report its findings and make its recommendation to the city council no later than forty (40) days after the close of public hearing described in subsection C2 of this section. If the planning commission has not acted upon the final plat within forty

- (40) days following the close of public hearing on such and in compliance with this chapter, the council may act on the final plat without the planning commission's recommendation.
6. The city council must take action on a final plat within sixty (60) days after receiving the report and recommendation from the planning commission. If the final plat is not approved by the city council, the reasons for such action will be recorded in the official proceedings of the city and will be transmitted to the applicant. (Ord. 2004-41, 1-3-2005)
  7. Upon receiving final plat approval by the city council the applicant or his/her agent must, within sixty (60) days, provide the city planner with all necessary mylars and hard boards for city designated representative signatures. After all city signatures have been applied to the mylars and hard boards the applicant will record said plat with the county recorder within sixty (60) days, or the approved final plat will be considered void unless the applicant receives an extension from the city planner. Upon delivery of the final plat to the county recorder, the applicant will be required to ensure that all applicable fees and taxes are paid. (Ord. 2012-10, 5-29-2012)
  8. Upon recording of the final plat, the city planner will notify the applicant or his/her agent of the recording and make available a signed copy of the plat.
  9. Upon receiving final plat approval, the applicant or his/her agent must submit a copy of the plat in electronic format compatible with software in use by the city at the time of submittal, with the Fargo-Moorhead council of governments layering scheme. The computerized plat must be referenced as county coordinates and provide a seamless edge match to the existing city database. Coordinates of existing plats will be provided by city staff. (Ord. 2004-41, 1-3-2005)

#### **11-3-4: DENIAL OF PLAT:**

The planning commission may recommend denial and the council may deny a subdivision if it makes any of the following findings:

- A. Conflicts: That the proposed subdivision is in direct conflict with adopted applicable general and specific comprehensive plans of the city, county, or township;
- B. Physical Characteristics: That the physical characteristics of this site, including, but not limited to, topography, percolation rate, soil conditions, susceptibility to erosion and siltation, susceptibility to flooding, water storage, drainage and retention, are such that the site is not suitable for the type of development, design or use contemplated;
- C. Density: That the site is not physically suitable for the proposed density of development;

- D. **Environmental Damage:** That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage;
  
- E. **Public Health:** That the design of the subdivision or the type of improvements are likely to cause serious public health problems;
  
- F. **Conflict With Easement:** That the design of the subdivision or the type of improvements will conflict with easements of record or with easements established by judgment of a court;
  
- G. **Outside Of Boundaries:** That the proposed subdivision is outside the boundaries of the city and;
  - 1. The county, township or developer has not certified in writing that they will assume all responsibility for repair and maintenance of dedicated streets until annexed to the city; or
  - 2. The township or county has not certified in writing that it has the capacity for and will provide police and fire protection and on site sewer system inspections to ensure proper installation.
  
- H. **Flooding Provisions:** That the proposed subdivision, its site, or its design adversely affects the flood carrying capacity of the floodway, increases flood stages and velocities, or increases flood hazards within the floodway fringe or within other areas of the city.
  
- I. **MEQB Policies:** The proposed subdivision is inconsistent with the policies of the Minnesota environmental quality board (MEQB), as may be amended, and could adversely impact critical environmental areas or potentially disrupt or destroy historic areas which are designated or officially recognized by the city council in violation of federal and state historical preservation laws. (Ord. 2004-41, 1-3-2005)

## **Chapter 4**

# **PLAT AND DATA REQUIREMENTS**

### **11-4-1: PRELIMINARY PLAT:**

The applicant must prepare and submit a preliminary plat, together with a completed city action request form and appropriate fee. The preliminary plat should contain the information set forth in

the subsections which follow. Upon specific request, the city may exempt an applicant from the submission of data which is not considered relevant to the application:

**A. Identification And Description:**

1. The proposed name of the subdivision; names must not duplicate or be alike in pronunciation to the name of any plat recorded in the city or begin with the wording "replat".
2. Name of the owner(s) of record, or any agent having control of the land, and the land surveyor.
3. Location of boundary lines in relation to a known section, quarter section or quarter-quarter section lines comprising a legal description of the property.
4. Graphic scale not less than one inch (1") to one hundred feet (100') for large scale copies, twenty two inches by thirty four inches (22" x 34").
5. North point/arrow.
6. Date of preparation.

**B. Existing Conditions:**

1. Boundary lines to include bearings and distances.
2. Location of existing rights of way, recorded easements, parks and other land dedicated for public use.
3. 100-year flood elevations, the regulatory flood protection elevation and boundaries of floodway and flood fringe areas, if known, taking into consideration the flood insurance study and flood insurance rate map.

**C. Proposed Subdivision Features:**

1. Layout of proposed streets showing the right of way widths and proposed names of streets in conformance with city and county street identification policies. The name of any street heretofore used in the city or its environs should not be used unless the proposed street is a logical extension of an already named street, in which event the same name should be used.
2. Each plat must provide at least two (2) points of entry to adjacent streets, unless otherwise approved by the city council.
3. Locations and widths of proposed alleys and pedestrianways.
4. Site(s) dedicated for parks, playgrounds or other public uses to include size of such dedications.

5. Areas, other than streets, alleys, bikeways, pedestrianways and utility easements, intended to be dedicated or reserved for public use, including the size of such area or areas in acres.
  6. Lot lines, lot numbers and block numbers.
  7. Lot dimensions.
  8. Total acreage of proposed plat area.
- D. Supplementary Information: Any or all of the supplementary information requirements set forth in this subsection should be submitted separately from the plat when deemed necessary by the city staff, consultants, advisory bodies and/or city council to adequately address the application and site in question.
1. Grading plan which must include the proposed grading and drainage of the site, including provisions for storm water detention and drainage.
  2. Proposed fill, levees, channel modifications, and other methods to overcome flood or erosion hazard areas in accordance with the zoning ordinance and by use of the 100-year flood profile and other supporting technical data in the flood insurance study.
  3. Existing zoning classifications for land in and abutting the subdivision.
  4. Minimum front and side street building setback line, including those located on curves and within cul-de-sacs.
  5. Sites, if any, for multi-family dwellings, shopping centers, churches, industry or other nonpublic uses exclusive of single-family dwellings.
  6. Location and size of existing sewers, water mains, culverts or other underground facilities within the preliminary plat area and to a distance of one hundred fifty feet (150') beyond. Such data as grades and locations of catch basins, manholes, hydrants and street pavement width and type also must be shown.
  7. Topographic data, including contours at vertical intervals of not more than one-half foot ( $\frac{1}{2}'$ ) shown on a contour/topographic map. Watercourses, marshes, wooded areas, rock outcroppings, power transmission poles and lines, and other significant features also must be shown. USGS datum must be used for all topographic mapping where feasible.
  8. Subsurface conditions on tracts for subdivisions utilizing individual water and wastewater disposal systems; location and results of tests to ascertain subsurface soil, rock and ground water conditions and availability; location and results of soil percolation tests.
  9. Other conditions on the tract: watercourses, marshes, rock outcroppings, wooded areas, isolated preservable trees one foot (1') or more in diameter, existing houses, barns and other significant features.
  10. Statement of the proposed use of lots stating type of buildings with number of proposed dwelling units or type of business or industry, so as to reveal the effect of the development on

traffic, park facilities, fire hazards, and congestion of population. The city may require the applicant to have formal traffic or other studies performed to the city's satisfaction which show the effect of the proposed development on traffic, fire hazards and congestion.

