

CHAPTER 1

10.00 ADOPTION OF MUNICIPAL CODE OF VILLAGE OF KERKHOVEN

10.01 **Adoption Code.** The Ordinances of the Village of Kerkhoven are hereby revised and codified. Such codification is hereby adopted as the Municipal Code of the Village of Kerkhoven.

10.02 **Subsequent Ordinances.** Ordinances passed after the effective date of the Code shall be passed as amendments or additions to this Code (unless they are of limited or special application or are otherwise deemed to be not a part of this Code). Such ordinances shall be incorporated into this Code.

10.03. **Consecutive Number to Continue.** Consecutive chronological numbering of all ordinances as passed shall continue. Following the passage of such ordinance, the Village Clerk shall incorporate the ordinance into the provisions of the Municipal Code.

10.04. **Separability.** If any chapter, section, sentence, clause or other part of the Municipal Code of the Village of Kerkhoven shall be adjudged void or of no effect, for any reason whatsoever, said decision shall not affect the validity of any other portions of the Code.

10.05 **Penalty—Misdemeanor.** (Amended October 14, 2024). Every person convicted of a violation of any provision of this Code may be prosecuted for the commission of a misdemeanor and upon conviction may be punished by a fine and/or by imprisonment according to Minn. Stat. §609.02 and as amended.

10.06 **Publication of Code and Effective Date.** This codification of the Municipal Code of the Village of Kerkhoven, together with all indexes, supplements, appendices or other material as the Council may designate, shall be published in book or pamphlet form and a substantial quantity of copies shall be printed and available at the office of the Village Clerk for general distribution to the public upon payment of a reasonable price. The Municipal Code shall become operative and effective as soon as the Village Clerk shall publish a notice in an official newspaper of the Village stating that the Code has been passed and that printed copies of the Municipal Code are available at the office of the Village Clerk for general distribution upon payment of a reasonable price.

Derivation: July 24, 1969

CHAPTER 2

20.00 RULES OF CONSTRUCTION

20.01 **General.** Words and phrases shall be construed in their plain, ordinary and usual sense, except that technical words and phrases having a peculiar appropriate meaning in law shall be understood according to their technical import.

20.02 **Masculine, Feminine or Neuter.** Unless the context clearly requires otherwise, the use of either masculine, feminine or neuter gender shall include the other genders.

20.03 **Singular or Plural.** Unless the context clearly requires otherwise, the use of either singular or plural number shall include the other number.

20.04 **Past, Present or Future.** Unless the context clearly requires otherwise, the use of either past, present or future tense shall include the other tenses.

20.05 **Joint Authority.** Words importing joint authority to three or more persons shall be construed as authority to a majority of such persons.

20.06 **Computation of Time.** The time within which an act shall be done shall be computed by excluding the first and including the last day. If the last day is a Sunday or legal holiday, such day shall be excluded.

20.07 **Deputies.** Whenever the Municipal Code requires an act to be done, which act may be legally be done by an agent or employee, as well as the principal, such requirement shall be satisfied by the performance of such act by an authorized agent or employee.

20.08 **Conjunctions.** The words "or" and "and" may be read interchangeably in situations where the context requires it.

20.09 **Catch Lines.** The catch lines of the various sections of the Municipal Code printed in bold face type are intended to indicate the context of the section for the convenience of the reader and shall not be construed as a part of the section.

Derivation: July 24, 1969

CHAPTER 3

30.00 VILLAGE GOVERNMENT

30.01 **Corporate Seal.** The corporate seal of the Village of Kerkhoven shall be in the form designated by the Village Council and the said corporate seal shall remain in the control and custody of the Village Clerk.

30.02 **Council Meeting.** Regular meetings of the Village Council of the Village of Kerkhoven shall be held on the second and fourth ~~Tuesdays~~ Mondays of each month and shall commence at ~~7:30 p.m.~~ 6:30pm.
(Amended December 10, 2013)

30.03 **Special Meetings.** Special meetings of the Council may be called by the Mayor or any two members of the Council by filing written notice with the Clerk. At least one day before the meeting the Clerk shall notify each member of the time, place and purpose of the meeting. The one-day notice provision may be dispensed with when all of the Council members consent to waive the one-day notice provision. If any Council member so demands, written notices of any special meeting shall be sent to all of the Council members. The business conducted at a special meeting shall be limited to the purpose represented in the notice of meeting unless all of the Council members present agree to entertain other matters.

30.04 **Organizational Meeting.** At the first regular Council meeting in January of each year, the Council shall:

1. Designate the depositories of Village funds;
2. Designate the official newspaper;
3. Choose an acting Mayor from the Trustees who shall perform the duties of the Mayor during any disability or absence of the Mayor from the Village, or in case of a vacancy in the office of the Mayor, until a successor has been appointed and qualified.
4. Appoint such officers and employees and such members of boards, commissions and committees as may be necessary.

30.05 **Committee Chairman.** The committee shall be headed by a commissioner or chairman who may appoint such deputies as may be necessary to assist him in the proper performance of his duties.

30.06 **Committee Duties.** The duties of the commissioner or chairman and the various committees may be defined by the Council, as necessary, from time to time.

30.07 **Council Meetings Public.** All Council meetings, including special and adjourned meetings, shall be open to the public.

30.08 **Presiding Officer.** The Mayor shall preside at all meetings of the Council. In the absence of the Mayor, the acting Mayor shall preside. In the absence of both, the Clerk shall call the meeting to order and shall preside until the Council members present at the meeting choose one of their number to act temporarily as presiding officer.

30.09 **Parliamentary Procedure.** The presiding officer shall preserve order and force the rules of procedure herein prescribed and determine without debate, subject to the final decision of the Council on appeal, all questions of procedure and order. Except as otherwise provided by statute or by these Rules, the proceedings of the Council shall be conducted in accordance with *Roberts Rules of Order, Revised*.

30.10 **Appeal.** Any member may appeal to the Council from a ruling of the presiding officer. If the appeal is seconded, the member may speak once solely on the question involved and the presiding officer may explain his ruling, but no other Council member shall participate in the discussion. The appeal shall be sustained if it is approved by the majority of the members present exclusive of the presiding officer.

30.11 **Participation by Chair.** Whenever the presiding officer desires to speak on any question or to make or second any motion, he shall vacate the chair, designate the acting Mayor, or in his absence, some other Council member to preside temporarily and shall not resume the chair until the matter under consideration has been acted upon by the Council.

30.12 **Minutes.** The minutes of each Council meeting shall be kept by the Clerk, or in his absence, by the Deputy Clerk. In the absence of both, the presiding officer shall appoint a secretary pro tempore. Ordinances, Resolutions and claims need not be recorded in full in the minutes, if they appear in other permanent records of the Clerk and can be accurately identified from the description given in the minutes.

30.13 **Typewritten Minutes.** The minutes of each meeting shall be reduced to typewritten form, shall be signed by the Clerk, and upon demand, copies thereof shall be delivered to each Council member as soon as practicable after the meeting. At the next regular Council meeting following such delivery, approval of the minutes shall be considered by the Council. The minutes need not be read aloud, but the presiding officer shall call for any additions or corrections. If there is no objection to a proposed addition or correction, it may be made without a vote of the Council. If there is an objection, the Council shall vote upon the addition or correction. If there are no additions or corrections, the minutes shall stand approved.

30.14 **Order of Business.** Each meeting of the Council shall convene at the time and place appointed therefore. Council meetings shall be conducted in the following order:

1. Call to order.
2. Roll call.
3. Approval of minutes.
4. Public hearings.
5. Petitions, requests and communications.
6. Ordinances and Resolutions.
7. Reports of officers, boards and committees.
8. Unfinished business.
9. New business.
10. Miscellaneous.
11. Adjournment.

30.15 **Variance in Order.** The order of business may be varied by the presiding officer, but all public hearings shall be held at the time specified in the Notice of Hearing.

30.16 **Quorum.** At all Council meetings the majority of all the Council members elected shall constitute a quorum for the transaction of business.

30.17 **Quorum Necessary.** A majority of all members of the Council shall be necessary for approval of any Ordinance unless a larger number is required by statute. Except as otherwise provided by statute, a majority vote of a quorum shall prevail in all cases.

30.18 **Manner of Voting.** The votes of the members on any question pending before the Council may be by voice vote, standing vote or any other manner of voting which signifies the intention of the members; but if the vote is not unanimous, there shall be a roll call and the names of those voting for and against a question shall be recorded in the minutes. If any member being present does not vote, the minutes as to his name shall be marked "present—not voting."

30.19 Ordinances, Resolutions, Motions, Petitions and Communications.

1. Every Ordinance and Resolution shall be presented in writing and shall be read in full before a vote is taken thereon; but reading in full may be dispensed with by unanimous consent. All motions shall be recorded in the minutes and stated in full before they are submitted to a vote by the presiding officer. All petitions and other communications addressed to the Council shall be in writing and shall be read in full upon presentation of the same to the Council. They shall then be recorded in the office of the Clerk.
2. Every Ordinance and Resolution passed by the Council shall be signed by the Mayor, attested by the Clerk and filed by him in the Ordinance and Resolution book. Proof of publication of every Ordinance shall be attached to and filed with the Ordinance.
3. Every Ordinance and Resolution repealing a previous Ordinance or Resolution or section or subdivision thereof, shall give the number, if any, and the title of the Ordinance or Resolution to be repealed in whole or in part. No Ordinance or Resolution or section or subdivision thereof shall be amended by reference to the title alone, but such an amending Ordinance or Resolution shall set forth in full each section or subdivision to be amended.

30.20 Suspension or Amendment of the Rules. These rules or any of them may be temporarily suspended by a majority vote of all the Council members and shall not be repealed or amended except by a majority vote of the whole Council after notice has been given at some preceding Council meeting.

Derivation: July 24, 1969

31.00 PUBLIC UTILITY COMMITTEE

31.01 **Establishment.** There is hereby established a Public Utility Committee for the City of Kerkhoven which shall be composed of all members of the City Council with the Clerk of the City acting as Secretary and Inspector of Utilities.

31.02 **Inspector.** The Clerk is hereby authorized to designate another individual as Inspector of Utilities.

31.03 **Franchise Required.** Before any natural gas or electric utility services any person, the company, school or other building with gas or electric service, such utility shall first obtain a franchise from the City of Kerkhoven. See Chapter 4.

31.04 **Minutes.** The Clerk of the City shall keep the minutes and records of the Public Utility Committee and keep the regulations as adopted from time to time by said Committee.

31.05 **Rules and Regulations.** The Public Utility Committee shall provide and establish rules and regulations regarding any gas or electric utility that will protect the health, welfare and safety of the residents of the City of Kerkhoven.

31.06 **Violations.** Any utility that serves any person or building within the limits of the City without first obtaining a franchise from the City, shall be guilty of a misdemeanor, shall be fined a sum not greater than \$100.00, for each and every day that it operates without a franchise and each day shall be considered to be a separate and distinct violation of this Ordinance.

31.07 **Enforcement.** In addition to the penalties provided in subdivision 31.06 herein, the City may use its full power of enforcement officers to terminate any services provided without a franchise.

Derivation: July 24, 1969

ORDINANCE 32.00

AN ORDINANCE PROVIDING FOR THE COMBINATION OF THE OFFICES OF CITY CLERK AND CITY TREASURER AND PROVIDING FOR ANNUAL CITY AUDITS

32.01 **Positions Combined.** Pursuant to the authority granted by Laws 1961, Ch. 230, the offices of Clerk and Treasurer in the City of Kerkhoven, Swift County, Minnesota, are hereby combined in the office of Clerk-Treasurer.

32.02 **Audit Provided.** Beginning with the year in which this Ordinance becomes effective and each year thereafter, there shall be an audit of the City's financial affairs by the State Auditor or public accountant in accordance with minimum auditing procedures prescribed by the State Auditor.

32.03 **Effective Date.** This Ordinance is effective January 1, 1979, after passage and publication.

Passed: September 26, 1978

CHAPTER 4

40.00 FRANCHISES

40.01 **Definition.** As used in this chapter, franchise shall mean a special privilege granted to any person, association, partnership, corporation, group or entity requiring the use of any public street, alley or other public property relative to the establishment and/or operation of a public facility, utility or service, e.g. electricity, natural gas, transportation, communication, heat or water (this list is not exclusive).

40.02 **Grant and Limitation.** Only the City Council shall have the power to grant franchises for any term not to exceed 25 years. Any person, group or entity requesting a franchise shall submit its application to the City Council upon such forms and upon such conditions as may be prescribed by the Council. The Ordinance shall contain all the terms and conditions of the franchise and shall be adopted the same as any other Ordinance, except that a proposed franchise Ordinance shall be published verbatim for two successive weeks in a public newspaper of general circulation in the vicinity of the City of Kerkhoven prior to its adoption by the Council.

40.03 **Control and Fees.** The Council shall have the right and the power to regulate and control the exercise of the franchise holder of the franchise privilege at any and all times, and further, the franchise may be required to pay such fees or a gross earnings tax in addition to the costs of processing its application as the Council may prescribe.

Derivation: July 24, 1969

ORDINANCE NO. 41.00

An Ordinance granting to the Otter Tail Power Company, a Minnesota corporation, its successors and assigns, permission to erect, construct, install and maintain within the City of Kerkhoven, an electric light and power system and transmission lines and to operate the same and to install conduits, poles, wires, pipes and other fixtures in, upon and under the streets, alleys, bridges and public grounds of said City for the purpose of furnishing electric light, heat and power to said City and the inhabitants thereof.

41.01 Duration and Extent. There is hereby granted to Otter Tail Power Company, a Minnesota corporation, its successors and assigns, hereinafter called the Grantee, for a period of 10 years from and after the passage and approval of this Ordinance and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to construct, install and maintain an electric light and power system and transmission line and to operate and maintain the same within and through the City and to transmit electricity to and from the other towns or cities for the purpose of light, power and heat and to erect, construct, install and maintain conduits, poles, wires, pipes and other necessary fixtures and attachments upon and under the streets, alleys, bridges and public grounds of said City for the purpose of furnishing and selling electricity for light, heat and power and such other purposes for which electricity may be used by the inhabitants of said City, said permission and franchise to become operative and continue under the conditions hereinafter set forth, and provided further, that this franchise shall be effective for an additional 10 years, if the City does not elect to terminate said franchise within 60 days prior to the commencement of the second 10-year period.

41.02 Conditions. Said Grantee shall use poles, wires, cross arms, equipment and devices to conform with the standards of construction adopted by the National Electrical Safety Code of the United States, Department of Commerce, and all apparatus connected therewith shall be located so as not to obstruct the avenues, streets and alleys of said City or to endanger persons or property or to hinder or to obstruct the use of said avenues, streets and alleys for public places by the inhabitants of said City, or public in general, or to interfere with any street, sidewalk, curb, gutter or park improvements that the City may deem proper to make along the lines of said avenues, streets and public places.

All poles where set in alleys shall be set at or near the boundary line thereof, and where set in streets shall be located at such distances as shall be directed by the City, from the property line of the abutting owner and shall be placed so as not to interfere with the construction or placing of any water pipes, sewers or drains or the flow of water therefrom which have been or may be placed by authority of said City. In the event that said Grantee shall make any unnecessary obstructions of said streets, alleys, public grounds or places not designated by the City Council, the City may cause the removal of such obstructions and charge and collect from such Grantee the actual cost of such removals.

All conduits, poles, wires and pipes installed by virtue of this Ordinance shall be installed in such places and in such manner as not unnecessarily to encroach upon streets, alleys, bridges or public grounds and places of said City and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon and the installation thereof shall be subject to the reasonable supervision and direction of the City Council of the said City. Whenever practicable, all poles shall be set in alleys and poles now in position upon or along the streets, whenever practicable, shall be removed and the locations of all of said poles shall be designated by the President of the City Council under the supervision of the City Council of the said City.

41.03 Extensions. During the construction, maintenance or enlargement of any part of said electric light and power system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City, and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

The City reserves the right for itself and its agents to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to, such reasonable regulations of a police nature as it may deem necessary for the best interests of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

41.04 Hold Harmless. Whenever the said Grantee, in erecting, constructing and maintaining said lines or poles, shall take up any of the pavements, sidewalks, crossings or curbs on any of the avenues, streets and alleys or public places in said City or shall make any excavations thereon; such excavations shall be refilled and the sidewalk, crossing or curb replaced under the direction of the said City and any excavation so made shall be properly lighted at night during the construction and in case of the failure to do so on the part of the said Grantee, then the said City may do the same at the expense of said Grantee and said Grantee agrees to pay said City for the reasonable cost or value of said work.