11. If any zoning changes are contemplated, the proposed zoning plan for the areas, including dimensions, must be shown. Such proposed zoning plan will be for information only and will not vest any rights in the applicant.
12. A storm water management plan both during construction and after development has been completed. Such plans are to be in accordance with best management practices (BMPs) as provided by city ordinance, the Minnesota pollution control agency and the board of water and soil resources.
13. A statement certifying the environmental condition of the site including the presence of any hazardous substance as defined in Minnesota statutes 115B.02, subdivision 8. Such statement may be required to be based upon an environmental assessment of the site by an environmental engineering firm acceptable to the city.
14. An environmental assessment worksheet must be submitted if the city, city consultants, Minnesota environmental quality board or other groups or agencies determine that one is required by law.
15. Sidewalks and bikeways.
16. Total square footage of each lot and block.
17. Such other information as may be required by the city. (Ord. 2004-41, 1-3-2005)

#### **11-4-2: FINAL PLAT:**

The applicant must submit a final plat together with a completed city action request form, appropriate fee and any necessary supplementary information. The final plat, prepared for recording purposes, must be prepared in accordance with provisions of Minnesota state statutes and Clay County regulations, and such final plat must contain the following information:

##### **A. General Requirements:**

1. The final plat must be prepared and certified by a land surveyor who is registered in the state and must comply with the provisions of the law and this title.
2. Name of the subdivision, which must not duplicate or too closely approximate the name of any existing plat recorded in the county or begin with the wording "replat".
3. Location by section, township, range, county and state, and including descriptive boundaries of the subdivision, based on an accurate traverse, giving angular and linear dimensions.

4. The location of monuments must be shown and described on the final plat. Locations of such monuments must be shown in reference to existing official monuments on the nearest established street lines, including true angles and distances to such reference points or monuments.
5. Location of lots, outlots, street rights of way, public highways, alleys, and parks and other features, with accurate dimensions in feet and decimals of feet, with the length of radii and/or arcs of all curves, and with all other information necessary to reproduce the plat on the ground must be shown. Dimensions must be shown from all angle points of curve to lot lines.
6. Lots must be numbered clearly, blocks are to be numbered, with numbers shown clearly in the center of the block.
7. Total square footage per lot, acreage per block and total acres in the plat, to be submitted separately from the plat.
8. The exact locations, widths and names of all streets to be dedicated.
9. Location, purpose and width of all easements to be dedicated.
10. Scale not less than one inch to one hundred feet (1" = 100') of plat for large scale copies, twenty two inches by thirty four inches (22" x 34") (the scale to be shown graphically on a bar scale), date and north arrow.
11. A written statement from the county or township submitted separately, if the subdivision lies outside the boundaries of the city and is not to be annexed certifying the following:
  - a. That the road authority, county, township or developer, will assume all responsibility for repair and maintenance of dedicated streets until annexation to the city.
  - b. That the township or county has the capacity for and will provide police and fire protection and on site sewer system and well inspections to ensure proper installations.
12. An executed copy of restrictive covenants to be submitted separately from the plat.
13. Statement dedicating all easements as follows: "Easements for installation and maintenance of utilities and drainage facilities are reserved over, under and along the designated areas marked 'utility easements'".
14. Statement dedicating all streets, alleys and other public areas not previously dedicated as follows: "Streets, alleys and other public areas shown on this plat and not heretofore dedicated to public use are hereby so dedicated".
15. Such other information that may be required by the city. (Ord. 2004-41, 1-3-2005)

### **11-4-3: CERTIFICATION REQUIRED:**

- A. Certification by a registered land surveyor in the form required by section 505.03, Minnesota statutes, as amended.
- B. Execution of all owners of any interest in the land and holders of a mortgage thereon of the certificates required by section 505.03, Minnesota statutes, as amended, and which certificate must include a dedication of the utility easements and other public areas in such form as approved by the city council.
- C. Space for certificates of approval by the planning commission and city council in the following form in a substantially similar form:

*CITY PLANNER/PLANNING COMMISSION CERTIFICATION*

*At a regular meeting of the PLANNING COMMISSION OF THE CITY OF MOORHEAD, MINNESOTA, on the day of , 20\_ , the plat of to the City of Moorhead, Clay County, Minnesota, was duly recommended for approval to the City Council.*

\_\_\_\_\_  
*(NAME OF CURRENT CITY PLANNER) City Planner  
City of Moorhead, Minnesota*

*CITY COUNCIL CERTIFICATION*

*At a regular meeting of the CITY COUNCIL, OF THE CITY OF MOORHEAD, MINNESOTA, on the day of , 20\_ , the plat of to the City of Moorhead, Clay County, Minnesota, was duly approved.*

\_\_\_\_\_  
*(NAME OF CURRENT CITY CLERK) City Clerk  
City of Moorhead, Minnesota*

*CITY ENGINEERS APPROVAL*

\_\_\_\_\_  
*(NAME OF CURRENT CITY ENGINEER  
City of Moorhead, Minnesota*

*(Ord. 2004-41, 1-3-2005)*

**11-4-4: METES AND BOUNDS:**



- A. Except in unique situations as may be allowed by the city council or in cases of minor subdivisions, conveyances by metes and bounds will be prohibited where any lot or lots involved are less than five (5) acres in area or have a width of less than three hundred feet (300') at the building setback line.
- B. When a conveyance by metes and bounds is made and the parcels involved are between five (5) acres and twenty (20) acres in size, a survey of the parcels involved must be submitted to the city planner before any building permits will be issued for those parcels, and a copy of the survey must be attached to the deed when it is submitted to the Clay County recorder's office for recording. (Ord. 2004-41, 1-3-2005)

## **Chapter 5**

# **SUBDIVISION DESIGN STANDARDS**

### **11-5-1: CONFORMITY WITH MOORHEAD'S COMPREHENSIVE PLAN AND ZONING ORDINANCE:**

A proposed subdivision must conform to the city's comprehensive plan, or similar document, growth area plans, neighborhood plans, related policies adopted by the city council and to title 10 of this code. (Ord. 2004-41, 1-3-2005)

### **11-5-2: LAND REQUIREMENTS:**

- A. Land should be suited to the purpose for which it is to be subdivided. No plan will be approved if the site is not suitable for the purposes proposed by reason of potential flooding, topography or adverse soil.
- B. Land subject to hazards to life, health, or property will not be subdivided until all such hazards have been eliminated or unless adequate safeguards against such hazards are provided by the subdivision plan.
- C. Proposed subdivisions will be coordinated with surrounding jurisdictions and/or neighborhoods, so that the city as a whole may develop efficiently and harmoniously. (Ord. 2004-41, 1-3-2005)

**11-5-3: BLOCKS:**

- A. Accommodation: Block length and width or acreage within bounding streets must accommodate the size of residential lots required in the area by the zoning ordinance and to provide for convenient access, circulation control and safety of street traffic.
- B. Block Length: In general, intersecting streets should be provided at such intervals so as to serve cross traffic adequately and to meet existing streets. Where no existing plats control, the blocks in residential subdivisions should not exceed one thousand two hundred feet (1,200') nor be less than three hundred feet (300') in length, except where topography or other conditions justify a departure from this minimum.
- C. Block Width: The width of the block should normally be sufficient to allow two (2) tiers of lots of minimum depth as required by the zoning ordinance except adjoining a lake, stream, river, railroad or arterial or where one tier or lot is necessary because of topographic conditions. Blocks intended for business or industrial uses should be of such width as to be considered most suitable for their respective use, including adequate space for off street parking, deliveries and loading. Such facilities should be provided with safe and convenient limited access to the street system. (Ord. 2004-41, 1-3-2005)

**11-5-4: LOTS:**

- A. Area: The minimum lot area, width and depth should not be less than that established by the city zoning ordinance in effect at the time of adoption of the final plat.
- B. Side Lot Lines: Side lines of lots should be at right angles to street lines, radial to curved street lines or radial to accommodate site specific topographic conditions.
- C. River Frontage Lots: Such lots should be designed so that the lot lines extended will maintain the closest approximation to riparian rights.
- D. Frontage On Two Streets: Double frontage, or lots with frontage on two (2) parallel or nonintersecting streets should not be permitted, except where lots back on arterial streets or highways, or where topographic or other conditions render subdividing otherwise unreasonable.

E. Driveway Restrictions: In the case where a proposed plat is adjacent to a limited access highway, other major highway, principal or minor arterial streets, no direct vehicular access from individual lots to such streets and roads will be permitted. (Ord. 2004-41, 1-3-2005)

### **11-5-5: STREETS:**

- A. Conformance: Proposed streets must conform to state, metropolitan, and county highway plans which have been prepared, adopted and/or filed as prescribed by law.
- B. Topography: Streets should be logically related to the topography, so as to produce usable lots and reasonable grades.
- C. Access: Access must be given to all lots and portions of the tract in a subdivision and to adjacent unsubdivided parcels, unless the topography clearly indicates that such connection is not feasible. Reserved strips and landlocked areas must not be created.
- D. Continuation: The arrangement of streets in new subdivisions should make provision for the appropriate continuation of existing streets in adjoining areas.
- E. Projection: Where adjoining areas are not subdivided, but in the future may be subdivided, the arrangement of streets in a new subdivision should make provision for the proper projection of streets into adjoining areas by carrying the new streets to the boundaries of the new subdivision at appropriate locations. A temporary turnaround facility may be required at the closed end, in conformance with cul-de-sac size requirements. Temporary facilities will not require curb and gutter and the construction standards will be established by the city engineer.
- F. Arrangement: The arrangement of arterial and collector streets should be considered in their relation to the reasonable circulation of traffic, to topographic conditions, to runoff of storm water, to public convenience and safety and in their appropriate relation to the proposed uses of the area to be served.
- G. Provisions For Resubdivision Of Large Lots And Parcels: When a tract is subdivided into larger than normal building lots or parcels which have the potential for further subdivision, such lots or

parcels should be so arranged as to permit the logical location and openings of future streets and appropriate resubdivision, with provision for adequate utility connections for such resubdivision.

H. Dead Ends: Dead end streets will be prohibited, except as stated in subsection E of this section.

I. Private Streets: Private streets are prohibited, except in the case of a planned unit development and/or approval of the city council. No public street improvement will be approved for any private street.

J. Service Streets: Where a subdivision abuts or contains an existing or planned major arterial or a railroad right of way, a street approximately parallel to and on each side of such arterial and right of way may be required for adequate protection of residential properties and separation of through and local traffic. Such service streets must be located at a distance from the major arterial or railroad right of way suitable for appropriate use of the intervening land, as for park purposes in residential districts, or for commercial and industrial purposes in appropriate districts. Such distances should be determined with due regard for the requirements of approach grades and future grade separations.

K. Design: The street design should not be such as to cause hardship to owners of adjoining property in platting their own land and providing convenient access to it.

L. Cul-De-Sac Streets: Cul-de-sac streets permanently designed as such, must not exceed six hundred feet (600') in length, including a terminal turnaround which must be provided at the closed end, with a right of way radius of not less than sixty feet (60'). The length will be measured along the centerline from the nearest intersection to the center point of the cul-de-sac. (Ord. 2004-41, 1-3-2005)

#### **11-5-6: ALLEYS:**

- A. Location Permitted: Alleys or service drives may be provided in residential, commercial and industrial districts.
- B. Widths: The right of way width of all alleys or service drives must be at least twenty four feet (24') in commercially or industrially zoned areas.
- C. Grades: All centerline gradients in alleys must be at least five-tenths percent (0.5%) and must not exceed six percent (6%).
- D. Surfacing: All alleys must be hard surfaced with concrete or asphalt, with concrete valley gutter with a four foot (4') minimum width. (Ord. 2004-41, 1-3-2005)

### 11-5-7: STREET DESIGN:

- A. Widths: Street right of way widths will be as determined in the comprehensive plan and on the official street map, and where applicable, must conform to county and state standards for trunk highways. In cases where no standard is provided, the following standards will apply:

	ROW Width (Minimum) In Feet	Paved Width Curb To Curb (Minimum) In Feet
All uses:		
Minor arterial <sup>1</sup>	120	40
Parkway <sup>1</sup>	80	32
Collector <sup>1</sup>	76 _ 80	28
Local collector, parking on both sides of street	80	38
Local collector, parking on 1 side of street	80	32
Local collector, no on street parking	80	26

Cul-de-sac turnaround	60 foot radius	40 foot radius
Marginal access/frontage roads <sup>2</sup>	50	26
Residential uses:		
Multiple-family local, parking both sides of street	70	38
Multiple-family local, parking 1 side of street	60	32
Single-family local, parking on 1 side of street	60	30
Single-family local, parking on both sides of street	66	36
Single-family local, no on street parking	50	26

**Notes:**

1. No on street parking will be permitted for newly platted and newly constructed roadways unless supported by appropriate analysis and approved by the city council.
2. Marginal access/frontage roads are not designed for on street parking and must provide an additional 6 feet for each on street parking lane.

- B. Street Intersections:** Insofar as practical, streets should intersect at right angles. In no case will the angle formed by the intersection of two (2) streets be less than seventy five degrees (75°) or more than one hundred five degrees (105°). Intersections having more than four (4) corners will be prohibited. (Ord. 2012-10, 5-29-2012)
- C. Tangents:** A tangent of at least one hundred feet (100') must be introduced between reverse curves on arterial and collector streets.
- D. Deflections:** When connecting street lines deflect from each other at one point by more than ten degrees (10°), they should normally be connected by a curve with a radius adequate to ensure a sight distance of not less than five hundred feet (500') for arterials, three hundred feet (300') for collectors, and two hundred feet (200') for all other streets. The planning commission may allow greater or lesser sight distances.
- E. Street Intersection Jogs:** Street intersection jogs with centerline offsets of less than one hundred

fifty feet (150') are prohibited.