Said Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the said City, caused by it or its agents, servants or employees in erecting, operating and maintaining the said electric system within said City, and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system.

41.05 Assignments. There is granted to said Grantee, its successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets and public grounds of said City so as to remove all parts of said trees interfering with the proper erection, maintenance and operation of poles, cables, wires, masts or other fixtures or appliances installed or to be installed pursuant to authority hereby granted.

Said Grantee shall have full right and authority to assign any person, persons, firm or corporation all the rights that are given it by this Ordinance, provided that the assignee of such rights, by accepting such assignment, shall become subject to the terms and conditions of this Ordinance.

41.06 Damages. The Grantee shall use due diligence and care in furnishing electric service as herein provided, but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt said Grantee from liability for negligence.

41.07 Deposit Required. The Grantee shall have the right to require any person to whom electric service is furnished to make a deposit to insure the payment of bills for service to be rendered. The company shall issue a receipt for such deposit and shall return same whenever the customer shall discontinue the use of electric service, provided all bills are then paid. The Grantee may apply all or any portion of the deposit to any unpaid bills and shall thereupon mail to the customer a receipt for such amount.

41.08 Exclusive Franchise. It is further expressly and specifically provided that all permits, licenses and franchises heretofore granted by the City, giving or purporting to give permission to any person, persons or corporation to construct, install or maintain an electrical line or system in, upon or through the streets, alleys or public grounds of the City for the purpose of furnishing light, heat and power to the City or its inhabitants be, and the same hereby are, in all respects revoked, cancelled and annulled.

41.09 Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the City Council and its publication as required by statute. The said Grantee shall specify its acceptance of this franchise in writing, to be filed by the City Clerk and in no event shall this Ordinance be binding on said Grantee until the filing of such acceptance.

Derivation: November 14, 1978

42.00 FRANCHISE

KMP TELEPHONE COMPANY

42.01 **Grant.** That the right is hereby granted to KMP Telephone Co. of Kerkhoven, Minnesota, its successors and assigns, to place, erect, construct and maintain underground, upon, along and through the public streets, highways, alleys, bridges and public squares of the said City of Kerkhoven, all cabling, conduits, poles, posts or other supports and all wires and fixtures proper and necessary for supplying to the public proper telephone service or other approved appliances. Subject, however, to all the conditions and stipulations herein set forth.

42.02 **Conditions.** All underground networks, poles, supports and wires shall be placed in such manner that they do not obstruct, impair or interfere with the proper use of such streets, highways, alleys, bridges and public squares for other lawful purposes and the same to be done under the supervision of the City authorities. The poles and supports shall be reasonably straight and maintained in good repair and the wiring thereon shall be placed at such an elevation as the City Council may designate. After erecting the poles and wires or making repairs thereon, the telephone company shall restore the streets or alleys to as good a condition as the same were in prior to any labor by the telephone company.

42.03 **Pole Placement.** The telephone poles or underground cables shall not be set in such a manner as to interfere with the placement, construction or maintenance of any water pipe, gas pipe, drain or sewer that may be authorized by the City of Kerkhoven. In the event the present street grade or curb lines are subsequently changed, the said telephone company shall change and reset their poles to conform to such changes and such changes shall be chargeable to the telephone company.

42.04 **Damages.** The telephone company is to be responsible and liable for any damages caused or done by its agents or employees in constructing, repairing, extending or operating its telephone system.

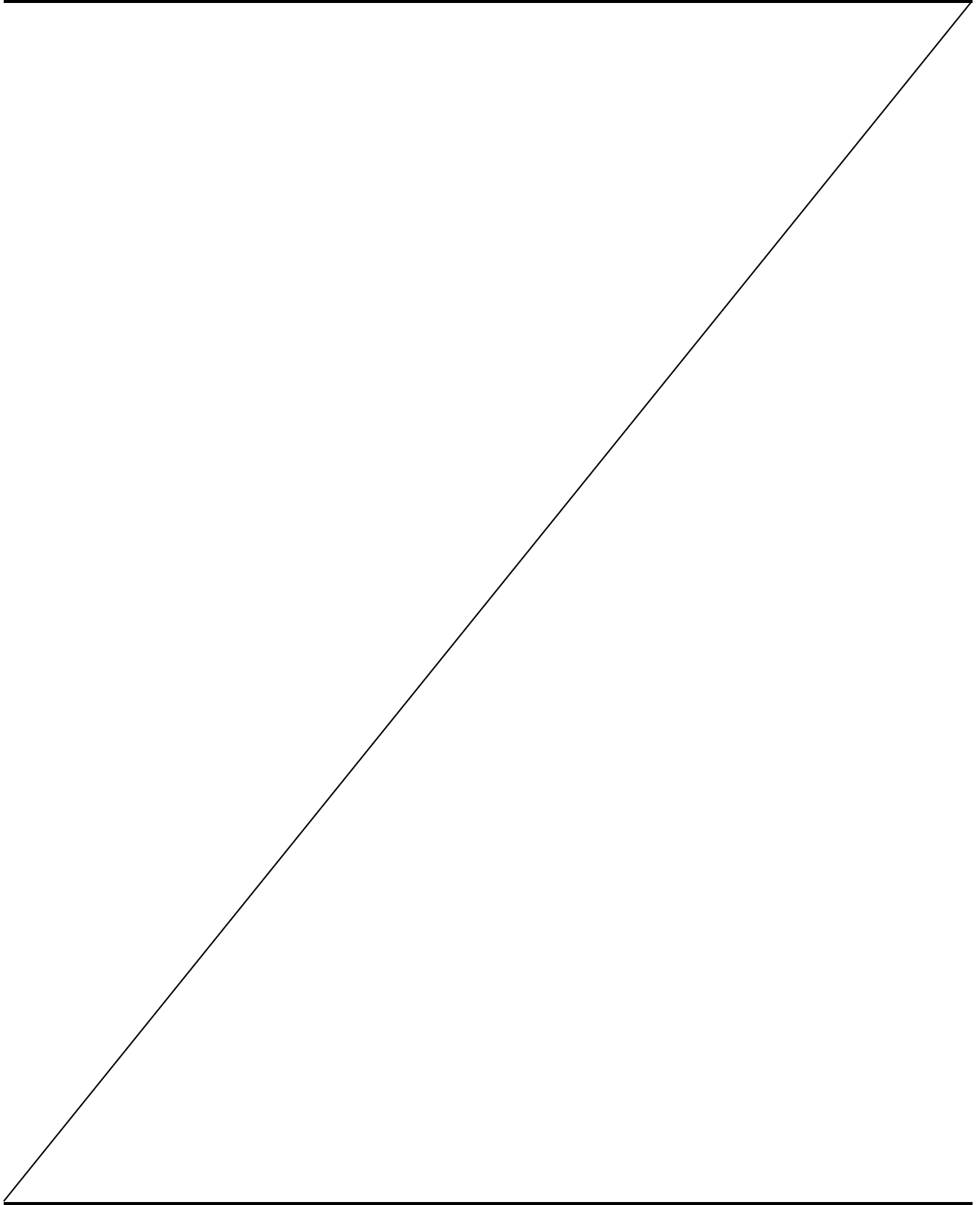
42.05 **Effective Date.** This Ordinance shall be published according to law and shall take effect only upon filing in the office of the City Recorder of said City of Kerkhoven after the publication thereof, a written acceptance of the terms of the Ordinance by said telephone company.

Derivation: Originally Ordinance 13

CHAPTER 5

**50.00 SEWERS, RULES AND REGULATIONS WITH REFERENCE TO THE USE
OF THE PUBLIC SEWER SYSTEM AND THE PUBLIC DISPOSAL PLANT**

Ordinance 50 replaced by Ordinance 54 in 2008.



**51.00 PUBLIC WATER DISTRIBUTION SYSTEM
FOR THE CITY OF KERKHOVEN**

51.01 **Water Department.** There is hereby established a water department, which shall be under the supervision of the City Council and Water Operator. The Council and Operator shall be responsible for management, maintenance, care and operation of the water works system of the City.

51.02 **Use of Water System Restricted (Amended by Ordinance adopted August 10, 2009).**

- 1) No person shall make or use any water service installation connected to the City water system, except pursuant to application and permit as provided in this chapter.
- 2) No person shall make or use any such installation contrary to the regulatory provisions of this chapter.
- 3) No unauthorized person shall remove or damage any structure, appurtenance or part of the water system or fill or partially fill any excavation or move any gate valve used in the water system.
- 4) No person shall make any connection of an electrical welder to the city water main, appurtenance or service or use an electric welder for the purpose of thawing frozen water mains, appurtenances or services.

51.03 **Application for Service.**

- 1) Procedure. Application for water service shall be made to the City of Kerkhoven on a form prescribed and furnished by the City. By his signature, the applicant shall agree to conform to this Ordinance and to rules and regulations that may be established by the City as conditions for the use of water.
- 2) Connection Fee. When a connection requires installation of a new or replacement service line from the main to the property line, the applicant for a permit shall pay to the City an amount not less than the cost of making the necessary connections, taps and installation of pipe and appurtenances to provide service to the property and the necessary street repairs.
- 3) Water installation shall be restricted to properties within the City limits. (Amended by Ordinance adopted November 22, 2010)

51.04 **Accounting, Billing and Collecting.**

- 1) Accounts in Name of Owner. All accounts shall be carried in the name of the property owner. The owner shall be liable for water supplied to his property, whether he/she is occupying the property or not, and any charges unpaid shall be a lien upon the property.
- 2) Bills for Service. Bills shall be mailed to the customers monthly and shall specify water charges in accordance with rates established by resolution by the City Council.
- 3) Delinquent Accounts. All charges for water shall be billed the first of the month and shall be delinquent thereafter. The City shall endeavor to collect delinquent accounts promptly. In any case, where satisfactory arrangements for payment have not been made, the City may, after the procedural requirements of subdivision 5 have been complied with, discontinue service to the delinquent customer by shutting off the water at the stop box. When water

service to any premises has been discontinued, service shall not be restored except upon payment of all delinquent bills and a fee of \$30.00. Delinquent accounts shall be certified by the Clerk who shall prepare an assessment roll each year providing for assessment of the delinquent amounts against the respective properties served. The assessment roll shall be delivered to the Council for adoption on or before October 1 of each year for certification to the County Auditor for collection along with taxes. Such action is optional and may be subsequent to taking legal action to collect delinquent accounts. (Amended by Ordinance adopted August 10, 2009)

- 4) Penalty on Delinquent Accounts. The delinquent customer shall be assessed and pay a penalty of \$3.00 per month which shall be due and payable with the monthly bill.
- 5) Procedure for Shutoff of Services. Water shall not be shut off under subdivision 3 or for a violation of rules and regulations affecting service until notice and an opportunity for a hearing have first been given the occupant of the premises involved. The notice shall be sent and shall state that if payment is not made before a day stated in the notice, but not less than 10 (ten) days after the date on which the notice is given, the water supply to the premises will be shut off. The notice shall also state that the occupant may request a hearing on the matter before the 10 days after the date on the notice are up, in which case the supply will not be cut off until after a hearing is held. The Mayor will set the date of the hearing. If as a result of the hearing the Council finds that the amount claimed to be owing is actually due and unpaid and that there is no legal reason why the water supply of the delinquent customer may not be shut off in accordance with this Ordinance, the City may shut off the supply.

51.05 **General Water Use Regulations.**

- 1) Discontinuance of Service. The City may discontinue service to any water consumer without notice for necessary repairs or, upon notice as provided in subdivision 5, Section 51.04, for nonpayment of charges, or for violation of rules and regulations affecting utility service.
- 2) Supply From Service. No more than one house or building shall be supplied from one service connection except by special permission of the Council. Whenever two or more parties are supplied from one pipe connecting with a service main, each building or part of building separately supplied shall have a separate stop box.
- 3) Turning on Water, Tapping Mains. No person except an authorized City employee shall turn on any water supply at the stop box or tap any distributing main or pipe of the water supply system or insert a stock cock or other appurtenance therein without a city permit.
- 4) Use of Fire Hydrants. No person other than an authorized City employee shall operate a fire hydrant or interfere in any way with the City water system without first obtaining authority from the Water Operator. (Amended by Ordinance adopted August 10, 2009)
- 5) Private Water Supply. No water pipe of the City water supply shall be connected with any pump, well or tank that is connected with any other source of water supply. When any such connection is found, the water department shall notify the owner to sever the connection and if this is not done immediately, the City shall turn off the water supply forthwith. Before any new connection to the City system is permitted, the department shall ascertain that no cross connection will exist when the new connection is made. The drilling of water wells or driving of sand points within those areas of the City wherein reasonably convenient connection to the City water supply may be had is prohibited. (Amended by Ordinance adopted August 10, 2009)

- 6) Restricted Hours. Whenever the Council determines that a shortage of water supply threatens the City, it may, by resolution, limit the times and hours during which City water may be used for sprinkling, car washing, irrigation, air conditioning or other specified uses. After publication of the resolution, no person shall use or permit water to be used in violation of the resolution. (Amended by Ordinance adopted August 10, 2009)
- 7) Permitting Use by Others. No person shall permit City water to be used for any purpose except upon his own premises except in an emergency and then only if written permission is first obtained from the water department. Anyone wishing to obtain water from a hydrant for construction purposes shall make application to the Council for such services. (Amended by Ordinance adopted August 10, 2009)
- 8) Damage to Water System. No unauthorized person shall remove or damage any structure, appurtenance, or part of the water system or fill or partially fill any excavation or move any gate valve used in the water system. No person shall make any connection of an electrical welder to the City water main, appurtenance or service or use an electric welder for the purpose of thawing frozen water mains, appurtenances or services. (Amended by Ordinance adopted August 10, 2009)

51.06 Repairs (Amended by Ordinance adopted August 10, 2009).

- 1) Determination of Need for Repairs. Based on the information supplied by the property owner or available to the City, the City will make a determination whether a problem exists in that portion of the service which is the City's responsibility. If the problem appears to exist in the areas for which the City has no responsibility, the private owners will be responsible for correction of the problem.
- 2) Thawing of Water Services. The City will attempt to thaw water services on request of the resident. If the problem is found within that portion of the service for which the private owner is responsible, the private owner thereafter will be responsible for thawing the service and correction of the problem.
- 3) Excavation or Repair of Water Service.
 - (a) The City will arrange for the investigative digging up and repair of any water service where the problem apparently exists within that area for which the City has responsibility.
 - (b) Unless it is clearly evident, however, that the problem is the responsibility of the City, the excavation and repair will not be made until the property owner requests the City in writing to excavate or repair the service and agrees to pay the cost.
 - (c) The owner further agrees to waive public hearing and be special assessed the cost of the excavation and repair if the problem is found to be other than the City's responsibility. The City will make the determination for responsibility of the cost of investigation or repair.
 - (d) The matter of whether the dig up is done by City forces or contracted would depend on the urgency or need of repair and the availability of City forces to do the work. Recovery by the City for faulty construction will depend upon the circumstances and the decision of the City Attorney on the likelihood of recovery.

- 4) Failure to Repair. In case of failure upon the part of any consumer or owner to repair any leak occurring in his or her service pipe within 24 hours after verbal or written notice thereof, the water may be turned off by the City and shall not be turned on until the leak has been repaired and a fee of \$30.00 has been paid to the City.

51.07 Location of Curb Stop Box. Curb stop boxes will be installed on the right-of-way line or easement limits at a location as determined by Public Utilities Department to be best suitable to the property and shall be left in a vertical position when backfilling is completed. Curb stop boxes will be installed at an approximate depth of seven feet below the finished ground elevation and the top of the curb stop box shall be adjusted to be flush with the finished ground elevation. Curb stop boxes must be firmly supported by a masonry block. No person shall erect any fence or plant any tree or other landscaping that would obstruct, or place a structure on, park a motor vehicle on, or otherwise obstruct the use of the curb stop box, or cause damage to the same. (Amended by Ordinance adopted August 10, 2009)

51.08 Meters (Amended by Ordinances adopted August 11, 2008 and August 10, 2009).

- (1) Meters Required. Except for extinguishment of fires, no person, unless otherwise authorized by the City Council or Public Utilities Department, shall use water from the water system or permit water to be drawn there from unless the same be metered by passing through a meter supplies or approved by the City. No person not authorized by the City Council or Utilities Superintendent shall connect, disconnect, take apart, or in any manner change or cause to be changed or interfere with any meter or remote reader or the action thereof, or break any meter or valve seal.
- (2) Maintenance. Whenever a water meter is found to be out of order, then the Utilities Superintendent shall direct its repair and if damage shall be caused by carelessness or neglect (including damage from freezing or hot water backup) the property owner shall be liable for the expense or repairing or replacing the meter.
- (3) Charges. All water passing through a meter will be charged to the property, whether used or wasted. It shall be the duty of the person authorized by the City Council or Public Utilities Department to see that all meters are read monthly and the amount of water to be charged to the premises will be billed monthly.
- (4) Meter reading and Inspection. Meter readers shall have free access at reasonable hours of the day to all parts of every building and premises connected to the City water supply in order to read the meters and make inspections.
- (5) Meter ownership. All meters and remote readers shall be and remain the property of the City.
- (6) Final Reading. It shall be the responsibility of the consumer to notify the City to request a final reading at the time of the customers' billing change.

51.09 Penalty. Any person violating the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000.00 and/or up to 90 days in jail. (Amended by Ordinance adopted August 10, 2009)

**52.00 REFUSE COLLECTION AND DISPOSAL SYSTEM
FOR THE CITY OF KERKHOVEN**

52.01 Definitions.

- 1) Words and Phrases. For the purpose of this chapter, the following words and phrases have the meaning given them in this section.
- 2) Garbage means organic waste resulting from the preparation of food and decayed and spoiled food from any source.
- 3) Refuse includes garbage and rubbish.
- 4) Rubbish means inorganic solid waste such as tin cans, glass, paper, ashes, sweepings, etc., but excludes stone, sod, earth, concrete, contractors' buildings materials, large automobile parts, large appliances, inflammable liquids, tree trunk sections, articles so heavy or bulky that they cannot be handled by one person.
- 5) Recycling is the collection of glass, metal, plastic, paper, etc. in order to regain material for human use. (Amended by Ordinance adopted August 10, 2009)

52.02 General Regulations.

- 1) Unauthorized Accumulation. Any unauthorized accumulation of refuse on any premises is a nuisance and prohibited.
- 2) Refuse in Streets, Etc. No person shall place any refuse in any street, alley, or public place or upon any private property except in property containers for collection. No person shall throw or deposit any refuse in any stream or any other body of water.

52.03 Disposal Required (Amended by Ordinance adopted August 10, 2009).

- 1) Every person owning, managing, operating, leasing or renting any premises shall use the garbage and refuse collection service provided by the City.
- 2) Every person owning, managing, operating, leasing or renting any premises shall use the recycling collection service provided by the City/County.

52.04 Containers.

- 1) General Requirement. Every householder, occupant or owner of any residence and any restaurant, industrial establishment or commercial establishment shall provide on the premises one or more containers to receive and contain all refuse which may accumulate between collections. All normal accumulations of refuse shall be deposited in such containers. Leaves, trimmings from shrubs, grass clippings, shavings, excelsior, and other rubbish of similar volume and weight may be stored in closed containers not meeting the requirements in subdivision 2.
- 2) Containers Requirements. Each container shall be water-tight and shall be impervious to insects and rodents, shall be fireproof and shall not exceed 32 gallons in capacity, except that any commercial or business establishment having refuse volume exceeding one cubic yard per week shall provide bulk or box-type refuse storage container of a type approved by the City Council. Containers shall be maintained in good and sanitary condition. Any

container not conforming to the requirements of this chapter or having ragged or sharp edges or any other defect likely to hamper or injure the person collecting the contents shall be promptly replaced after notice by the City.

- 3) Placement. Where an alley open to traffic is available, each container for premises abutting the alley shall be placed at the rear of the property next to the alley. Where no alley exists, the container shall be placed near the rear door of the building to which it relates. In that case the container shall be placed at the front line for collection. Bulk type containers used by any commercial or business establishment must be placed on a concrete pad to facilitate collections and must be placed as to be easily accessible to the loading device on the garbage truck.
- 4) Use of Containers. Refuse shall be drained of liquid and household garbage shall be bagged in plastic bags before being deposited in a container. Highly flammable or explosive material shall not be placed in containers.
- 5) Recyclables. Shall be placed in the blue or green container provided by the County, or in a box or adequate container clearly marked RECYCLABLES. (Amended by Ordinance adopted August 10, 2009)

52.05 **Municipal Collection.**

- 1) City System Established. There is hereby established a municipal system for the collection and disposal of refuse accumulated within the City. Any person may transport recyclables to a recycling center, but otherwise no person except an authorized City employee shall collect, convey over any street or alley of the City, or dispose of any refuse accumulated in the City except as provided in Section 52.02, subdivision 4.
- 2) Responsibility for City System. The City Council shall supervise and control the collection and disposal of refuse. It shall employ necessary personnel and acquire necessary equipment to provide for the collection and disposal of refuse accumulated within the City.

52.06 **Meddling With Trash Receptacles Prohibited (Amended by Ordinance adopted August 10, 2009).**

- 1) It shall be unlawful to meddle with garbage cans, trash or rubbish receptacles or in any way pilfer, search or scatter contents of garbage cans or rubbish receptacles in or upon any street or alley within the City limits.
- 2) This section shall not apply to persons authorized by the City or persons authorized by state or federal law to search or otherwise meddle with trash receptacles.

52.07 **Removal of Building Materials Prohibited (Amended by Ordinance adopted August 10, 2009).**

Waste from building operations, rock waste, building materials or other refuse resulting from building or remodeling operations or resulting from a general clean up of vacant or improved property shall be removed by the building contractor, owner or occupant of the building at his or her own expense. It shall be unlawful for any person to place those materials in any dumpster or other trash receptacle for disposal by the City or any agent or contractor of the City.

52.08 Prohibited Acts (Amended by Ordinance adopted August 10, 2009).

- 1) It shall be unlawful for any person to sweep, throw or deposit any garbage, trash, debris, stagnant water or dead animal into, upon or along any public property or private property of another, except as may be specifically provided by this chapter.
- 2) It shall be unlawful for any person owning or otherwise in control of any premises within the City to permit any of the conditions described in division (A) to exist upon property owned or controlled by him or her after having actual or constructive notice thereof.
- 3) It shall be unlawful for any person to place in any container any material other than as specifically provided in this chapter.
- 4) It shall be unlawful for any person to deposit or maintain garbage or trash except as provided for by this chapter.
- 5) It shall be unlawful for any person to deposit any burning match, charcoal, ember, or other material in any container used for the disposal of garbage.

52.09 Collection of Leaves, Trees or Tree Limbs. Nothing in this chapter shall be construed to prevent the collection for hire by other persons of leaves, trees or tree limbs. (Amended by Ordinance adopted August 10, 2009)

52.10 Rates and Charges (Amended by Ordinance adopted August 10, 2009).

- 1) Schedule. The Council shall by resolution establish a system of service charges for refuse collection. In such resolution it shall fix the maximum charges, including any special charges for extra hauling.
- 2) Billing. The service charge shall be made to the owner of each building or housing unit served. If the building is served by City water or sewer, the refuse collection charge shall be billed as a separate entry on the water or sewer bill. If the premises are not so served, the refuse collection charge shall be separately billed by the City Clerk.
- 3) Payment. Service charges shall be payable at the same time as bills for water service and subject to the same conditions of payment. If any charge is unpaid on September 1 of any year, the Clerk shall certify the assessment to the County Auditor for collection in the same manner as assessments for local improvements.
- 4) Fund. All service charges shall be deposited in a separate fund designated as the garbage fund. All the expenses of providing refuse collection service shall be paid from this fund.

Passed and adopted by the City Council of the City of Kerkhoven on the 10th day of January, 1984
Published in the *Kerkhoven Banner* on the 2nd day of February, 1984

52.11 Refuse Collection Schedule. The City shall collect refuse from property in the City in accordance with the following schedule: household twice per week; commercial or business once per week, with additional pick-up scheduled as needed. Swift County shall collect recycling from the property with the following schedule: household recycling once per week. (Amended by Ordinance adopted August 10, 2009)

52.12 Effective Date. This Ordinance shall be in full force and in effect from and after its passage, approval and recording and publication as provided by law. (Amended by Ordinance adopted August 10, 2009)

ORDINANCE 53

AN ORDINANCE PROHIBITING DISCHARGES INTO THE SANITARY SEWER SYSTEM AND PROVIDING PENALTIES THEREOF

The City of Kerkhoven does ordain as follows:

53.01 No person shall discharge or cause to be discharged any storm water, cooling water, surface water, subsurface drainage, groundwater, roof run off, yard drainage, yard fountain, pond overflow or any substance other than sanitary sewage into the sanitary sewer collection system.

- a) No roof runoff, sump pump, swimming pool discharge or surface water drainage shall be connected to the sanitary sewer system and no building shall hereafter be constructed nor shall any existing buildings be hereafter altered in such a manner that the roof drainage or any other source of discharge or drainage other than sanitary sewer shall connect with the sanitary sewer system inside or outside the building.
- b) Any person, firm or corporation having a roof, sump pump, swimming pool discharge, cistern overflow pipe or surface drain now connected and/or discharging into the sanitary sewer system shall disconnect and/or remove same prior to March 1, 1999. Any disconnects or openings in the sanitary sewer shall be closed or repaired in an effective, workmanlike manner.
- c) All sump pumps shall have a discharge pipe installed to the outside wall of the building with one (1) inch inside minimum diameter. The pipe attachment shall be a permanent fitting such as PVC pipe with glue fittings. The discharge shall extend at least three (3) feet outside of the foundation wall and shall be directed toward the front yard or rear yard area of the property.
- d) Every person owning improved real estate that discharges into the City's sanitary sewer system shall allow the City employee(s) to inspect the building to confirm that there is no sump pump or other prohibited discharge into the sanitary sewer system. Any person may furnish a certificate from a licensed plumber certifying that their property is in compliance with this subsection in lieu of having the City inspect their property. Any person refusing to allow their property to be inspected or refusing to furnish a plumber's certificate within fourteen (14) days of the date City employee(s) are denied admittance to the property shall immediately become subject to the surcharge hereinafter provided for. Any property found to violate this section shall make the necessary changes to comply with this Ordinance and such changes shall be verified by an employee or authorized agent of the City of Kerkhoven.
- e) The City Council shall determine whether or not conditions evidence the violation of this Ordinance. Upon identification of the violation, notice by certified mail shall be issued to the owner as shown by the City's property tax records of the property which evidences any violation of this Ordinance. Said notice shall identify the nature of the violation, the requirements of the ordinance, and order compliance with the ordinance no later than ten (10) days after receipt of the above notice.
- f) The owner may appeal said order to the City Council of the City of Kerkhoven by filing a written appeal with the City Clerk. Upon receiving the written appeal, the City Council shall conduct a hearing and upon completion of the hearing, shall affirm, modify or rescind the order of compliance. The decision of the City Council shall be final.

- g) Any property owner whose sump pump discharges ground water accumulations during the winter months may apply to the City Council for a permit allowing the sump pump to discharge into the sanitary sewer system during the months of November, December, January, February and March of each year. Any property owner receiving a permit shall pay a user fee of Five Dollars (\$5.00) per month for use of the sanitary sewer system. The monthly fee shall be added to and collected with the regular monthly utility bill. Any sump pump operated in violation of the permit or operated without a permit shall be subject to the fine established in subsection (i).
- h) The City Council shall have the power and duty of hearing and deciding requests for waivers from the applicability of the provisions of this Ordinance where strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration or cause a safety problem.
- i) A surcharge of One Hundred Dollars (\$100.00) per month is hereby imposed and shall be added to every utility billing mailed on and after March 1, 1999, to the property owners who are not in compliance with this Ordinance. The surcharge shall be added every month, until the property is in compliance. The imposition of such surcharge shall in no way limit the right of the City of Kerkhoven to seek injunction in District Court ordering the property owner to disconnect the non-conforming connection to the sanitary sewer system or from pursuing any other legal remedies available.
- j) This Ordinance shall become effective upon its passage and publication as provided by law.

Introduced by Council member Keith Finstrom, October 12, 1998

Hearing held: November 9, 1998

Published: Kerkhoven Banner, November 25, 1998

ORDINANCE 54

SANITARY SEWER REGULATIONS

This Ordinance shall replace Ordinance 50, Sewers, Rules and Regulations with Reference to the Use of the Public Sewer System and the Public Disposal Plant and Ordinance 53, An Ordinance prohibiting discharges into the Sanitary Sewer System and Providing Penalties Thereof.

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

Act. The Federal Water Pollution Control Act, also referred to as the Clean Water Act, being 33 USC 1251 et seq., as amended.

ASTM. American Society for Testing Materials.

Authority. This City or its representative thereof.

Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20°C, expressed in terms of milligrams per liter (mg/l).

Building Drain. The part of the lowest horizontal piping of a drainage system which receives the discharge from waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning three feet outside the building wall.

Building Sewer. The extension from the building drain to the public sewer or other place of disposal, also referred to as a house connection or service connection.

City. The area within the corporate boundaries of the City as presently established or as amended by ordinance or other legal actions at a future time. The term CITY when used herein may also be used to refer to the City Council and its authorized representative.

Control Manhole. A structure specially constructed for the purpose of measuring flow and sampling of wastes.

Easement. An acquired legal right for the specific use of land owned by others.

Garbage. Animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.

Industrial Waste. Gaseous, liquid and solid wastes resulting from industrial or manufacturing processes, trade or business, or from the development, recovery and processing of natural resources, as distinct from residential or domestic strength wastes.

Industry. Any nongovernmental or nonresidential user of a publicly-owned treatment works which is identified in the Standard Industrial Classification Manual, latest edition, which is categorized in Divisions A, B, D, E and I.

Infiltration. Water entering the sewage system (including building drains and pipes) from the ground through means as defective pipes, pipe joints, connections and manhole walls.

Infiltration/Inflow(I/I). The total quantity of water from both infiltration and inflow.

Inflow. Water other than wastewater that enters a sewer system (including building drains) from sources such as, but not limited to, roof leaders, cellar drains, yard and area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers, catch basins, surface runoff, street wash waters or drainage.

Interference. The inhibition or disruption of the City's wastewater disposal system processes or operations which causes or significantly contributes to a violation of any requirement of the City's NPDES or SDS permit. The term includes sewage sludge use or disposal by the City in accordance with published regulations providing guidelines under Section 405 of the Act (33 USC 1345) or any regulations developed pursuant to the Solid Waste Disposal Act (42 USC 6901 et seq.), the Clean Air Act (42 USC 7401 et seq.), the Toxic Substances Control Act (15 USC 2601 et seq.), or more stringent state criteria applicable to the method of disposal or use employed by the City.

May. The term is permissive.

MPCA. The Minnesota Pollution Control Agency.

National Categorical Pretreatment Standards. Federal regulations establishing pretreatment standards for introduction of pollutants in publicly-owned wastewater treatment facilities which are determined to be not susceptible to treatment by those treatment facilities or would interfere with the operation of those treatment facilities, pursuant to Section 307(b) of the Act (33 USC 1317(b)).

National Pollutant Discharge Elimination System (NPDES) Permit. A permit issued by the MPCA, setting limits on pollutants that a permittee may legally discharge into navigable waters of the United States pursuant to Sections 402 and 405 of the Act (33 USC 1342 and 33 USC 1345).

Natural Outlet. Any outlet, including storm sewers and combined sewers, which overflow into a watercourse, pond, ditch, lake or other body of surface water or ground water.

Non-Contact Cooling Water. The water discharged from any use such as air conditioning, cooling or refrigeration, or during which the only pollutant added is heat.

Normal Domestic Strength Waste. Wastewater that is primarily introduced by residential users with a BOD5 concentration not greater than 287 mg/l and a suspended solids (TSS) concentrate not greater than 287 mg/l.

Person. Any individual, firm, company, association, society, corporation or group.

PH. The logarithm of a reciprocal of the concentration of hydrogen ions in terms of grams per liter of solution.

Pretreatment. The treatment of wastewater from industrial sources prior to the introduction of the waste effluent into a publicly-owned treatment works.

Properly Shredded Garbage. The wastes from the preparation, cooking and dispensing of food that have been shredded to a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers with no particle greater than 2-inch (1.27 cm) in any dimension.

Sewage. The spent water of a community. The preferred term is wastewater.

Sewer. A pipe or conduit that carried wastewater or drainage water.