- F. **Access To Principal Arterials:** Full access to such principal arterials should normally be at intervals of not less than one-half ( $\frac{1}{2}$ ) mile and through existing and established crossroads where possible. Conditional access may be allowed at intervals of not less than one-fourth ( $\frac{1}{4}$ ) mile.
- G. **Access To Minor Arterials:** Full access to such minor arterials should normally be at intervals of not less than one-fourth ( $\frac{1}{4}$ ) mile and through existing and established crossroads where possible. Conditional access may be allowed at intervals of not less than one-eighth ( $\frac{1}{8}$ ) mile.
- H. **Access To Collectors:** Full access to such collectors should normally be at intervals of not less than one-eighth ( $\frac{1}{8}$ ) mile and through existing and established crossroads where possible. (Ord. 2004-41, 1-3-2005)
- I. **Access To Local Collectors:** Full access to such local collectors should normally be at intervals of not less than three hundred thirty feet (330'). (Ord. 2012-10, 5-29-2012)
- J. **General Access:** Access to principal arterials, minor arterials, and collectors that are located in the urban core. Access to such roadways may be granted at the discretion of the city engineer at intervals of not less than three hundred (300) to six hundred sixty feet (660').
- K. **Platting Of Small Tracts:** In the platting of small tracts of land fronting on a principal arterial, minor arterial, or collector where there is no convenient access to existing entrances and where access from such plat would be closer than one-fourth ( $\frac{1}{4}$ ) mile from an existing access point, a temporary entrance permit may be granted. Provision will be made in such plats for the connection of roads to neighboring land. As the neighboring land is platted and developed and access becomes possible at a preferred location, such temporary entrance permits will become void at the discretion of the city.
- L. **Half Streets:** Half streets are prohibited except where it will be practical to require the dedication of the other half when the adjoining property is subdivided, in which case the dedication of a half street may be permitted. The probable length of time elapsing before dedication of the

remainder must be considered in this decision.

- M. **Inadequate Street Width:** Where a subdivision abuts or contains an existing street of inadequate width, sufficient additional width will be provided to meet the above standards.
- N. **Additional Width:** Additional right of way and roadway widths may be required to promote public safety and convenience when special conditions require it.
- O. **Corner Radii:** Roadways of street intersections will be rounded by a radius of not less than twenty feet (20'). Corners at entrances to the turnaround portions of cul-de-sacs must be rounded by a radius of not less than twenty feet (20').
- P. **Curb And Gutter:** Concrete curb and gutter will be included as part of the required street surface improvement and will be designed for installation along both sides of all roadways. With the exception of multiple-family development, mountable curbing may be allowed within residential subdivisions. Barrier curb and gutter will be required in multiple-family, commercial and industrial subdivisions.
- Q. **Street Designation:** Whenever practical, streets and avenues will be designated numerically. The following policies may be generally applied when designating awkward street and avenue configurations.
1. Cul-de-sacs less than three hundred feet (300') will assume the designation of the street or avenue they abut.
  2. Loops must be designated avenues, streets or a combination of both, depending on the depth of the configuration. Generally, the longer the length or depth, the greater the applicability for a separate street and avenue designation. For short loops, the word "circle" must be used to indicate the configuration. Upon approval of the city council, streets may be named when such streets are not through streets.
  3. No street names will be used that duplicate or may be confused with the names of existing streets, unless a new street is a continuation of or in alignment with the existing or platted street. In that event, it must bear the same name of the existing or platted street. Street names must conform to the city's street naming and property numbering system as applicable.
- R. **Minimum Standards:** Private streets, at a minimum, must be designed to provide twenty four feet (24') of access lanes and be constructed to a minimum depth of five inches (5") of concrete or eight inches (8") of asphalt. (Ord. 2004-41, 1-3-2005; amd. Ord. 2012-10, 5-29-2012)



### **11-5-8: SIDEWALKS:**

- A. All new subdivisions within the city shall provide sidewalks on both sides of all arterial, collector, local and cul-de-sac street(s). A developer, in connection with the platting of a new subdivision or replatting a subdivision, shall submit a sidewalk plan for approval by the planning commission and city council, which plan shall be incorporated into a developer's agreement for that plat.

A sidewalk plan may be submitted by the developer which illustrates the placement of sidewalks on one side of a street or areas with no sidewalks. Factors that the planning commission and city council shall consider include, but are not limited to:

1. The expected population density of the area;
2. The location of pedestrian traffic generators within walking distance;
3. The relationship of the subdivision to adjacent existing and projected land uses;
4. Design of the subdivision for which sidewalks are required; and
5. Existing and/or planned sidewalk connections adjacent to the subdivision. (Ord. 2012-10, 5-29-2012)

- B. All sidewalks proposed for a subdivision must conform to the standards outlined in section 11-6-3 of this title. (Ord. 2004-41, 1-3-2005; amd. Ord. 2012-10, 5-29-2012)

### **11-5-9: BIKE PATHS:**

- A. Bike paths will be required for those subdivisions within the city where such need has been identified within the metropolitan bicycle and pedestrian plan or within an applicable growth area plan. (Ord. 2004-41, 1-3-2005)

### **11-5-10: BOULEVARD TREES:**

- A. All subdivisions within the city will be required to provide boulevard trees in conformance with the standards outlined below:

1. All boulevard trees planted will be a minimum of a one and three-fourths inch ( $1\frac{3}{4}$ " ) diameter, and of a variety(ies) which shall be agreed to by the city and owner and

- incorporated within developers agreement.
2. For any residential lot a boulevard tree may not be planted until the installation of sidewalk and fine grading of the area that lies between the street curb and the sidewalk is complete.
  3. The number of boulevard trees to be planted on any residential lot will be equivalent to that lot's total linear footage along the city right of way divided by thirty feet (30') provided the total number of boulevard trees planted on any residential lot may be reduced so as to not conflict with driveways, fire hydrants, easement locations or other impediments.
  4. Boulevard trees will not be required within cul-de-sac roadways.
  5. The installation of boulevard trees will be allowed:
    - a. By any property owner of record in accordance with an executed developers agreement.
    - b. By the city or its agent at such time as any subdivision is determined by the city to be eighty percent (80%) developed (a structure for which a building permit has been issued by the city has been constructed on a lot).
  6. Any property owner of record will be informed thirty (30) days prior to the planting of boulevard trees, by the city or its agent.
  7. Costs associated with the acquisition and planting of boulevard trees within each subdivision will be paid in full and assessed equally on a per lot basis within said subdivision provided any property owner of record who has acquired and planted a boulevard tree in accordance with all provisions of an executed developers agreement, at their own expense, will only be assessed the per lot assessment for trees installed along side lot frontage. (Ord. 2004-41, 1-3-2005)