- (1) Collection Sewer. A sewer whose primary purpose is to collect wastewaters from individual point source discharges and connections.
- (2) Interceptor Sewer. A sewer whose primary purpose is to transport wastewater from collection sewers to a treatment facility.
- (3) Private Sewer. A sewer which is not owned and maintained by a public authority.
- (4) Public Sewer. A sewer owned, maintained and controlled by a public authority.
- (5) Sanitary Sewer. A sewer intended to carry only liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters which are not admitted intentionally.
- (6) Storm Sewer or Storm Drain. A drain or sewer intended to carry storm waters, surface runoff, ground water, subsurface water, street wash water, drainage and unpolluted water from any source.

Shall. The term is mandatory.

State Disposal System (SDS) Permit. Any permit (including any terms, conditions and requirements thereof) issued by the MPCA pursuant to M.S. § 115.07, as it may be amended from time to time for a disposal system as defined by M.S. § 115.01(8), as it may be amended from time to time.

Suspended Solids (SS) or Total Suspended Solids (TSS). The total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and is removable by laboratory filtering as prescribed in Standard Methods for the Examination of Water and Wastewater, latest edition, and referred to as non-filterable residue.

Toxic Pollutant. The concentration of any pollutant or combination of pollutants which upon exposure to or assimilation into any organism will cause adverse affects as defined in standards issued pursuant to Section 307(a) of the Act (33 USC 1317(a)).

Unpolluted Water. Water of quality equal to or better than the effluent criteria in effect, or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities.

User. Any person who discharges or causes or permits the discharge of wastewater into the City's wastewater disposal system.

Utilities Superintendent. The person appointed by the City Council to supervise the sewer and water systems of the City.

Wastewater. The spent water of a community and referred to as sewage. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with any ground water, surface water and storm water that may be present.

Wastewater Treatment Works or Treatment Works. An arrangement of any devices, facilities, structures, equipment or processes owned or used by the City for the purpose of the transmission, storage, treatment, recycling and reclamation of municipal sewage, domestic sewage or industrial wastewater, or structures necessary to recycle or reuse water including interceptor sewers, outfall

sewers, collection sewers, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled water supply such as standby treatment units and clear well facilities; and any works including land which is an integral part of the treatment process or is used for ultimate disposal of residues resulting from that treatment.

WPCF. The Water Pollution Control Federation.

54.002 Control of Sewers; Administration of Chapter. The Utilities Superintendent, or other official designated by the City Council, shall have control and general supervision of all public sewers and service connections in the City, and shall be responsible for administering the provisions of this chapter to the end that a proper and efficient public sewer is maintained.

54.003 Building Sewers; General Requirements. Building sewer construction shall meet the pertinent requirements of the Minnesota State Building Code, which is those chapters of Minn. Rules referenced in Minn. Rules part 1300.2400, subpart 6, as they may be amended from time to time, and the Minnesota Plumbing Code, Minn. Rules Ch. 4715, as it may be amended from time to time. The applicant shall notify the City Clerk when the building sewer and connection is ready for inspection. The connection shall be made under the supervision of the Building Official or the Building Official's representative, if the City has adopted the State Building Code. If the City has not adopted the State Building Code, the Utilities Superintendent, shall perform the inspection. If the City does not have a Utilities Superintendent, an installer licensed under § 54.022 shall certify that the building sewer and connection comply with the State Building Code. No backfill shall be placed until the work has been inspected and approved, or until the certification has been received.
Penalty, see 54.045.

54.004 Tampering with Wastewater Facilities. No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the wastewater facilities. Any person violating this provision shall be subject to immediate arrest under the charge of a misdemeanor.
Penalty, see 54.045.

54.005 Cost of Repairing or Restoring Sewers. In addition to any penalties that may be imposed for violation of any provision of this chapter, the City may assess against any person the cost of repairing or restoring sewers or associated facilities damaged as a result of the discharge of prohibited wastes by that person, and may collect the assessment as an additional charge for the use of the public sewer or in any other manner deemed appropriate by the City.

GENERAL REGULATIONS

54.006 Deposits of Unsanitary Manner Prohibited. It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the City, or in any area under the City's jurisdiction, any human or animal excrement, garbage or objectionable waste.
Penalty, see 54.045

54.007 Discharge of Wastewater or Other Polluted Waters. It shall be unlawful to discharge to any natural outlet any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter and City's NPDES/SDS permit.
Penalty, see 54.045.

54.008 Restrictions on Wastewater Disposal Facilities. Except as otherwise provided in this chapter, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater.

Penalty, see 54.045.

54.009 Installation of Service Connection to Public Sewer (Amended by Ordinance adopted November 22, 2010).

A. The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes from which wastewater is discharged, and which is situated within the City and adjacent to any street, alley or right-of-way in which there is now located, or may in the future be located, a public sanitary sewer of the City shall be required at the owner's expense to install a suitable service connection to the public sewer in accordance with provisions of this code immediately. If sewer connections are not made pursuant to this section, an official ten-day notice shall be served instructing the affected property owner to make the connection.

Penalty, see 54.045.

B. Sanitary sewer connections shall be restricted to properties within the City limits.

PRIVATE WASTEWATER DISPOSAL

54.010 Public Sewer not Available. Where a public sewer is not available under the provisions of 54.009, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this subchapter and Minn. Rules Ch.7080, Individual Sewage Treatment Systems Program, as they may be amended from time to time.

Penalty, see 54.045.

54.011 Permits.

(A) Required. Prior to commencement of construction of a private wastewater disposal system, the owner shall first obtain permission from the City Council. Final approval must be obtained from the Swift County Environmental Services representative. All inspections will be done by the Swift County Environmental Services representative.

54.012 Type, Capacities, Location and Layout. The type, capacities, location and layout of a private wastewater disposal system shall comply with all requirements of Minn. Rules Ch. 7080, Individual Sewage Treatment Systems Program, as they may be amended from time to time. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

Penalty, see 54.045.

54.013 Operation and Maintenance by Owner. The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times at no expense to the City.

54.014 Application of Subchapter. No statement contained in this subchapter shall be construed to interfere with any additional requirements that may be imposed by the MPCA or the Minnesota Department of Health.

BUILDING SEWERS AND CONNECTIONS

54.015 **Restrictions on New Connections.** Any new connections to the sanitary sewer system shall be prohibited unless sufficient capacity is available in all downstream facilities including, but not limited to, capacity for flow, BOD5 and suspended solids, as determined by the Utilities Superintendent. Penalty, see 54.045.

54.016 **Building Sewer Permits.**

- (A) Required. No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the City.
- (B) Applications. Applications for permits shall be made by the owner or authorized agent and shall state the location, name of owner, street number of building to be connected and how occupied. No person shall extend any private building drain beyond the limits of the building or property for which the service connection permit has been given.
- (C) Classes. There shall be two classes of building sewer permits: one for residential and commercial service, and one for service to establishments producing industrial wastes. In either case, the application shall be supplemented by any information considered pertinent in the judgment of the city. The industry, as a condition of permit authorization, must provide information describing its wastewater constituents, characteristics and type of activity.
- (D) Inspection and Connection. The applicant for the building sewer permit shall notify the city when the building sewer is ready for inspection and connection to the public sewer. The connection and inspection shall be made under the supervision of the Utilities Superintendent or authorized representative thereof.

Penalty, see 54.045.

54.017 **Costs and Expenses.** All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may be directly or indirectly occasioned by the installation of the building sewer. Penalty, see 54.045.

54.018 **Separate Building Sewers Required.** A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway. The building sewer from the front building may be extended to the rear building and the whole considered one building sewer. The City does not and will not assume any obligation or responsibility for damages caused by or resulting from any connection. Penalty, see 54.045.

54.019 **Old Building Sewers; Restricted on Use.** Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Utilities Superintendent or his or her representative, to meet all requirements of this chapter.

54.020 **Surface Runoff or Groundwater Connections Prohibited.** No person shall make connection of roof downspouts, sump pumps, foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or indirectly to the wastewater disposal system.

54.021 **Excavations.** All excavations for building 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 in a manner satisfactory to the City. Penalty, see 54.045.

54.022 **Licenses.**

- (A) Required. No person shall make a service connection with any public sewer unless regularly licensed under this chapter to perform work, and no permit shall be granted to any person except a regularly licensed person. A person licensed as a plumber by the state of Minnesota, or a person in the ditch installing the pipe who has a card showing that they have completed a program of training that incorporates the Plumbing Code installation requirements, issued by either the Associated Builders and Contractors, Laborers-Employers Cooperation Education Trust, or Minnesota Utility Contractors Association, is not subject to the licensing requirements of this section.
- (B) Application. Any person desiring a license to make a service connection with public sewers shall apply in writing to the City Council with satisfactory evidence that the applicant or employer is trained or skilled in the business and qualified to receive a license. All applications shall be referred to the Utilities Superintendent for recommendations to the Council. If approved by the Council, the license shall be issued by the City Clerk upon the filing of a bond as hereinafter provided.
- (C) Issuance. No license shall be issued to any person until a policy of insurance to the City, approved by the Council, is filed with the City Clerk conditioned that the licensee will indemnify and save harmless the City from all suits, accidents and damage that may arise by reason of any opening in any street, alley or public ground made by the licensee or by those in the licensee's employment for any purpose whatever, and that the licensee will replace and restore the street and alley over that opening to the condition existing prior to installation, adequately guard with barricades and lights, and will keep and maintain the same to the satisfaction of the Utilities Superintendent, and shall conform in all respects to any rules and regulations of the Council relative thereto, and pay all fines that may be imposed on the licensee by law.
- (D) Suspension or Revocation. The Council may suspend or revoke any license issued under this subchapter for any of the following causes:
 - (1) Giving false information in connection with the application for a license.
 - (2) Incompetence of the licensee.
 - (3) Willful violation of any provisions of this chapter or any rule or regulation pertaining to the making of service connection.

USE OF PUBLIC SERVICES

54.023 **Discharges of Unpolluted Water.**

- (A) No person shall discharge or cause to be discharged any water such as storm water, ground water, roof runoff, surface drainage or non-contact cooling water to any sanitary sewer.
- (B) Storm water and all other unpolluted drainage shall be discharged to those sewers as are specifically designed as storm sewers or to a natural outlet approved by the City and other

regulatory agencies. Industrial cooling water or unpolluted process waters may be discharged to a storm sewer or natural outlet on approval by the City and upon approval and the issuance of a discharge permit by the MPCA.

54.024 Discharges of Waters or Wastes. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

- (A) Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the wastewater disposal system or to the operation of the system. Prohibited materials include but are not limited to gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides.
- (B) Solid or viscous substances which will cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to, grease, garbage with particles greater than 2-inches in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes.
- (C) Any wastewater having a pH of less than 5.0 or greater than 9.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater disposal system.
- (D) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to inhibit or disrupt any wastewater treatment process, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the wastewater disposal system. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to Section 307(a) of the Act (33 USC 1317(a)).

Penalty, see 54.045.

54.025 Limited Discharges.

- (A) The following described substances, materials, water or wastes shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either sewers, the wastewater treatment works, treatment process or equipment, will not have an adverse effect on the receiving stream and soil, vegetation and ground water, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The Utilities Superintendent may set limitations lower than limitations established in the regulations below if, in his or her opinion, the more severe limitations are necessary to meet the above objectives. In forming his or her opinion as to the acceptability of wastes, the Utilities Superintendent will give consideration to factors as the quantity of subject waste in reaction to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, the City's NPDES/SDS permit, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors.
- (B) The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer which shall not be violated without approval of the Utilities Superintendent are as follows:

- (1) Any wastewater having a temperature greater than 150°F (65.6°C), or causing, individually or in combination with other wastewater, the influent at the wastewater treatment plant to have a temperature exceeding 104°F (40°C), or having heat in amounts which will inhibit biological activity in the wastewater treatment works resulting in interference therein.
- (2) Any wastewater containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32°F and 150°F (0°C and 65.6°C); and any wastewater containing oil and grease concentrations of mineral origin of greater than 100 mg/l, whether emulsified or not.
- (3) Any quantities of flow, concentrations, or both which constitute as sludge as defined in 54.001.
- (4) Any garbage not properly shredded, as defined in 54.001 of this chapter. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food on the premises or when served by caterers.
- (5) Any noxious or malodorous liquids, gases or solids which either singly or by interaction with other wastes are capable of creating a public nuisance or hazard to life, or are sufficient to prevent entry into the sewers for their maintenance and repair.
- (6) Any wastewater with objectionable color not removed in the treatment process such as but not limited to dye wastes and vegetable tanning solutions.
- (7) Non-contact cooling water or unpolluted storm, drainage or ground water.
- (8) Wastewater containing inert suspended-solids such as but not limited to fullers earth, lime slurries, and lime residues, or of dissolved solids such as but not limited to sodium chloride and sodium sulfate, in quantities that would cause disruption with the wastewater disposal system.
- (9) Any radioactive wastes or isotopes of half-life or concentration as may exceed limits established by the Utilities Superintendent in compliance with applicable state or federal regulations.
- (10) Any waters or wastes containing the following substances to the degree that any material received in the composite wastewater at the wastewater treatment works is detrimental to treatment process, adversely impacts land application, adversely effects receiving waters, or is in violation of standards pursuant to Section 307(b) of the Act (33 USC 1317(b)): Arsenic, Cadmium, Copper, Cyanide, Lead, Mercury, Nickel, Silver, total Chromium, Zinc and Phenolic compounds which cannot be removed by the city's wastewater treatment system.
- (11) Any wastewater which creates conditions at or near the wastewater disposal system which violates any statute, rule, regulation or ordinance of any regulatory agency, or state or federal regulatory body.

- (12) Any waters or wastes containing BOD₅ or suspended solids of character and quantity that unusual attention or expense is required to handle the materials at the wastewater treatment works, except as may be permitted by specific written agreement subject to the provisions of 54.037.

54.026 Discharges Hazardous to Life or Constitute Public Nuisances.

- (A) If any waters or wastes are discharged or are proposed to be discharged to the public sewers which contain substances or possess the characteristics enumerated in 54.025 or which in the judgment of the Utilities Superintendent may have a deleterious effect upon the wastewater treatment facilities, processes, or equipment, receiving waters or soil, vegetation, and ground water, or which otherwise create a hazard to life or constitute a public nuisance, the City may:
 - (1) Reject the wastes;
 - (2) Require pretreatment to an acceptable condition for discharge to the public sewers, pursuant to Section 307(b) of the Act (33 USC 1317(b)) and all amendments thereof;
 - (3) Require control over the quantities and rates of discharge; and
 - (4) Require payment to cover the added costs of handling, treating and disposing of wastes not covered by existing taxes or sewer service charges.
- (B) If the City permits the pretreatment or equalization of waste flows, the design, installation and maintenance of the facilities and equipment shall be made at the owner's expense and shall be subject to the review and approval of the City pursuant to the requirements of the MPCA.

54.027 Increasing Use of Process Water. No user shall increase the use of process water or, in any manner, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in 54.024 and 54.025 or contained in the National Categorical Pretreatment Standards or any state requirements.
Penalty, see 54.045.

54.028 Pretreatment or Flow-Equalizing Facilities. Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation at the expense of the owner.

54.029 Grease, Oil and Sand Interceptors. Grease, oil and sand interceptors shall be provided when, in the opinion of the Utilities Superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, as specified in 54.025(B)(2), any flammable wastes as specified in 54.024(A), sand or other harmful ingredients; except that interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of the type to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal of the captured materials by appropriate means, and shall maintain a record of dates and means of disposal which are subject to review by the Utilities Superintendent. Any removal and hauling of the collecting materials not performed by the owner's personnel must be performed by a currently licensed waste disposal firm.
Penalty, see 54.045.

54.030 Industrial Wastes; Installations. Where required by the City, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure, or control manhole, with

necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of wastes. The structure shall be accessible and safely located, and shall be constructed in accordance with plans approved by the City. The structure shall be installed by the owner at his or her expense and shall be maintained by the owner to be safe and accessible at all times.

Penalty, see 54.045.