#### **11-5-11: WASTEWATER DISPOSAL AND STORM DRAINAGE FOR AREAS WITHOUT CENTRAL OR PUBLIC SERVICES:**

- A. **On Site Sewer System:** In areas being platted without central or public sewers, the on site sewer system, including the size and relative location of same, must be in conformance with county, township, state and federal requirements including any FEMA rules and regulations pertinent to site sewer and water. When such requirements conflict, the most restrictive will apply. Subdivisions and/or developments utilizing on site wastewater systems are required to connect to public facilities in accordance with this code, and pay any proportionate costs or applicable fees, when such facilities become available.
- B. **Storm Water Drainage Facilities:** Storm water drainage facilities, where required, must be designed to convey the flow of surface waters without damage to persons or property. The system must ensure drainage at all points along streets, and provide positive drainage away from building to accommodate frequent floods. Drainage plans must be consistent with local

and regional drainage plans. The facilities must be designed to protect against surface erosion and siltation of surface water and to prevent the discharge of excess runoff onto adjacent properties. (Ord. 2004-41, 1-3-2005)

### **11-5-12: DRAINAGE:**

A complete and adequate drainage system design approved by the city engineer will be required for all subdivisions and may include a storm sewer system or system of open ditches, culverts, pipes, catch basins and ponding areas, or a combination thereof consistent with the provisions of the storm water ordinance. (Ord. 2004-41, 1-3-2005)

### **11-5-13: EASEMENTS:**

All easements must be dedicated by appropriate language on the final plat as required by law and provisions of this title.

- A. Utility Easements: Easements of a minimum of ten feet (10') wide centered on rear and other lot lines, must be provided for public and private utilities where necessary. When it is not practical to center easements, the fully required easement width may be required along one property line. Said easements must have continuity of alignment from block to block. The easements, when approved, must not thereafter be changed without the approval of the city council pursuant to section 13.06 of the city charter, as may be amended.
  
- B. Drainage: Easements must be provided along each side of the centerline of any natural watercourse or drainage channel to a width sufficient to provide proper maintenance and protection and to provide for storm water runoff. Where necessary, drainage easements corresponding with lot lines must be provided. Such easements for drainage purposes will not be less than twenty feet (20') in width or a width equal to the required side yard setback established by the respective zoning district in which the property is located, whichever is least.
  
- C. Sight: Sight easements beyond required zoning setback regulations may be required by the city and state department of transportation to protect major intersections on the state trunk highway system, on arterial and collector streets and at the intersection of railroad crossings. (Ord. 2004-41, 1-3-2005)

## **11-5-14: PROTECTED AREAS:**

Where land proposed for subdivision is deemed environmentally sensitive by the city due to the existence of wetlands, drainageways, watercourses, and/or floodable areas, the design of said subdivision must clearly reflect all necessary measures of protection to ensure against adverse environmental impact. Based upon the necessity to control and maintain certain sensitive areas, the city will determine whether said protection will be accomplished through lot enlargement and redesign or dedication of those sensitive areas in the form of outlots. In general, measures of protection must include design solutions which allow for construction and grading involving a minimum of alteration to sensitive areas. Where these areas are to be incorporated into lots within the proposed subdivision, the applicant will be required to demonstrate that the proposed design will not require construction on slopes over eighteen percent (18%), or result in significant alteration to the natural drainage system such that adverse impacts cannot be contained within the plat boundary. (Ord. 2004-41, 1-3-2005)

## **11-5-15: PARK LAND DEDICATION REQUIREMENTS:**

- A. General Requirements: Because new residential development increases the population of the community and demand on the parks system, as a prerequisite to residential plat approval and at the sole determination by the city, applicants must dedicate land for parks, playgrounds, public open spaces, trails or bikeways and/or must make a cash dedication to the city.
1. Park land and open space dedication shall be considered in relation to the city comprehensive plan, growth area plans and parks master plan, should such planning documents exist at the time of plat, or is as determined to be in the best interest of the city.
  2. Where private open space for park and recreation purposes is provided in a proposed subdivision, such areas may be used for credit, at the discretion of the city, against the requirement of dedication for park and recreation purposes provided, the city finds it is in the public interest to do so.
  3. The city may elect at its sole discretion to receive a combination of cash and land dedication.
  4. During preliminary plat submission the applicant must provide the city with the number and type of residential units which will occupy the platted area. If during development the number or type of units are altered, the applicant will be required to make a cash dedication to account for the increased density of the project. However, if the number of units are decreased, the applicant will not be refunded that amount of cash or land dedicated during original plat approval.
  5. Property being replatted with the same number of units will be exempt from all park land dedication requirements. If the number of units is increased or if land outside the previously recorded plat is added, then the park land dedication and/or park cash contributions will be based on the additional units added to the plat.

- B. Park Land Dedication:** In all new residential subdivisions, land must be dedicated for public recreation use or open space as established by the city council. The dedicated land must be in addition to property dedicated for streets, alleys, easements, water detention or other public ways unless otherwise provided herein. The amount of land dedicated will be based on the type of development according to the following:

Type Of Dwelling Unit	Minimum Area Dedicated Per Dwelling Unit
Single or two-family	929 square feet
Multiple-family	669 square feet

1. Land to be dedicated must be reasonably suitable for its intended use as determined by the city and must be at a location convenient to the public to be served. Factors used in evaluating the adequacy of proposed park and recreation areas must include size, shape, topography, geology, hydrology, tree cover, access and location.
  2. When land is dedicated and deeded to the city for park purposes, it will be the responsibility of the city to maintain such dedicated property.
  3. Land dedication to the city must be in the form of outlots.
  4. The preliminary plat must show the location and dimensions of all areas to be dedicated in this manner.
  5. When a proposed park, playground, recreational area, or other public ground has been indicated on the city's official map, within the comprehensive plan, growth area plan, or park master plan and is located in whole or in part within a proposed plat, it must be dedicated to the appropriate governmental unit, at the sole discretion of the city.
  6. Land area conveyed or dedicated to the city will be used in calculating allowable density per the city zoning ordinance.
  7. Wetlands, ponding areas and drainageways accepted by the city may not be considered in the park land and/or cash contribution to the city, where such areas have been determined to have a park function, as approved by the city council.
- C. Payment In Lieu Of Dedication:** When, in the opinion of the city and at its sole discretion, it is impractical, inappropriate, and/or in the best interest of the city for a subdivision to not make a dedication of land for public use or make only a partial dedication of land, the applicant will be required to pay a cash fee based on the type and number of dwelling units. The in lieu amount shall be based on the average fair market value of land at the time of plat without public improvement, as determined by the city assessor and as approved annually by the city council.
1. Park cash contributions are to be calculated and paid in full at the time of final plat approval.

2. Cash contributions for parks and trails will be deposited in either the city's park fund or similar fund and will only be used for acquisition and development of future parks and trails or development of existing sites as determined by the city. Additionally, to the extent possible, said funds should be utilized in a timely manner within a benefiting area to the development, or within a regional park facility.