54.031 Industrial Wastes; Requirements. The owner of any property serviced by a building sewer carrying industrial wastes may, at the discretion of the City, be required to provide laboratory measurements, tests or analyses of waters or wastes to illustrate compliance with this chapter and any special condition for discharge established by the City or regulatory agencies having jurisdiction over the discharge. The number, type and frequency of sampling and laboratory analyses to be performed by the owner shall be as stipulated by the City. The industry must supply a complete analysis of the constituents of the wastewater discharge to assure that compliance with federal, state and local standards are being met. The owner shall report the results of measurements and laboratory analyses to the City at times and in the manner as prescribed by the City. The owner shall bear the expense of all measurements, analyses and reporting required by the City. At those times as deemed necessary, the City reserves the right to take measurements and supplies for analysis by an independent laboratory.

Penalty, see 54.045.

54.032 Measurements, Tests and Analyses of Waters and Wastes. All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of *Standard Methods for the Examination of Water and Wastewater*, published by the American Public Health Association. Sampling methods, location, times, duration and frequencies are to be determined on an individual basis subject to approval by the Utilities Superintendent.

Penalty, see 54.045.

54.033 Protection from Accidental Discharge of Prohibited Materials. Where required by the City, the owner of any property serviced by a sanitary sewer shall provide protection from an accidental discharge of prohibited materials or other substances regulated by this chapter. Where necessary, facilities to prevent accidental discharges of prohibited materials shall be provided and maintained at the owner's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the Utilities Superintendent for review and approval prior to construction of the facility. Review and approval of the plans and operating procedures shall not relieve any user from the responsibility to modify the user's facility as necessary to meet the requirements of this chapter. Users shall notify the Utilities Superintendent immediately upon having a slug or accidental discharge of substances of wastewater in violation of this chapter to enable countermeasures to be taken by the Utilities Superintendent to minimize damage to the wastewater treatment works. The notification will not relieve any user of any liability for any expense, loss or damage to the wastewater treatment system or treatment process, or for any fines imposed on the City on account thereof under any state and federal law. Employers shall ensure that all employees who may cause or discover a discharge are advised of the emergency notification procedure.

Penalty, see 54.045.

54.034 Permitting Substance or Matter to Flow or Pass into Public Sewers. No person having charge of any building or other premises which drains into the public sewer shall permit any substance or matter which may form a deposit or obstruction to flow or pass into the public sewer. Within 30 days after receipt of written notice from the City, the owner shall install a suitable and sufficient catch basin or waste trap, or if one already exists, shall clean out, repair or alter the same, and perform other work as the Utilities Superintendent may deem necessary. Upon the owner's refusal or neglect to install a catch basin or waste trap or to clean out, repair, or alter the same after the period of 30 days, the Utilities Superintendent may cause the work to be completed at the expense of the owner or representative thereof.

Penalty, see 54.045.

54.035 Repairing Service Connection. Whenever any service connection becomes clogged, obstructed, broken or out of order, or detrimental to the use of the public sewer, or unfit for the purpose of drainage, the owner shall repair or cause the work to be done as the Utilities Superintendent may direct. Each day after 30 days that a person neglects or fails to so act shall constitute a separate violation of this section, and the Utilities Superintendent may then cause the work to be done, and recover from the owner or agent the expense thereof by an action in the name of the City.

Penalty, see 54.045.

54.036 Catch Basin or Waste Traps Required for Motor Vehicle Washing or Servicing Facilities. The owner or operator of any motor vehicle washing or servicing facility shall provide and maintain in serviceable condition at all times a catch basin or waste trap in the building drain system to prevent grease, oil, dirt or any mineral deposit from entering the public sewer system.

Penalty, see 54.045.

54.037 Special Agreement and Arrangement. No statement contained in this subchapter shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefore by the industrial concern; provided, that National Categorical Pretreatment Standards and the city's NPDES/SDS Permit limitations are not violated.

USER RATE SCHEDULE FOR CHARGES

54.038 Charges Generally. Each user of sewer service shall pay the charges applicable to the type of service received.

54.039 Purpose. The purpose of the subchapter is to provide for sewer service charges to recover costs associated with operation, maintenance and replacement to ensure effective functioning of the City's wastewater treatment system, and local capital costs incurred in the construction of the City's wastewater treatment system.

54.040 Establishment of a Sewer Service Charge System.

- (A) The City hereby establishes a Sewer Service Charge System whereby all revenue collected from users of the wastewater treatment facilities will be used to affect all expenditures incurred for annual operation, maintenance and replacement and for debt service on capital expenditure incurred in constructing the wastewater treatment works.

54.041 Determination of Sewer Service Charges. The sewer service rates and charges to users of the wastewater treatment facility shall be as established by resolution prior to the adoption of this code, and may be amended from time to time.

54.042 Administration. The sewer service charge system and sewer service fund shall be administrated according to the following provisions:

- (A) The City Clerk shall maintain a sewer system account suitable for determining the operation and maintenance, equipment replacement and debt retirement costs of the treatment operation. The Council shall assess periodically and as necessary revise the Sewer Service Charge System in use to ensure the sufficiency of funds to maintain the capacity and performance to which the facilities were constructed, and to retire the construction debt.
- (B) In accordance with federal and state requirements, the City Clerk shall be responsible for maintaining all records necessary to document compliance with the Sewer Service Charge System adopted.

- (C) All charges for sewer service shall be billed monthly on the first of the month and shall be due and payable on the first of the next month and shall be delinquent thereafter. The City shall endeavor to collect delinquent accounts promptly. In any case, where satisfactory arrangements for payment have not been made, the City may discontinue service to the delinquent customer in accordance with 54.042(F).
- (D) The owner of the premises shall be liable to pay for the service to their premises, and the service is furnished to the premises by the City only upon the condition that the owner of the premises is liable therefore to the City.
- (E) Any additional costs caused by discharges to the treatment works of toxics or other incompatible wastes, including the cost of restoring wastewater treatment services, clean up and restoration of the receiving waters and environs, and sludge disposal, shall be borne by the discharger of the wastes, at no expense to the city.
- (F) Service shall not be discontinued until notice and an opportunity for a hearing have first been given to the occupant of the premises involved. The notice shall be sent and shall state that if payment has not been made before a day stated in the notice but not less than 10 days after the date on which to notice is given, service to the premises shall be discontinued. The notice shall also state that the occupant may request a hearing with the City Council before the 10 days after the date on the notice are up, in which case the service will not be discontinued until after a hearing is held. If as a result of the hearing the City Council finds that the amount claimed to be owing is actually due and unpaid and that there is no legal reason why the service should not be discontinued, the city may shut off the sewer service.

POWERS AND AUTHORITY OF INSPECTORS

54.043 Authorized Employees Permitted to Enter All Properties. The Utilities Superintendent or other duly authorized employees of the City, bearing proper credentials and identification, are authorized, with the permission of the licensee, owner, resident or other person in control of property within the City, to enter all properties for the purpose of inspection, observations, measurement, sampling and testing pertinent to the discharges to the city's sewer system in accordance with the provisions of this chapter.

54.044 Authorized Employees Permitted to Enter All Property With Easements. The Utilities Superintendent or other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within the easement. All entry and subsequent work, if any, on the easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

54.045 Penalty.

- (A) (1) Any person found to be violating any provisions of 54.001 through 54.037 and 54.043 through 54.044 shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in the notice, permanently cease all violations.

- (2) Any person violating any of the provisions of 54.001 through 54.037 and 54.043 through 54.044 shall become liable to the city for any expense, loss or damage occasioned by the City by reason of that violation.
- (B)
- (1) Each and every sewer service charge levied by and pursuant to 54.001 through 54.037 is made a lien upon the lot or premises served, and all charges which are on October 31 of each year past due and delinquent shall be certified to the County Auditor by November 29, for collection.
 - (2) As an alternative to levying a lien, the City may, at its discretion, file suit in a civil action to collect amounts as are delinquent and due against the occupant, owner or user of the real estate, and shall collect as well all attorney's fees incurred by the city in filing the civil action. Attorney's fees shall be fixed by order of the court.
 - (3) In addition to all penalties and costs attributable and chargeable to recording notices of the lien or filing a civil action, the owner or user of the real estate being serviced by the treatment works shall be liable for interest upon all unpaid balances at the rate of 8% per annum.

This Ordinance introduced by Council Member Jerry Goblirsch on July 14, 2008

This Ordinance published on July 24, 2008

Hearing held August 11, 2008

Ordinance adopted August 11, 2008

Ordinance published August 21, 2008

CHAPTER 6

60.00 ANNEXATION AND DETACHMENT

60.01 **Regulations.** Annexation and detachment being of concern to the state of Minnesota, is governed by general laws of the Legislature, which laws have created a statewide administrative commission called the Minnesota Municipal Commission for the purpose of passing upon the annexation or detachment to municipalities of contiguous unincorporated and incorporated property. All proceedings relative to annexation or detachment shall be in accordance with Chapter 414 of Minnesota Statutes, and every provision contained therein relating to annexation and detachment is hereby adopted and made a part of this Ordinance as if fully set forth herein.

60.01 **Ordinance Annexing a Part of the Northeast Quarter of the Southeast Quarter (NE¼ SE¼), Section Twenty-one (21), Township 120, Range Thirty-seven (37), Containing 3.5 Acres More or Less, Swift County, Minnesota.** The Village Council of Kerkhoven ordains: That a tract of land described as follows: Beginning at the Northeast Corner of the Southeast Quarter (SE¼) of Section Twenty-one (21), Township One Hundred Twenty (120), Range Thirty-seven (37), thence running West on the North line of the Southeast Quarter (SE¼) of said Section Twenty-one (21), Township One Hundred Twenty (120), Range Thirty-seven (37), a distance of 676.0 feet to the North right-of-way line of Trunk Highway #12, thence in a Southeasterly direction along the said North right-of-way line of Trunk Highway #12 to the East line of Section Twenty-one (21), Township One Hundred Twenty (120), Range Thirty-seven (37), thence North along the said East line of Section Twenty-one (21), Township One Hundred Twenty (120), Range Thirty-seven (37), a distance of 450 feet to place of beginning, containing 3.5 acres more or less, being in the Northeast Quarter of the Southeast Quarter (NE¼ SE¼) of Section Twenty-one (21), Township One Hundred Twenty (120), Range Thirty-seven (37), Swift County, Minnesota, be and the same hereby is wholly annexed to and made a part of the Village of Kerkhoven and the same shall be henceforth an addition to said Village and shall be a part thereof as effectually as if it had been originally a part thereof.

DERIVATION: Ordinance No. 40 originally passed June 23, 1960.

ORDINANCE NO. 60.

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE VILLAGE OF KERKHOVEN TO INCLUDE CERTAIN UNINCORPORATED UNPLATTED LAND NOT EXCEEDING TWO HUNDRED ACRES IN AREA ABUTTING UPON THE VILLAGE LIMITS.

WHEREAS, a certain Petition dated March 31, 1970, requesting annexation of the territory hereinafter described, was duly presented to the Council on the 10th day of November, 1970, and

WHEREAS, the quantity of land embraced within the area described in the Petition and bounded as described is less than one acre of unplatted land, no part of which is included within the limits of an incorporated city, village, or borough, and

WHEREAS, the Petition was signed by all owners, and

WHEREAS, no objection to the annexation has been received from the town board, the county board, or the governing board of any municipality whose boundaries abut upon the boundaries of the land to be annexed, after due notice as provided by law, and

WHEREAS, the land described in the Petition abuts upon the Village limits at the East boundary thereof;

The Council of the Village of Kerkhoven, Minnesota, ordains:

Section 1. The Village Council hereby determines (1) that the annexation will be to the best interests of the Village and of the territory affected; (2) that the territory described herein abuts upon the Village limits and is urban or suburban in character; and (3) that none of said property is now included within the limits of any city, village or borough.

Section 2. Territory Annexed. The corporate limits of the Village are hereby extended to include the unplatted land described as follows and the same is hereby annexed to and included within the Village as effectually as if it had originally been a part thereof;

That part of the Southwest Quarter of the Northwest Quarter (SW¹/₄-NW¹/₄) of Section Twenty-two (22), Township One Hundred Twenty (120), Range Thirty-seven (37), described as follows, to-wit: Commencing at the Southwest corner of said Southwest Quarter of the Northwest Quarter (SW¹/₄-NW¹/₄) of Section Twenty-two (22); thence North on and along the West line of said Section a distance of Six Hundred Seventy-two and eight-tenths (672.8) feet to a point; thence deflecting to the right Ninety (90) degrees, Twenty-seven (27) minutes and running parallel with the South line of said Southwest Quarter of the Northwest Quarter (SW¹/₄-NW¹/₄) of Section Twenty-two (22) a distance of One Hundred Twenty (120) feet to a point; thence South and parallel with the West line of said Section Twenty-two (22) a distance of One Hundred Twenty-seven and eight-tenths (127.8) feet to a point; thence West and parallel with the South line of said Southwest Quarter of the Northwest Quarter (SW¹/₄-NW¹/₄) of said Section Twenty-two (22) a distance of One Hundred Twenty (120) feet to a point on the West line of said Section; thence North on and along the West line of said Section a distance of One Hundred Twenty-seven and eight-tenths (127.8) feet to the place of beginning, County of Swift and State of Minnesota.

Section 3. Filing. The Village Clerk is hereby directed to file certified copies of this Ordinance with the Minnesota Municipal Commission, the Secretary of State, and the County Auditor.

Section 4. Effective Date. This Ordinance takes effect upon its passage and publication and the filing of the certified copies as directed in Section 3.

Adopted by the Village of Kerkhoven, Minnesota, this 10th day of November, 1970.

Originally Ordinance No. 40-70

ORDINANCE NO. 60.

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE VILLAGE OF KERKHOVEN TO INCLUDE CERTAIN UNINCORPORATED PROPERTY OWNED BY AND ABUTTING UPON THE LIMITS OF THE VILLAGE.

WHEREAS, the territory described below is not presently within the corporate limits of any incorporated city, village, or borough; and

WHEREAS, this territory abuts upon the corporate limits of the Village at the north and east boundary thereof and is deemed to be urban in character; and,

WHEREAS, this territory is owned in fee by the Village,

The Village Council of the Village of Kerkhoven ordains:

Section 1. Territory Annexed. The corporate limits of the Village of Kerkhoven are hereby extended to include the property described as follows now owned by the Village:

The South Two Hundred feet (S 200') of the West Two Hundred Fifty feet (W 250') of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$) of Section Twenty-two (22), in Township One Hundred Twenty (120), Range Thirty-seven (37); and,
A triangular piece of realty in the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section Twenty-one (21), Township One Hundred Twenty (120), Range Thirty-seven (37), described as follows: Beginning at the Northeast corner of the said Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ of NE $\frac{1}{4}$) of said Section Twenty-one (21); thence South along the east line of said Section a distance of Seventy-five feet (75) to a point on the North line of Grant Avenue in the Village of Kerkhoven; thence Westerly along the North line of said Grant Avenue a distance of one (1) rod to a point; thence Northeasterly to the place of beginning, and there terminating.

Section 2. Filing. The Village Clerk is hereby directed to file certified copies of this Ordinance with the Secretary of State, the County Auditor of Swift County, the Town Clerk of Pillsbury Township, Swift County, and Minnesota Municipal Commission.

Section 3. Effective Date of Annexation. This Ordinance takes effect upon its passage and publication and the filing of the certified copies as directed in Section 2.

Adopted by the Village of Kerkhoven, Minnesota, May 8, 1973.

Originally Ordinance No. 40-70

ORDINANCE NO. 60.

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE VILLAGE OF KERKHOVEN TO INCLUDE CERTAIN UNINCORPORATED PROPERTY OWNED BY CERTAIN PETITIONERS NOT EXCEEDING TWO HUNDRED ACRES IN AREA WHICH IS UNPLATTED AND WHICH ABUTS UPON THE VILLAGE LIMITS.

WHEREAS, a certain Petition dated June 12, 1973, requesting annexation of the territory hereinafter described, was duly presented to the Council on the 12th day of June, 1973, and

WHEREAS, the quantity of land embraced within the area described in the Petition and bounded as described is less than two hundred acres of unplatted land, no part of which is included within the limits of an incorporated city, village, or borough, and

WHEREAS, the Petition was signed by all owners, and

WHEREAS, no objection to the annexation has been received from the town board, the county board, or the governing board of any municipality whose boundaries abut upon the boundaries of the land to be annexed, after due notice as provided by law, and

WHEREAS, the land described in the Petition abuts upon the Village limits at the East boundary thereof;

The Council of the Village of Kerkhoven, Minnesota, ordains:

Section 1. The Village council hereby determines (1) that the annexation will be to the best interests of the Village and of the territory affected; (2) that the territory described herein abuts upon the Village limits and is urban or suburban in character; and (3) that none of said property is now included within the limits of any city, village or borough.

Section 2. Territory Annexed. The corporate limits of the Village are hereby extended to include the unplatted land described as follows and the same is hereby annexed to and included within the Village as effectually as if it had originally been a part thereof;

The Westerly One Hundred Ninety feet (Wly 190') of the Southwest Quarter of the Northwest Quarter (SW¹/₄ of NW¹/₄) of Section Twenty-two (22), Township One Hundred Twenty (120), Range Thirty-seven (37).

Section 3. Filing. The Village Clerk is hereby directed to file certified copies of this Ordinance with the Minnesota Municipal Commission, the Secretary of State, the County Auditor and the County Register of Deeds.

Section 4. Effective Date. This Ordinance takes effect upon its passage and publication and the filing of the certified copies as directed in Section 3.

Adopted by the Village of Kerkhoven, Minnesota, this 9th day of October, 1973.

Originally Ordinance No. 40-70

ORDINANCE NO. 60

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF KERKHOVEN TO INCLUDE CERTAIN UNINCORPORATED PROPERTY OWNED BY CERTAIN PETITIONERS AND THE CITY NOT EXCEEDING TWO HUNDRED ACRES IN AREA WHICH IS UNPLATTED AND WHICH ABUTS UPON THE CITY LIMITS.

WHEREAS, a certain Petition dated September 9, 1976 requesting annexation of the territory hereinafter described, was duly presented to the Council on the 27th day of September, 1976, and

WHEREAS, the quantity of land embraced within the area described in the Petition and bounded as described is less than two hundred acres of unplatted land, no part of which is included within the limits of an incorporated city, village, or borough, and

WHEREAS, the Petition was signed by all owners, and

WHEREAS, no objection to the annexation has been received from the town board, the county board, or the governing board of any municipality whose boundaries abut upon the boundaries of the land to be annexed, after due notice as provided by law, and

WHEREAS, the land described in the Petition abuts upon the City limits at the South and West boundaries thereof;

The Council of the City of Kerkhoven, Minnesota, ordains:

Section 1. The City Council hereby determines (1) that the annexation will be to the best interests of the City and of the territory affected; (2) that the territory described herein abuts upon the City limits and is urban or suburban in character; and (3) that none of said property is now included within the limits of any city, village or borough.

Section 2. Territory Annexed. The corporate limits of the City are hereby extended to include the unplatted land described as follows and the same is hereby annexed to and included within the City as effectually as if it had originally been a part thereof;

Tract I. All that part of the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ of SE $\frac{1}{4}$) of Section Twenty-one (21), Township One Hundred Twenty (120), Range Thirty-seven (37), lying Southwest (SW) of the Northeasterly right-of-way line of the Burlington Northern Railway Company.

Tract II. All that portion of the North Half of the Northwest Quarter (N $\frac{1}{2}$ of NW $\frac{1}{4}$) of Section Twenty-one (21), Township One Hundred Twenty (120), Range Thirty-seven (37), lying North of the Southwesterly right-of-way line of the Burlington-Northern Railway.

Tract III. The Southwest Quarter of the Southwest Quarter (SW $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section Sixteen (16), and that part of the South Half of the Southeast Quarter (S $\frac{1}{2}$ of SE $\frac{1}{4}$) of Section Seventeen (17), lying North and East of the Southwest (SW) right-of-way line of the Burlington-Northern Railway Company, all in Township One Hundred Twenty (120), Range Thirty-seven (37).

Section 3. Filing. The City Clerk is hereby directed to file certified copies of this Ordinance with the Minnesota Municipal Commission, the Secretary of State, the County Auditor and the County Recorder.

Section 4. Effective Date. This Ordinance takes effect upon its passage and publication and the filing of the certified copies as directed in Section 3.

Adopted by the City of Kerkhoven, Minnesota, this 11th day of January, 1977.

Originally Ordinance No. 40-70

ORDINANCE NO. 60

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF KERKHOVEN, A MUNICIPAL CORPORATION OF THE STATE OF MINNESOTA, TO INCLUDE CERTAIN LANDS NOT EXCEEDING 200 ACRES.

WHEREAS, a petition has been filed with the governing body of the City of Kerkhoven, a municipal corporation in the State of Minnesota, by the sole owner having an interest therein, to have certain real estate hereinafter described included within the limits of the City of Kerkhoven; and

WHEREAS, it is proposed to annex by virtue hereof to the said City of Kerkhoven, said property, all of which said property is in Swift County, Minnesota; and

WHEREAS, pursuant to Minnesota law, said land may be annexed by ordinance; and

WHEREAS, the said real estate to be annexed is described as follows, to-wit:

The East One Hundred Ten Feet (E 100') of the West Three Hundred Feet (W 300') of the South Eight Hundred and Thirty Feet (S 830') of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ --NW $\frac{1}{4}$), Section Twenty-two (22), Township One Hundred Twenty (120), Range Thirty-seven (37).

NOW, THEREFORE, the City Council of the City of Kerkhoven hereby determines, ordains and declares as follows:

Section 1. **Best Interest of the City of Kerkhoven and Area to be Annexed.** That the annexation will be in the best interest of the City of Kerkhoven, Minnesota, and of the territory affected.

Section 2. **Abuts on City Limits.** That the real estate above described abuts on the City limits, and is so conditioned as such property to be subject to city government.

Section 3. **Annexation.** That the said real estate is hereby annexed to, and included within, the City of Kerkhoven, Minnesota, as effectually as if it had originally been a part hereof.

Section 4. **Zoning.** That the above-described real estate shall be zoned R-1.

Section 5. **Acreage.** The parcel has a combined area of 2.1 acres.

Section 6. **Effective Date.** This Ordinance shall be filed and shall take effect and be in full force and effect from and after filing a certificate thereof with the Minnesota Municipal Commission, the County of Swift, Minnesota and the Secretary of State of the State of Minnesota, and from and after its adoption and publication.

This Ordinance introduced by Councilman: Jerry Welter.

This Ordinance introduced on: May 26, 1992.

This Ordinance published on: May 27, 1992.

This Ordinance given a hearing on: June 9, 1992.

This Ordinance adopted on: June 23, 1992.

This Ordinance published on: June 24, 1992.

ORDINANCE NO. 60

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF KERKHOVEN TO INCLUDE CERTAIN UNINCORPORATED TERRITORY ABUTTING THE CITY LIMITS.

WHEREAS, certain territory described below is not presently included within the corporate limits of any incorporated city or borough; and

WHEREAS, the land abuts the municipality and the area to be annexed is 60 acres or less, and a Petition for Annexation from all property owners of the land has been received by the Council; and

WHEREAS, the land is deemed to be urban or suburban in character;

The City Council of Kerkhoven ordains:

Section 1. **Territory Annexed.** The corporate limits of the City of Kerkhoven, Minnesota, are hereby extended to include the unplatted territory described as follows:

That part of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 21, Township 120, Range 37, Swift County, Minnesota, described as follows: Commencing at the East $\frac{1}{4}$ corner of said Section 21; thence North along the Section line 1246.67 feet; thence Northwesterly at an angle with said Section line of 60° West, 537.00 feet to the point of beginning of the tract herein described; thence at right angles Northeasterly 410.00 feet; thence Northwesterly at right angles 362.00 feet to the centerline of road; thence Southwesterly along the centerline of said road to intersection of said centerline with the North side of Grant Avenue in the City of Kerkhoven, Swift County, Minnesota; thence Southeasterly along the North side of Grant Avenue, 488.00 feet to the point of beginning. Except that part of said NE $\frac{1}{4}$ of the NE $\frac{1}{4}$, described as follows, to-wit: Beginning at the intersection of the centerline of the public highway known as County State Aid Road #6 with the North side of Grant Avenue in the City of Kerkhoven; running thence Southeasterly along the North side of said Grant Avenue a distance of 100.00 feet; running thence Northeasterly parallel with said public highway a distance of 100.00 feet; running thence Northwesterly parallel with the first described line on the North side of Grant Avenue a distance of 100.00 feet to a point 100.00 feet Northeasterly of the point of beginning; thence Southwesterly along the East side of said public highway a distance of 100.00 feet to the point of beginning. AND ALSO that part of said NE $\frac{1}{4}$ of the NE $\frac{1}{4}$, described as follows: Commencing at the Southeast corner of said NE $\frac{1}{4}$; thence North along the Section line 1246.67 feet; thence Northwesterly on the North side of Grant Avenue, City of Kerkhoven, Minnesota, 537 feet on a heading of N 59°46' W; thence Northeasterly for 410 feet on a heading of N 30°14' E; thence Northwesterly for 362.00 feet on a heading of N 59°46' W to the point of beginning; thence on a heading of S 47°19' W for 328.90 feet; thence on a heading of N 59°46' W for 98.25 feet; thence on a heading of N 38°19' E for 317.95 feet; thence on a heading of S 59°46' E for 153.55 feet to the point of beginning.

Section 2. **Filing.** The City Clerk is directed to file certified copies of this Ordinance with the Secretary of State, the County Auditor of Swift County, the Town Clerk of Pillsbury Township and the Minnesota Municipal Board (Minnesota Planning Municipal Boundary Adjustments).

Section 3. **Population.** The population of the annexed territory is two (2).

Section 4. **Effective Date of Annexation.** This Ordinance takes effect upon passage and publication in the filing of certified copies as directed in Section 2 and by approval of the Minnesota Municipal Board (Minnesota Planning Municipal Boundary Adjustments).

Adopted by the City Council of Kerkhoven, Minnesota, August 25, 2003.

Petition presented April 28, 2003

Ordinance introduced by Councilmember Keith Finstrom August 25, 2003

Ordinance adopted August 25, 2003

Ordinance published August 28, 2003

75.00 FIRE DEPARTMENT

75.01 **Fire Department Continued.** There is hereby continued in this City a volunteer fire department consisting of not more than 28 fire fighters.

75.02 **Selection.** The chief of the fire department shall be elected annually by the members of the department, subject to confirmation by the Council. The chief shall appoint three captains and assistant chief. Each shall hold office for one year and until his successor has been duly elected, except that he may be removed by the Council for cause after a public hearing. Firefighters and probationary firefighters shall be appointed by the members of the department, subject to confirmation by the Council. Firefighters shall continue as members of the department during good behavior and may be removed by the Council only for cause after a public hearing.

75.03 **Duties of Chief.** The chief shall have control of all the fire fighting apparatus and shall be solely responsible for its care and condition. He shall submit reports and recommendations at any meeting of the Council, and he shall report each suspension by him of a member of the fire department at the first meeting of the Council following such suspension. He shall be responsible for the proper training and discipline of the members of the fire department, and may suspend any member for refusal or neglect to obey order pending final action by the Council on his discharge or retention. He shall serve as Fire Marshall, and as such, his duties shall be the enforcement of all ordinances aimed at fire prevention. He shall have full authority to inspect all premises and to cause the removal or abatement of all fire hazards.

75.04 **Records.** The chief shall keep in convenient form a complete record of all fires. Such a record shall include the time of the alarm, location of fire, cause of fire (if known), type of building, name of owner and tenant, purpose for which occupied, value of building and contents, members of the department responding to the alarm, and such other information as he may deem advisable or as may be required from time to time by the Council or state insurance department.

75.05 **Practice Drills.** The chief and appointed drill instructor shall, when the weather permits, hold a monthly practice drill of at least one hour's duration for the fire department and shall give or arrange for instruction to the firefighters in approved methods of fire fighting and fire prevention.

75.06 **Assistant Chief.** In the absence or disability of the chief, the assistant chief shall perform all the functions and exercise all of the authority of the chief.

75.07 **Firefighters.** The assistant chief and firefighters shall be able-bodied and not less than eighteen (18) years of age.

75.08 **Loss of Membership.** Absence of any firefighter from three consecutive drills or calls unless excused by the chief shall be cause for removal from the department.

75.09 **Compensation.** Compensation will be set by fire department members subject to Council approval.

75.10 **Relief Association.** The members and officers of the fire department may organize themselves into a fireman's relief association in accordance with law.

75.11 **Interference with Department.** No person shall give or make or cause to be given or made, a fire alarm without probable cause, or neglect or refuse to obey any reasonable order of the chief at a fire, or interfere with the fire department in the discharge of its duties.

DERIVATION: Ordinance No. 35 originally passed July 25, 1942.
Revised July 24, 1969 and February 1984.

/s/ William Doering Jr., Mayor

/s/ Mona Doering, City Clerk-Treasurer

Passed and adopted by the City Council of the City of Kerkhoven on the 14th day of February, 1984.
Published the 23rd day of February, 1984.

76.00 RESCUE SQUAD—AMBULANCE SERVICE

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF A VOLUNTEER RESCUE SQUAD—AMBULANCE SERVICE AND MAKING RULES AND REGULATIONS FOR THE GOVERNMENT OF SAME

The City Council of the City of Kerkhoven, Minnesota ordains:

76.01 **Definitions.** “Ambulance” means a vehicle which is designed or intended to be used in providing transportation of wounded, injured, sick, invalid, or incapacitated human beings or expectant mothers.

“Attendant” means a trained and/or qualified individual responsible for the operation of an ambulance and the care of the patients whether or not the attendant also serves as driver.

76.02 **Purpose.** This Ordinance is for the purpose of providing adequate transportation for the sick and injured and promoting the public health, safety, and comfort and welfare of the citizens of the Kerkhoven area.

76.03 **Volunteer Rescue Squad—Ambulance Service Established.** There is hereby established a volunteer Rescue Squad—Ambulance Service for the City of Kerkhoven to provide adequate provisions for the transportation of the sick and injured to and from hospitals, asylums, medical centers or institutions where proper treatment and assistance may be administered.

76.04 **Election.** The director, assistant director, secretary and treasurer shall be elected annually by the members of the Rescue Squad—Ambulance Service subject to confirmation by the City Council. Each shall hold office for one year and until his successor has been duly elected, except that he may be removed by the Council for cause after a public hearing. Attendants shall be appointed by the members of the Rescue Squad—Ambulance Service and shall continue as members of the Service during good behavior and may be removed by the Council only for cause after a public hearing.

76.05 **Duties of Director.** The Service shall be directed and supervised by the director whose duty it shall be to keep all ambulance equipment in order, to establish rules and regulations for the use and operation of the same and that such rules and regulations are duly executed; and otherwise to do and perform with the assistance of such additional personnel as necessary to accomplish the object and aims of this Ordinance.

The director shall make a report, annually, to the Council at its meeting in September, as to the condition of the equipment and needs of the Service. He may submit additional reports and recommendations at any meeting of the Council and he shall report each suspension by him of a member of the Service at the first meeting of the Council following such suspension. He shall be responsible for the proper training and discipline of the members of the Service, and may suspend any member for refusal or neglect to obey orders pending final action of the Council.

76.06 **Qualifications.** The members shall be able bodied and not less than 18 years of age. They shall acquire the 81-hour Emergency Health Care Certificate or its equivalent, and have a valid Minnesota driver’s license.

76.07 **Assistant Director.** In the absence or disability of the director, the assistant director shall perform all the functions and exercise all the authority of the director.

76.08 **Compensation.** Compensation shall be set by the members of the Service subject to Council approval.

76.09 **Establishment of Rates.** The members of the Service shall establish a schedule of charges for the use of the ambulance which will pay all costs incurred in the operation of the Ambulance Service, subject to the approval of the City Council.

76.10 **Establishment of Ambulance Fund.** It is hereby established and the City Clerk-Treasurer shall maintain a fund to be known as the Rescue Squad—Ambulance Fund, a record of which shall be kept by the City Clerk-Treasurer into which shall be paid all moneys received from the use of the ambulance and from which all disbursements shall be paid.

76.11 **Records.** Upon completion of each ambulance run, the attendants on duty shall complete the “Emergency Medical Service Record” form or its equivalent as prescribed by the Minnesota Department of Health.

76.12 **Equipment Requirements.** The ambulance, when in service, shall be equipped with and carry the minimum equipment recommended by the American College of Surgeons.

76.13 **Availability of Service.** The Ambulance Service shall offer ambulance service 24 hours per day every day of the year.

76.14 **Licensing.** The ambulance shall possess a valid license issued by the Minnesota State Board of Health.

76.15 **Interference with Service.** It shall be unlawful for any person to give, or make cause to be made a call for ambulance service without probable cause or to neglect to obey any reasonable order of a driver or attendants at an ambulance call or to interfere with the Rescue Squad—Ambulance Service’s discharge of its duties.