D. Purchase And Assessment Of Park Land: The requirement for park land dedication or payment in lieu of dedication may be waived by the city when an agreement incorporated into a developer's agreement has been executed between the city and developer. Such agreement must require the developer to petition for park improvements to be assessed against the property owned by the developer, which may include property outside the current plat. The agreement must set forth the land to be purchased by the city for park purposes and the purchase price for the land. In addition, the agreement must set forth the general type of improvements to be included in the petition for park improvements, as well as the maximum amount of money that may be assessed. Such maximum amount may be based on a sliding scale based on the density of the development. The city may enter into such an agreement only if the city council determines that such an agreement results in a more favorable result to the city than the imposition of the standard park land dedication or payment in lieu of dedication requirements. (Ord. 2004-41, 1-3-2005)

### **11-5-16: DEDICATION OF STORM WATER RETENTION AREAS:**

Upon approval by the council, the applicant may be required to dedicate to the public up to six percent (6%) of the land proposed to be subdivided for storm water retention areas. The six percent (6%) dedication may be considered in addition to the park land dedication required by section 11-5-15 of this chapter. Additional land may be required for storm water facilities as identified in an approved growth area plan, storm water master plan, or to satisfy the requirements of the storm water ordinance. (Ord. 2004-41, 1-3-2005)

### **11-5-17: OTHER REQUIREMENTS:**

The design features set forth in this chapter are minimum requirements. The city may impose additional or more stringent requirements concerning lot size, streets and overall design as deemed appropriate considering the property being subdivided based upon site considerations and the Moorhead comprehensive plan. (Ord. 2004-41, 1-3-2005)

## **Chapter 6**

## REQUIRED IMPROVEMENTS

### 11-6-1: MONUMENTS:

Monuments must be placed at all block and lot corners, angle points, points of curves in streets and at intermediate points as will be required by the city. The monuments must consist of a number five (5) deformed reinforcement rod, a minimum of thirty inches (30") long, which with the exception of lot corner monuments, is placed in concrete a minimum of four feet (4') deep and six inches (6") in diameter or a manufactured monument. Such monuments must be in place at the time of final plat approval.

Stakes showing the locations of easements must be provided by the subdivider upon request of the city. The stakes must be wood lathes and will be used only to ensure the proper location of utilities on the easements. The stakes must not be intended to be permanent survey monuments. (Ord. 2004-41, 1-3-2005)

### 11-6-2: STREETS AND ALLEYS:

- A. Grading: The full width of the right of way of each street and alley dedicated in the plat must be graded in accordance with the plan approved by the city engineer. Grading should provide for easy installation of sidewalks at some future date.
- B. Paving: For subdivisions within the city, all streets and alleys must be improved with a concrete or bituminous surface. Streets to be paved must be surfaced for a seven (7) ton axle weight capacity using current Minnesota department of transportation design standards. Streets not to be paved must be improved in accordance with the county or city standards, whichever applies. No building permit will be issued for any lot or parcel in a subdivision prior to the installation of the first lift of bituminous surfacing or concrete surfacing on the streets thereof. Exceptions to this provision may be granted by the city council at their discretion as part of a developer's agreement.
- C. Concrete Curb And Gutter: Concrete curb and gutter of a city approved design will be required for all paved streets.
- D. Boulevards: All boulevards must have four inches (4") of top soil (black dirt) placed on them and then be sodded or seeded.

E. **Street Signs:** Street signs of standard design approved by the city must be installed at each street intersection.

F. **Traffic Control Signs:** Traffic control signs must be installed at the request of the city. (Ord. 2004-41, 1-3-2005)

### **11-6-3: SIDEWALKS:**

Unless approved by the city engineer and established as part of a developers agreement, sidewalks, where required:

- A. Must be a minimum of four and one-half feet ( $4\frac{1}{2}'$ ) wide and setback a minimum of seven feet (7') from the curb line.
- B. Must be concrete, four inches (4") thick, placed on a two inch (2") sand cushion.
- C. Must slope one-fourth inch ( $\frac{1}{4}"$ ) per foot away from the property line and the profile grade must not exceed eight percent (8%). All grades must be constructed as approved by the city engineer.
- D. Must be designed to accommodate applicable ADA requirements and street intersection ramps.
- E. Costs associated with the installation of sidewalks within each subdivision will be paid in full and assessed equally on a per lot basis within said subdivision provided any property owner of record who has installed sidewalk in accordance with all provisions of an executed developers agreement, at their own expense, will only be assessed the per lot assessment for sidewalks installed along side lot frontage. (Ord. 2004-41, 1-3-2005)

### **11-6-4: BIKE PATHS:**

Unless approved by the city engineer and established as part of a developers agreement, bike



paths, where required:

- A. Must be a minimum of ten feet (10') wide, setback a minimum of seven feet (7') from the curb line, and placed within the right of way or upon an easement of at least twenty feet (20').
- B. Must be constructed of concrete or asphalt a minimum of four inches (4") thick, placed on a minimum of two inch (2") sand cushion.
- C. Must slope one-fourth inch ( $\frac{1}{4}$ " ) per foot away from the property line and the profile grade must not exceed eight percent (8%). All grades must be constructed as approved by the city engineer. (Ord. 2004-41, 1-3-2005)

#### **11-6-5: PUBLIC UTILITIES:**

- A. Water Main: A minimum water main of six inch (6") PVC pipe or other approved pipe will be required. Mains over six inches (6") in size may be required, and the additional cost will be allocated pursuant to established city policies. In cul-de-sac streets of more than one hundred fifty feet (150'), provisions must be made to loop feed water mains as "dead end" water mains are not permitted, unless otherwise approved by the city engineer.
- B. Fire Hydrants: Installation must be pursuant to plans approved by the city engineer and city fire chief. A hydrant will be required in the turnaround area of all permanent cul-de-sac streets.
- C. Sanitary Sewer: Unless otherwise required, a sanitary sewer of eight inch (8") pipe must be installed as the minimum size, placed at grades approved by the city engineer. Mains over eight inches (8") in size may be required, and the additional cost will be allocated pursuant to established city policies. Service wyes must be a minimum of four inches (4") in diameter.
- D. House Services: Each house service must be run from the main to the property line, where a cap or plug will be placed until the service is extended to the structure. A one inch (1") type K copper water service, or approved equal; corporation cock, curb box and stop; and four inch (4") PVC schedule 40 pipe, or approved equal, sewer service must be the minimum requirements, and they may be placed in a common trench.

- E. As Built Drawings: Reproducible "as built" drawings showing all utilities and improvements must be furnished to the city by the applicant of all required improvements in developments where the applicant has been responsible for improvements. Such "as built" drawings must be certified to be true and accurate by the registered engineer responsible for the installation of the improvements. (Ord. 2004-41, 1-3-2005)

#### **11-6-6: SANITATION:**

Water and sewer lines must be installed and connected to the public system to serve all lots within the proposed subdivision under the provisions of applicable statutes and ordinances. The city council will require the installation of water and sewer mains, at the applicant's expense or under the provisions of applicable statutes and ordinances. (Ord. 2004-41, 1-3-2005)

#### **11-6-7: WATER SUPPLY:**

An individual well, if permitted by the city council, must be constructed in accordance with the Minnesota state well code and the following standards will apply:

- A. In subdivisions of less than forty (40) lots, the applicant must provide evidence that lots proposed for individual wells will have a good chance of securing an adequate supply of potable water. In those cases where evidence cannot be provided, the city may require the applicant to install an approved central water system and service each lot with an adequate supply of potable water.
- B. In subdivisions of forty (40) or more lots, the applicant must install an approved central water system and service each lot with an adequate supply of potable water.
- C. Subdivisions and/or developments utilizing on site well systems are required by this code to connect to public facilities as required by this code, and pay any proportionate costs or applicable fees, when such facilities become available. (Ord. 2004-41, 1-3-2005)

#### **11-6-8: WASTEWATER DISPOSAL:**

- A. Sanitary sewer mains and service connections must be installed to serve all the lots in the

subdivision and must be connected to the public system when within the city limits and/or utility service area.