76.16 **Effective Date.** This Ordinance shall be in full force and effect from the day of its passage and publication.

Passed by the City Council this 22nd day of May, 1984.

/s/ William Doering Jr., Mayor

/s/ Mona Doering, City Clerk-Treasurer

(seal)

Published in the *Kerkhoven Banner* on the 30th day of May, 1984.

77.00 CIVIL DEFENSE AGENCY

77.01 **Act Adopted.** The Minnesota Civil Defense Act, Minnesota Statutes, Chapter 12, insofar as it relates to cities, is adopted by reference as part of this Ordinance as fully as if set forth explicitly herein.

77.02 **Civil Defense Agency.**

Subdivision 1. Agency and Director. There is hereby created within the City government a civil defense and disaster agency which shall be under the supervision and control of a director of civil defense, hereinafter called the director. The director shall be appointed by the Mayor for an indefinite term and may be removed by him at any time. He shall serve without salary but shall be paid his necessary expenses. The director shall have direct responsibility for the organization, administration, and operation of the civil defense agency, subject to the direction and control of the Mayor.

Subdivision 2. Organization and Functions. The Civil Defense Agency shall be organized into such divisions and bureaus, consistent with state and local defense plans, as the director deems necessary to provide for the efficient performance of local civil defense functions during a civil defense emergency. The Agency shall perform civil defense functions with the City and in addition shall conduct such functions outside the City as may be required pursuant to Minnesota Statutes, Chapter 12, or this Ordinance.

77.03 **Powers and Duties of Director.**

Subdivision 1. Intergovernmental Arrangements. With the consent of the Mayor, the director shall represent the City on any regional or state organization for civil defense. He shall develop proposed mutual aid agreements with other political subdivisions within or outside the state for reciprocal civil defense aid and assistance in a civil defense emergency too great to be dealt with unassisted, and he shall present such agreements to the Council for its action. Such agreements shall be consistent with the civil defense plan and during a civil defense emergency, the civil defense agency and civil defense forces shall render assistance in accordance with the provisions of such agreements.

Subdivision 2. Civil Defense Plan. The director shall prepare a comprehensive general plan for the civil defense of the City and shall present such plan to the City Council for its approval. When the Council has approved the plan by resolution, all civil defense forces of the City shall perform the duties and functions assigned by the plan.

Subdivision 3. Reports. The director shall prepare and present to the Council periodically a report of activities and recommendations.

77.04 **Effective Date.** This Ordinance shall take effect and be enforced from and after its passage and publication pursuant to law.

DERIVATION: New 1982.

CHAPTER 8

80.00 TRAFFIC REGULATION

80.01 Highway Traffic Regulation Act Incorporated by Reference. The regulatory provisions of Minnesota Statutes, Chapter 169, are hereby adopted as a Traffic Ordinance regulating the use of highways, streets and alleys within the City of Kerkhoven, and except as otherwise provided by Ordinance, are hereby incorporated in and made a part of this Ordinance as completely as if set out herein in full.

80.02 Careless Driving. No person shall operate or halt any vehicle upon a street or highway within the City of Kerkhoven carelessly or heedlessly in disregard of the rights and safety of others, or in a manner so as to endanger or likely to endanger any person or property.

80.03 Speed Regulations. No person driving a vehicle within the City of Kerkhoven shall drive the same at a speed greater than is reasonable and prudent under the conditions, and having regard to the actual and potential hazards then existing. In every event, speed shall be so restricted as may be necessary in order to avoid colliding with any person, vehicle or other conveyance on or entering the highway in compliance with the legal requirements, and it shall be the duty of all persons to use due care. No person shall drive a vehicle at such a slow speed as to impede and block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation, or in compliance with [the] law. Until the streets of this City have been zoned as authorized by the State Highway Traffic Regulation Act, no vehicle shall be driven thereon at a speed in excess of thirty (30) miles per hour. On any street where a different speed zone had been so established and signs have been posted calling attention to such zone, no vehicle shall be driven in the City of Kerkhoven at a speed greater than that indicated on such signs.

80.04 Exhibition Driving Prohibited. No person shall turn, accelerate, decelerate, or otherwise operate a motor vehicle within the City of Kerkhoven in a manner which causes unnecessary engine noise or backfire, squealing tires, skidding, swaying, throwing of sand or gravel, or in a manner simulation a race. Unreasonable squealing or screeching sounds emitted by tires, or the unreasonable throwing of sand or gravel by the tires is prima facie evidence of a violation of this section.

80.041 Penalty. Any person violating any provision of Section 80.04 shall be guilty of a petty misdemeanor.

80.05 Through Highway. Pursuant to the authority of Minnesota Statutes 169.04, all that portion of Trunk Highway No. 12 located within the limits of the City of Kerkhoven is hereby designated as a through highway.

- 1) It shall be unlawful for the driver of any vehicle to fail to stop before entering the through highway established above.
- 2) Stop signs of a design approved by the Commissioner of Highways shall be posted upon or at the street entrances to the through highway designated by this chapter.

80.06 Through Streets. The Chief of Police by a written designation approved by the Mayor and filed with the City Clerk may designate any street as a through street, and any intersection as a stop intersection where necessary to preserve the free flow of traffic and to prevent accidents, and he shall post appropriate signs at the entrance to such streets or intersections; but no trunk highway shall be designated as a through street and no intersection unless the consent of the Commissioner of Highways to such designation, is first secured. Every driver of a vehicle shall bring his vehicle to a full stop before entering any stop street or intersection properly designated and posted as such by the Commissioner of Highways or the Chief of Police.

80.07 Stop Intersections. The Chief of Police, by a written designation approved in writing by the Mayor of the City and by one member of the Traffic Committee of the City Council and filed with the City Clerk, may

designate any intersection in any part of the City as a "Stop" intersection, from whichever direction it may be approached by traffic, where necessary to preserve the free flow of traffic, to prevent accidents, and particularly to safeguard children, students, and pedestrians in, about and near school buildings in the City of Kerkhoven; said designations may provide that certain intersection shall be a "Stop" intersection only during certain hours of the day, or when due and appropriate signs are posted in, at or upon said intersections; any person who shall drive an automobile through such an intersection of streets, when duly posted as herein provided, shall be subject to all of the penalties provided in this Ordinance for violation thereof.

80.08 U Turns Prohibited. No vehicle shall be turned so as to proceed in the opposite direction upon any portion of State Highway No. 12 located within the city limits of the City of Kerkhoven. The prohibitions of this chapter include a reverse turn in the form of a U and also prohibit turns executed by backing into a street or alley and thereby changing the course of travel.

80.09 Parking Regulations.

- 1) Angle Parking. Angle parking shall be required on all streets where marked by painted stripe or signs. On any street where angle parking is permitted the vehicles parked shall be parked with the front of such vehicle facing the curb or the edge of the traveled portion of the street at an angle approximately forty-five (45) degrees.
- 2) Parallel Parking. On all streets other than those named in subdivision 1) herein, parallel parking shall be required. On any such street with the street having a curb, every vehicle shall be parked parallel to the curb and with the right hand wheels of such vehicle within twelve (12) inches of the curb. On any such street without a curb, every vehicle shall be parked to the right of the main traveled portion thereof and parallel thereto, and in such a manner that it shall not interfere with the free flow of traffic.
- 3) Parking Prohibited. No person shall park their vehicle or permit it to stand, whether attended or unattended, upon any street or highway within the City in any of the following places:
 1. On the sidewalk.
 2. In front of a public or private driveway.
 3. Within an intersection.
 4. Within fifteen (15) feet of a fire hydrant.
 5. On a crosswalk.
 6. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.
 7. Upon a bridge or any other elevated structure.
 8. Upon a highway except as otherwise provided by Ordinance.
 9. Alongside or opposite any street excavation when such stopping, standing or parking would obstruct traffic.
 10. At any place where official signs prohibit stopping.
- 4) Camping Prohibited. No person shall, for camping purposes, leave or park a house trailer on any street or the right-of-way thereof.

- 5) Stopping Prohibited. No person shall stop or park a vehicle on a street when directed to proceed by any peace officer with authority to direct traffic.
- 6) Advertising Prohibited. No vehicle shall be parked on any street for the purpose of displaying it for sale.
- 7) Disabled Vehicle. All vehicles parked upon any street within this City shall be parked only in accordance with the provisions of the foregoing Ordinances or Ordinances subsequently adopted, however, these provisions shall not apply to any vehicle disabled upon any street. A police officer of this City may require the person in charge of said vehicle to move it to a place of safety and if such movement is not made or any motor vehicle is left alone or abandoned in any such position, the officer may provide for the removal of such vehicle to the nearest convenient garage or other place of safekeeping.
- 8) Towing of Snowbirds. Any vehicle used infrequently enough to be considered a nuisance to street maintenance will be towed away at the owner's expense. The City of Kerkhoven or the tow unit will not be held responsible for any damage done in towing.

80.10 Driving Under the Influence of Liquor or Narcotics. No person who is a habitual user of narcotic drugs or is under the influence of narcotics or liquors or a combination thereof, shall drive or operate a vehicle on any street within the City and no person shall consume liquor while an occupant of the vehicle upon any street in the City.

80.11 Open Bottle Container. No person shall have in his possession or allow to be kept in a motor vehicle when such vehicle is upon the City streets any bottle or receptacle containing intoxicating liquors or non-intoxicating malt liquors which has been opened, or on which the federal liquor tax stamp or seal has been broken or removed, provided that such container may be located in the trunk of any automobile or elsewhere in a motor vehicle so as not to be accessible to the driver or any occupant of the vehicle while it is in motion.

80.12 Parking Restrictions—Winter (Amended by Ordinance adopted March 14, 2011)

1. When snow has accumulated to a depth that requires plowing and/or removal, all vehicles including trailers parked and/or standing on city streets and alleys in the City of Kerkhoven shall be moved off of the city streets by 6:00 a.m.
2. All vehicles remaining on the city streets after 6:00 a.m. may be towed to an impound lot at owner's expense.
3. Parking may be resumed in individual streets as soon as the snow has been removed from these streets, except as may be otherwise restricted by this Ordinance.
4. It shall be the duty of the City of Kerkhoven's police department to maintain a log of vehicles towed so that any subsequent infractions each snow season may also result in a citation being issued besides towing the vehicle at the owner's expense.
5. This order shall not include parking lots, backyard parking or private driveways.

ORDINANCE 81.00

AN ORDINANCE PROHIBITING PERSONS, VEHICLES, SNOWMOBILES, AND ALL TERRAIN VEHICLES UPON PUBLIC SCHOOL GROUNDS AND PROPERTY SITUATED IN THE CITY OF KERKHOVEN, MINNESOTA, AND ESTABLISHING CERTAIN HOURS OF PROHIBITION, REGULATING THE SPEED AND PARKING OF VEHICLES UPON PUBLIC SCHOOL GROUNDS AND PROPERTY SITUATED IN THE CITY OF KERKHOVEN. AND THE USE OF LIQUOR AND DRUGS AND ANY DISORDERLY CONDUCT AND PROVIDING FOR A PENALTY FOR THE VIOLATION THEREOF

81.01 That in order to protect persons and property and promote the safety, order and general welfare of the City of Kerkhoven, the following acts are hereby declared to be unlawful and a public nuisance upon all public school grounds and property situated in the City of Kerkhoven.

Subdivision 1. Parking Prohibited: Vehicle parking on all school grounds and property after the hour of 11:00 p.m. and before 6:00 a.m. except for persons having business within the adjacent school building or attending school authorized functions, or vehicles owned by the school district.

Subdivision 2. Speed Restrictions:

Subd. A. Basic Rule: No person shall drive a vehicle on school property in a reckless manner or at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so restricted as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering school district property in compliance with legal requirements and the duty of all persons to use due care.

Subd. B. Speed Limits: Even where no special hazard exists the speed limit within school district property shall be a maximum limit of 10 MPH and any speed in excess thereof shall be unlawful.

Subd. C. Posting: That appropriate signs conforming to the regulations of the State Highway Department shall be placed upon the school district property designating the speed limits set forth in Subd. B of this subsection.

Subd. D. Designated Driving Areas: Except as necessary in an emergency or in connection with maintenance and repair of school district property, no person shall operate a vehicle on school district property on any natural grass or dirt surface except those of a specified kind of vehicle, and which are so identified by appropriate markers.

Subdivision 3. No person shall be upon any school grounds or property after the hour of 11:00 p.m. and before 6:00 a.m. except for persons having business within the adjacent school building or attending school authorized functions.

Subd. A. No unauthorized person shall be upon any school building at any time.

Subdivision 4. That all snowmobiles and all terrain vehicles are prohibited upon school grounds and property at any time except when used to attend authorized school classes or authorized school functions.

81.02 Vehicle in this Ordinance is hereby defined to mean every device in, upon or by which any person or property may be transported and which is self propelled and not deriving its power from other means.

81.03 No person while on school grounds shall be under the influence of liquor and drugs.

81.04 No person at a school function on the school premises shall be guilty of any disorderly conduct.

81.05 **Penalty.** Any person found guilty of violating any provision of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine up to \$1,000.00 and/or up to 90 days in jail. (Amended by Ordinance adopted August 10, 2009)

81.06 This Ordinance shall take effect and be enforced from and after its passage and publication pursuant to law.

DERIVATION: May 23, 1978.

ORDINANCE 82:00

**AN ORDINANCE RELATING TO THE PARKING OF VEHICLES WITHIN
THE CITY OF KERKHOVEN AND IMPOSING PENALTIES FOR VIOLATION**

The City Council of Kerkhoven ordains:

82:01 Parking of Certain Vehicles Restricted. No person shall park any of the following vehicles on any street or alley for more than one hour.

- 1) Trucks of a capacity of more than three (3) tons per axle.
- 2) Trucks having an overall length of more than thirty-six (36) feet, or a width at any point of more than eight (8) feet.
- 3) Any truck, trailer or semi-trailer which is being used for the transportation of livestock or has been used for the transportation of livestock and has not been cleaned.

82:02 Parking with Motor Running. No truck-tractors shall be parked in any residential area with the motor running to include any trailer mounted motor, for a period of more than one hour.

82:03 Parking of Detached Semi-Trailers Prohibited. No semi-trailer, which is not attached to a truck-tractor designed to pull it, shall be parked on any city street in any residential area.

82:04 Parking Vehicles with Keys in Prohibited. No person shall park a passenger automobile on any city street unless they shall lock the ignition, remove the key(s) and take same with them. Whenever any police officer finds any motor vehicle standing in violation of this provision he MAY remove keys from the vehicle and deliver them to police headquarters.

82:05 Penalty. Any person violating any provision of this Ordinance is guilty of a petty misdemeanor and upon conviction shall be punished by a fine of not to exceed \$300.00. (Amended by Ordinance adopted August 10, 2009)

82:06 Effective Date. This Ordinance becomes effective on May 3, 1989. Passed this 25th day of April, 1989.

/s/ William Doering, Mayor

/s/ Mona Doering, Clerk-Treasurer

Published in the *Kerkhoven Banner* on May 3, 1989.

ORDINANCE NO. 83

AN ORDINANCE REGULATING THE USE OF SNOWMOBILES AND ATVS IN THE CITY OF KERKHOVEN

The City of Kerkhoven does ordain as follows:

SNOWMOBILES AND ATVS

1. **Intent.** It is the intent of this Ordinance to supplement the laws of the state of Minnesota relating to the operation of certain motor vehicles commonly called snowmobiles and all-terrain vehicles or ATVs. This Ordinance is not intended to allow what the state Statutes prohibit nor to prohibit what the state Statutes expressly allow, except as herein specifically provided. For purposes of this Ordinance, an ATV is a vehicle defined by Minnesota Statutes, Section 84.92.
2. **Prohibition in Certain Areas.** It is unlawful for any person within the city limits of the City of Kerkhoven to operate a snowmobile or ATV:
 - a. On private property of another without permission of the owner of said property.
 - b. On sidewalks and publicly owned land, including schools, parks property, recreation areas and playground.
 - c. In a manner so as to create a loud, unnecessary or unusual noise which disturbs, annoys or interferes with the peace and quiet of other persons.
 - d. On any street or highway within the city limits, including any portion of the right of way thereof, between the hours of 10:00 p.m. and 8:00 a.m.
3. **Safe Operation and Speed Limit.** Snowmobiles and ATVs operated on city streets or highways must travel in single file. No person shall operate or haul any snowmobile or ATV carelessly or heedlessly in disregard of the rights or the safety of others or in a manner so as to endanger or be likely to endanger any person or property, and shall not operate any snowmobile or ATV in excess of 20 miles per hour.
4. **Yield at Intersection.** Every operator of a snowmobile or ATV shall yield the right-of-way at any intersection in the City of Kerkhoven to any pedestrian or to any motor vehicle which shall be approaching said intersection in such a manner as to constitute an immediate hazard, and in all events the operator of every snowmobile or ATV shall stop or reduce his speed at intersections, so as to avoid colliding with any person or motor vehicle lawfully using the streets or highways.
5. **Age Limitations.** No person under the age of 14 years shall operate a snowmobile or ATV on a public street or thoroughfare within the City of Kerkhoven, and no person under the age of 18 years shall operate a snowmobile or ATV on a public street or thoroughfare unless he shall have in his immediate possession a valid snowmobile safety permit issued by the Department of Natural Resources of the State of Minnesota.