- B. When a subdivision lies outside of the city limits all applicable state and county requirements must be satisfied. (Ord. 2004-41, 1-3-2005)

### **11-6-9: DRAINAGE:**

All surface and underground drainage systems must be installed by the applicant to adequately remove all natural drainage that accumulates on the developed property. All such systems must provide complete removal and a permanent solution for the removal of drainage water and will be subject to city review and approval. (Ord. 2004-41, 1-3-2005)

### **11-6-10: UTILITIES LOCATION:**

Except for utilities installed by the city, all utilities must be placed underground. All underground work must be completed prior to street surfacing. All utility lines for telephone and electrical service must be placed in rear line easements when carried on overhead poles. (Ord. 2004-41, 1-3-2005)

### **11-6-11: CONSTRUCTION PLANS, INSPECTION AND WARRANTY:**

- A. For municipal improvements which are publicly financed, construction plans for the required improvements conforming in all respects with the standards and ordinances of the city shall be prepared by the city. The city may contract with a professional engineer licensed in the state, with input from the owner/developer, to complete the design work. The owner/developer must acknowledge and approve, in writing, proposed project costs and any related special assessments as outlined in the preliminary engineering report prior to award of a construction bid. The city and/or city's contracted professional engineer will complete construction observation and contract administration. All project costs shall be eligible for public financing.
- B. For municipal improvements which are privately financed, construction plans for the required improvements conforming in all respects with the standards and ordinances of the city shall be prepared by a professional engineer licensed in the state contracted by the owner/developer. A preliminary engineering report and construction plans, together with the quantities of construction items and estimated cost, must be reviewed and approved by the city prior to

award of a construction bid. The owner/developer must provide written approval of proposed project costs, as outlined in the preliminary engineering report. A plan review fee, as established by the city council, shall be charged. The owner/developer shall contract with a professional engineer licensed in the state to complete construction observation and contract administration. Upon completion of construction, the owner/developer must provide to the city a written warranty certified by a professional engineer licensed in the state that all required improvements on the site meet or exceed all city standards, that such improvements have been inspected and tested in accordance with city standards, and that such improvements have been constructed in accordance with the approved plans. The owner/developer shall be responsible for the cost of all inspections and testing. Upon certification and delivery of as built plans, the city will accept and maintain all public improvements. All plans will become part of the written agreement.

- C. For municipal improvements which are publicly financed in part, construction plans for the required improvements conforming in all respects with the standards and ordinances of the city shall be prepared by a professional engineer licensed in the state contracted by the owner/developer. A preliminary engineering report and construction plans, together with the quantities of construction items and estimated cost, must be reviewed and approved by the city prior to award of a construction bid. The owner/developer must acknowledge and approve, in writing, proposed project costs and any related special assessments as outlined in the preliminary engineering report prior to award of a construction bid. A plan review fee, as established by the city council, shall be charged. The city and/or city's contracted professional engineer will complete construction observation and contract administration. The municipal improvements, construction observation, and construction contract administration costs shall be eligible for public financing. (Ord. 2012-10, 5-29-2012)

## **Chapter 7**

# **SUBDIVIDING IN FLOOD AREAS**

### **11-7-1: WARNING AND DISCLAIMER OF LIABILITY FOR FLOODING:**

This title does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This title will not create liability on the part of the city of Moorhead or any officer or employee thereof for any flood damages that result from reliance on this title or any administrative decisions lawfully made thereunder.

No responsibility or liability will arise from the design or operation of subdivision drainage facilities dedicated to the city until the city has accepted such dedication. (Ord. 2012-1, 2-27-2012)

### **11-7-2: LAND REQUIREMENTS:**

As stated in section 11-5-2 of this title, land must be suited to the purpose for which it is to be subdivided. No plat will be approved if the site is not suitable for the purposes proposed by reason of potential flooding. (Ord. 2012-1, 2-27-2012)

### **11-7-3: SUBDIVISION FLOODING AND FLOOD CONTROL:**

- A. No land will be subdivided if the council finds the land unsuitable for subdividing due to flooding, inadequate drainage, water supply, or wastewater treatment facilities in accordance with this title and title 10 of this code. Any building sites on lots within the flood fringe district must be constructed in accordance with this title and title 10 of this code. All subdivisions must have water and sewer disposal facilities that comply with the provisions of this title, and any applicable building, health or safety codes, including the Minnesota state building code. Each of the above requirements must take into consideration the 100-year flood profile and other supporting technical data in the flood insurance study and the flood insurance rate map.
- B. In reviewing proposed subdivisions in the floodway or flood fringe overlay districts, all criteria in section 10-2-2; title 10, chapter 17, article B; and section 10-18-4 of this code shall be considered. (Ord. 2012-1, 2-27-2012)

### **11-7-4: BUILDING SITE IMPROVEMENTS FOR FLOOD PRONE AREAS:**

- A. Should the city council determine that only a part of a proposed plat can be safely developed, it will limit development to that part and require that the specifications for development be consistent with its determination.
- B. When someone other than the applicant intends to develop the plat, and the city council determines that additional use controls are required to ensure safe development, it may require the applicant to impose appropriate deed restrictions on the land. Such deed restrictions must be inserted in every deed and noted on the face of the final recorded plat. (Ord. 2012-1, 2-27-2012)

### **11-7-5: PLAT AND DATA REQUIREMENTS:**

The applicant must prepare and submit a preliminary plat which includes the following flood related data:

A. As stated in section 11-4-1 of this title, a preliminary plat must include:

1. 100-year flood elevations, the regulatory flood protection elevation, and boundaries of floodway and flood fringe areas, if known, taking into consideration the flood insurance study and flood insurance rate map; and
2. Proposed fill, levees, structural flood works, channel modifications and other methods to address flood or erosion hazard areas in accordance with title 10, chapter 17, article B of this code and by use of the 100-year flood profile and other supporting technical data in the flood insurance study. This information must be submitted when requested by the city staff, consultants, advisory bodies, the planning commission, and/or city council to address site specific questions. (Ord. 2012-1, 2-27-2012)

#### **11-7-6: DENIAL OF PLAT:**

As stated in section 11-3-4 of this title, the planning commission may recommend denial and the council may deny a subdivision if it makes any of the following findings related to subdivision in flood prone areas:

- A. That the physical characteristics of this site, including, but not limited to, topography, percolation rate, soil conditions, susceptibility to erosion and siltation, susceptibility to flooding, water storage, drainage and retention, are such that the site is not suitable for the type of development, design or use; and
- B. That the proposed subdivision, its site, or its design adversely affects the flood carrying capacity of the floodway, increases flood stages or velocities, or increases flood hazards within the floodway or flood fringe or within other areas of the city. (Ord. 2012-1, 2-27-2012)



**OFFICE OF ADMINISTRATIVE HEARINGS**  
**Municipal Boundary Adjustment Unit**  
**Factual Information Form**

MBA Unit Docket Number: D-494 Moorhead/Moorhead Twp

This form is being completed by:

Name:

Representing: Moorhead Township

The term "subject area" refers to the area proposed for boundary adjustment.

**1. Population and Households:**

	Subject Area	City	Township/Other City
2000 Population			
2010 Population			
Current Population	0		
Current Households	0		
Projected in 5 Years			
Source of Data			

**2. Geographic Features:**

**A.**

	Subject Area	City	Township	Adjacent Unit of Gov't
Total Acreage				

**B.** Describe any waterways within or adjacent to the subject area (rivers, streams, shore lands, protected water or wetlands, watershed districts):

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**C.** Are the waterways subject to any State or Federal regulations? If yes, please describe:

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**D.** Describe the soils in the subject area:

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**E.** Describe the natural terrain in the subject area:

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3. The perimeter of the subject area is bordered approximately:

- \_\_\_\_\_ % by the city
- \_\_\_\_\_ % by the Township
- \_\_\_\_\_ % by other unit of government

4. Present pattern of physical development, planning, and intended land use(s):

A. Fill in the approximate acreage for each land use type.

	Subject Area	City	Township
Residential			
Institutional			
Commercial/Retail			
Industrial			
Agricultural			
Vacant Land			

B. What type of development/zoning is proposed for the subject area?

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C. What are the current land use(s)/zoning in the adjacent area(s)?

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5. Existing Transportation Network:

A.

	Subject Area	City	Township
How many miles of highways, streets, and roads?			

B. Are there any transportation changes planned:

- In the subject area? Yes  No
- In the city? Yes  No
- In the adjacent area(s)? Yes  No

C. What are the road/highways that serve the subject area?

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**6. Land Use Controls and Planning:**

**A. Comprehensive Plan** (Attach a copy of the portion that applies to the subject area):

	City	Township	County	Region
Adoption Date				
Status of Plan				
No Existing Plan				

**B.** If any area planning authorities (planning commissions, Met Council, Regional Development Commissions, etc.) have adopted an official position on the proposed boundary adjustment, please describe and attach a copy of the position:

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**C.** Please note where the following exists and provide any necessary explanations on how it relates to the proposed boundary adjustment. (Since it may be possible to have two or more ordinances attempt to regulate the same area, please indicate whose ordinance presently applies to the subject area.) **Attach copies of maps and portions of ordinances that apply to the subject area.**

	City Adoption Date	Township Adoption Date	County Adoption Date	Which Applies to Subject Area?
Zoning Regulations				
Subdivision Regulations				
Official Map				
Capital Improvements/ Budget				
Fire Code				
Shoreland Ordinance				
Floodplain Ordinance				
Wild and Scenic Rivers Ordinance				
Sanitation Ordinance				

**D.** Is the subject area, or any portion thereof, eligible for "Green Acres" (Minn. Stat. § 273.111)? If yes, please describe:

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E. Has the city established separate "Urban and Rural Taxing Districts" (Minn. Stat. § 272.67) in the subject or adjacent area(s)? If yes, please describe:

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7. Government services being provided:  
Please place check marks where appropriate:

	City provides to the city	City provides to the subject area	City will provide to the subject area	Township provides to the township	Township provides to the subject area
<b>Water</b>					
<b>Sanitary Sewer/Wastewater Treatment</b>					
<b>Storm Sewer</b>					
<b>Solid Waste Collection &amp; Disposal</b>					
<b>Fire Protection</b>					
<b>Law Enforcement</b>					
<b>Street Improvements</b>					
<b>Street Maintenance</b>					
<b>Administrative Services</b>					
<b>Recreational Services</b>					
<b>Other</b>					

A. Please provide any additional relevant information regarding the above mentioned government services:

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**B. Are new services necessary for the subject area?**

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**C. What is the current capacity of the sewer and water systems? How much is being used and by whom?**

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**D. Can necessary government services best be provided by the proposed boundary adjustment or would another type of boundary adjustment be more appropriate?**

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**8. Describe any existing or potential environmental problems and whether the proposed boundary adjustment is likely to improve or resolve these problems: (Example: ground or surface water, sewage treatment, air pollutants, noise and/or odors; effect on fish and/or wildlife; effect on historical, archaeological, and/or aesthetic resources; impairment of park lands, prime farmlands, wild or scenic rivers, and/or critical habitat; dump and/or disposal sites, etc.):**

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**9. Will the proposed boundary adjustment generate a need for an Environmental Assessment Worksheet (EAW) or an Environmental Impact Statement (EIS) If so, please explain why:**

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**10. Describe the plan of the receiving unit of government for providing governmental services to the subject area as well as the impact on those services:**

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**11. Describe the relationship and the effect of the proposed boundary adjustment on affected and adjacent school districts and communities:**

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**12. Fiscal Impact:**

	Subject Area	City	Township	Trend over last 3 years
Net Tax Capacity				

# MOORHEAD Township

REC'D BY  
MBA

AUG 24 2012

Tax Rates	Subject Area	City	Township	Trend over Last 3 years
County				
Local Unit of Gov't				
School District				
Special Tax District				
Insurance Rating (Fire)				
Levy Limit				
Actual Current Levy				
Total Bonded Indebtedness				

13. If the proposed boundary adjustment were approved:

A. Would the city/township suffer any undue hardship? If yes, please describe:

no

B. Would the symmetry of the city/township be affected? If yes, please describe:

no just adds land and tax base back

C. Should the subject area be increased or decreased? If yes, please describe and attach a revised area map:

leave as is

14. Has the city/township provided any improvements to the subject area? If so, what improvements were provided and when:

none

15. Has the city/township assessed the subject area for the improvements? If yes, please describe:

no

16. Will the subject area be assuming any city/township indebtedness? If yes, please describe:

no debt

17. Has there ever been a previous boundary adjustment filed for this property or substantially the same property? If yes, when and what was the outcome?:

only annexation

18. Attach any additional information which you believe is important. If you have not supplied some information, please explain why:

\_\_\_\_\_  
\_\_\_\_\_

SUBMITTED BY:

City of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

Township of MOOREHEAD, this 20 day of August, 2012

Kevin L. Martin  
Township Chair

Diane Allen  
Township Clerk

BY: \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Property Owner

\_\_\_\_\_  
Property Owner

BY: \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Property Owner

\_\_\_\_\_  
Property Owner

Rev. 2/2012

**MINNESOTA STATE DEMOGRAPHER**  
**2011 POPULATION AND HOUSEHOLD ESTIMATES**

<b>CLAY COUNTY</b>	<b>POPULATION</b>	<b>HOUSEHOLDS</b>
<b>Moorhead, City</b>	<b>38,516</b>	<b>14,452</b>
<b>Moorhead, Township</b>	<b>169</b>	<b>68</b>