Section 2. **Effective Date.** This Ordinance shall take effect from and after its adoption and second publication.

This Ordinance introduced by Councilman Goblirsch
This Ordinance introduced on December 13, 1999
Hearing held February 29, 2000
Ordinance published March 9, 2000

CHAPTER 9

90.00 PUBLIC PEACE, SAFETY AND MORALS

90.01 **Disturbing the Peace.** Every person who, without authority of law, shall willfully disturb any assembly or meeting not unlawful in its character, or the peace and quiet of any family or neighborhood, shall be guilty of a misdemeanor and may be punished as provided in these Ordinances.

90.02 **Public Drunk.** Unless prohibited, any person who shall be found in a state of drunkenness or intoxication on any street or any public place within the City limits, shall be guilty of a misdemeanor and may be punished as provided in these Ordinances.

90.03 **Offensive Conduct Prohibited.** Any person who appears on a street or public or exposed place within the corporate limits of the City of Kerkhoven dressed in a manner not becoming to his or her sex or in any indecent or lewd dress, or who shall make any indecent exposure of his or her person, or shall commit any obscene or filthy act, or shall conduct himself in any lewd, indecent, disorderly, immoral, profane or insulting manner, language or behavior, or shall exhibit, sell or offer to sell any indecent, obscene or lewd books, pictures or other thing, shall exhibit or perform any indecent, immoral or lewd act or other representation, shall be guilty of a misdemeanor and shall be punished as provided for in these Ordinances.

90.04 **Vagrancy.** The following persons shall be considered vagrants:

- 1) A person who, being an habitual drunkard, abandons, neglects or refuses to contribute to the support of his family.
- 2) A person who has contracted an infectious or other disease in the practice of drunkenness or debauchery, requiring charitable aid to restore him to health.
- 3) Every male person who lives wholly or in part on the earnings of prostitution or who in any public place solicits for immoral purposes. A male person who lives with or is habitually in the company of a prostitute and has no visible means of support, shall be deemed to be living on the earnings of prostitution.
- 4) A common prostitute who shall be found wandering about the streets or loitering in or about any restaurant, lodging house, saloon or other place where intoxicating liquors are sold.
- 5) Every female who shall be found wandering about the streets and addressing male persons for the purpose of soliciting them, commission of any lewd, indecent or unlawful act, or for the purpose of enticing any male person into a house of prostitution or assignation, bed, house, room or other place for any unlawful purpose.
- 6) Fortune tellers and such other like imposters.
- 7) A person known to be a pickpocket, thief, burglar or confidence man, and having no visible or lawful means of support, when found loitering about a railroad yard, banking institution, place of public amusement, hotel, auction room, store, shop, at any public gathering or assembly, or at any other public place provided, however, that this subsection shall not apply to any such person unless he has been convicted of the offense which would make him known as such person, and shall not apply to any person who has been in prison for such offense who, after being released from such imprisonment, has been engaged in lawful employment and shall not in any case apply to any such person until more than thirty (30) days have elapsed since being released from such imprisonment.

- 8) A person engaged in practicing or attempting any trick or devise to procure money or other thing of value, if such trick or devise is made a public offense by any law of this State or any person engaged in soliciting, procuring or attempting to solicit or procure money or other things of value by falsely pretending or representing himself to be blind, deaf, dumb, without arms or legs, or to be otherwise physically deficient, or to be suffering from any physical defect or infirmity.
- 9) A person wandering about or lodging in taverns, grocery stores, market places, uninhabited buildings or any open area and not giving good account of himself.
- 10) A person not blind, over sixteen (16) years of age and who has not resided in Swift County at any time for a period of six months prior thereto, and not having visible means to maintain himself, lives without employment or wanders about and begs, or goes from door to door or places himself in the streets, highways or public passages to beg or receive him.
- 11) Any person found guilty of the foregoing offense shall be deemed guilty of a misdemeanor and may be punished as provided in these Ordinances.

90.05 Discharge of Firearms Prohibited. No person shall discharge any firearm of any description or fire, explode or set off any other explosive instrument, substance or material within the limits of the City of Kerkhoven, unless it is in the discharge of official duty prescribed by these Ordinances or by the laws of the State of Minnesota, or upon the written permission of the City Council.

90.06 Fireworks.

- 1) Prohibitions. Except as otherwise provided in subdivision 2, it shall be unlawful for any person to offer for sale, sell, use or explode any fireworks, firecrackers, rockets, torpedoes or other explosive contrivances within the corporate limits of the City of Kerkhoven. This Ordinance shall not, however, apply to the keeping and storage of such merchandise for shipment outside this City provided a special permit for such storage has been issued by the City Council.
- 2) Permit Required. Any person, group or organization desiring to use any fireworks or explosive contrivances to display within the City limits, shall make written application to the City Clerk at least fifteen (15) days in advance of the date of the display. The City Council, with the advice and consent of the Fire Chief shall then determine whether the operator of the display is competent and whether the display is of such a character and is to be so located, discharged or fired so that it will not be hazardous to property or endanger any person. Further, the proposed display shall conform to the rules and regulations of the State Fire Marshal provided thereto. If the proposed display meets all of the foregoing criteria, the City Clerk shall issue a permit for the display upon payment of a fee of Two Dollars (\$2.00).
- 3) Limitation on Permit. Permits granted pursuant to subdivision 1 shall be lawful only for the display to which the permit relates.
- 4) Permits Non-Transferable. Permits granted pursuant to subdivision 2 shall not be transferable.
- 5) Seizure Permitted. Fireworks or explosive contrivances used in violation of these Ordinances may be seized by the City law enforcement officers and subsequently destroyed by said officers.

- 6) Penalty. The seizure of any fireworks or explosive contrivances by law enforcement officers shall not prevent any person who violates these firework provisions from being prosecuted as provided elsewhere in these Ordinances.

90.07 **Gambling.**

- 1) Gambling Prohibited. Gambling with cards, dice, gambling tables, slot machines, or other gambling devices within the City of Kerkhoven is hereby prohibited.
- 2) Gambling Halls Prohibited. The keeping of all houses or places for the purpose of gambling or gaming and the keeping or setting up of any gambling device designed to be used in gambling within the corporate limits of this City is also prohibited.

90.08 **Billiards and Pool.**

- 1) License Required. No person shall be engaged in the business of operating a billiard, pool or pigeon hole table or allow such tables to be kept in their premises without having first obtained a license therefor as provided in these Ordinances.
- 2) License. A person desiring a license under subdivision 1 shall apply to the City Clerk therefor and shall pay to said Clerk for said license the sum of Five Dollars (\$5.00) per annum for each and every such table kept for use in their place of business.
- 3) Transfer of License. Upon payment of the foregoing sum, the City Clerk shall issue a license for a term of one year from the date of its issuance. For cause shown, and upon payment of One Dollar (\$1.00) to cover the cost thereof, such license may be transferred to another person or persons for the balance of the license year. Said transfer of such license shall be authorized only upon motion made to the City Council and the City Council approving the same by majority vote.
- 4) Order Required. Any person who obtains a license as provided herein, shall keep an orderly place and not permit or suffer any games to be played on the Sabbath Day.
- 5) Revocation. Any license issued to this chapter may be revoked if the City Council should find following notice to the licensee and a hearing thereon that the said licensee has not complied with the provisions of subdivision 4 herein.

90.09 **Pinball Machines.**

- 1) License Required. No person shall allow pinball machines or other gaming or electronic amusement devices to be operated on a business location under his control and operation without first obtaining a license as hereinafter provided.
- 2) License. A person desiring a license under subdivision 1 shall apply to the City Clerk therefor and shall pay to the Clerk as a fee the sum of Twelve and 50/100 Dollars (\$12.50) per annum for each and every pinball machine, gaming or electronic amusement device kept for use in their place of business.
- 3) Transfer of License. Upon payment of the foregoing sum, the City Clerk shall issue a license for a term of one year from the date of its issuance. For cause shown and upon payment of One Dollar (\$1.00) to cover the cost thereof, such license may be transferred to another person or persons for the balance of the license year. Any such transfer shall be authorized only upon motion made to the City Council and the Council's approval by a majority vote.

- 4) Restrictions. Any person who obtains a license as provided herein shall keep an orderly place and not permit any wagering with respect to the playing of any of the amusement machines.

90.10 **Curfew.**

- 1) Regulating Conduct of Minors. It shall be unlawful for any minor under the age of eighteen (18) years to loiter or be in or upon the public streets, highways, alleys, parks, playgrounds or other public places or private unsupervised places, or to ride in or park in a vehicle in any of the foregoing places in the City of Kerkhoven between the hours of 10:00 p.m. and 4:00 a.m. of the following day provided, however, that the provisions of this section shall not apply to any such minor accompanied by his or her parent, guardian or other adult person having the care and custody of the minor, or when the minor is upon an errand directed by his or her parent, or any other adult person having the care and custody of the minor.
- 2) Regulating Conduct of Adults in Charge of Minors. It shall be unlawful for the parent, guardian or other adult person having the care and custody of a minor under the age of eighteen (18) years to permit such minor to violate the provisions of subdivision 1.
- 3) School Night. The provisions of subdivisions 1 and 2 shall not apply if the minor under the age of eighteen (18) is returning home after attending a school athletic, musical or social activity conducted for the benefit of its students provided, however, the limitation of subdivisions 1 and 2 shall apply between the hours of 12:30 a.m. and 4:00 a.m.

DERIVATION: July 24, 1969.

**AN ORDINANCE OF
THE CITY OF KERKHOVEN
PERTAINING TO LAWFUL GAMBLING ESTABLISHMENTS**

ORDINANCE NO. 91

**CONTRIBUTIONS OF 10% OF NET PROFITS DERIVED FROM LAWFUL GAMBLING CONDUCTED AT PREMISES
WITHIN THE JURISDICTION OF THE CITY REQUIRED.**

1. Pursuant to the provisions of M.S. § 349.213/1, every organization, establishment or facility licensed by the State of Minnesota to conduct lawful gambling in the City of Kerkhoven shall file with the City Clerk copies of the reports filed with the State of Minnesota Gambling Control Board showing the gross receipts and net receipts from lawful gambling, net profit therefrom and all expenditures for a “lawful purpose” as defined by statute.
2. The reports required by this section shall be filed quarterly with the City Clerk on the same date as or prior to the time the reports are required to be filed with the State Gambling Control Board.
3. The terms and phrases used in this section shall have the meaning given to them in Minnesota Statutes, Chapter 349.01, et. seq.
4. Every organization, facility or establishment licensed by the State of Minnesota to conduct lawful gambling in the City of Kerkhoven shall pay to the City of Kerkhoven, an amount equal to 10% of the net profits derived from lawful gambling conducted at premises within the jurisdiction of the city. Said payment shall be made to the City Clerk of the City of Kerkhoven no later than 10 days following the quarterly filing of reports with the City, as set forth above.
5. The contributions of 10% of net gambling profits received by the City shall be administered by the City of Kerkhoven pursuant to law. The City may disburse funds for the following:
 - i. Lawful purposes as defined in M.S. § 349.12/25; or
 - ii. Police, fire and other emergency or public safety related services, equipment and training, excluding pension obligations.
6. The City of Kerkhoven shall establish a separate fund in its financial records that will account exclusively for all receipts and expenditures of the 10% Contribution Fund.
7. The City shall submit an annual report to the Gambling Control Board listing revenues and expenditures in the 10% Contribution Fund for the previous calendar year, utilizing forms provided by the Gambling Control Board.
8. Upon request of the City Clerk, any organization, facility or establishment licensed by the State of Minnesota to conduct lawful gambling in the City of Kerkhoven shall provide other supporting financial reports and related documentation, including all relevant records, books and documents to ensure compliance with this Ordinance.
9. The City Council of the City of Kerkhoven shall sit as the 10% Contribution Fund Committee, and shall make expenditures from the said fund by resolution. Funds shall be expended from the account within a reasonable time from the date they are received.

Penalty. Failure to comply with the requirements of this Ordinance shall be a misdemeanor. The City Clerk shall immediately report any violation of this section to the State Gambling Control Board with a request that the license of the violating organization be suspended or other appropriate sanctions be instituted.

Effective Date. This Ordinance shall be effective from and after its adoption and second publication.

This Ordinance introduced by Councilman Hauge on November 13, 2001

This Ordinance published on November 21, 2001

Public hearing held December 10, 2001

This Ordinance adopted December 10, 2001

This Ordinance published second time December 13, 2001

/s/ Mona Doering, City Clerk

/s/ Tim Fiebiger, Mayor

**AN ORDINANCE OF THE
CITY OF KERKHOVEN
PROHIBITING THE ASSOCIATION OF ADULT ENTERTAINMENT
WITH THE SALE OF ALCOHOL**

Be it ordained by the City of Kerkhoven as follows:

WHEREAS, the statutes of the State of Minnesota authorize local municipalities to prescribe regulations for the sale of alcoholic beverages which are not in conflict with state statutes; and

WHEREAS, the City Council of the City of Kerkhoven upon due consideration finds that nudity and near nudity and sexual conduct are proper subjects for regulation in connection with the control of the sale of alcoholic beverages within the City of Kerkhoven; and

WHEREAS, the City Council further finds that any form of nudity coupled with alcohol consumption in a public place begets undesirable behavior and that there is a relationship between the consumption of alcoholic beverages and nudity and an increase in disruption of peace and the good order of the community. Concurrence of nudity and alcoholic beverages are hazardous to the health and the safety of those in attendance and tends to depreciate the value of adjoining property and to harm the economic welfare of the community as a whole. When there is concurrence of nudity and consumption of alcoholic beverages, other activities which are illegal, immoral and unhealthy tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to, prostitution, solicitation for prostitution, lewd and lascivious behavior, possession, distribution and transportation of obscene materials, sale or possession of controlled substances and violent crimes against persons and property; and

WHEREAS, the City Council has determined that the enactment of an ordinance prohibiting nudity and sexual conduct in establishments licensed to sell alcoholic beverages, beer, wine, malt liquor or other intoxicating spirits, or which are licensed as a bottle club under Minnesota Statutes, within the City of Kerkhoven will prevent or limit such undesirable conduct and activities.

NOW, THEREFORE, BE IT ORDAINED, by the City of Kerkhoven, Minnesota, as follows:

Section 1. **Improper Exhibitions.** In any establishment licensed to sell alcoholic beverages, beer, wine, malt liquor or other intoxicating spirits, or which is licensed as a bottle club, it shall be unlawful for any person to perform, or for any licensee or manager or agent of the licensee to permit any employee, entertainer or patron to engage in any live act, demonstration, dance or exhibition on the licensed premises which:

- a. Exposes his or her genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
- b. Exposes any device, costume or covering which gives the appearance of or simulates genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
- c. Exposes any portion of the female breast at or below the areola thereof; or
- d. Engages in or simulates sexual intercourse or any sexual contact, including the touching of any portion of the female breast or the male or female genitals.

Section 2. **License Suspension or Revocation.** In addition to any other penalties provided for violation of this Ordinance, any liquor license or bottle club license issued by the City of Kerkhoven shall be subject to suspension, revocation or nonrenewal upon violation of this Ordinance.

Section 3. **Penalty.** Any violation of this Ordinance shall be a misdemeanor and upon conviction therefore shall be punishable as provided by law.

This Ordinance introduced by Council Member Finstrom on September 23, 2002

This Ordinance published December 26, 2002

Hearing was held January 13, 2002³

Ordinance adopted January 13, 2003

Published January 29, 2003

**AN ORDINANCE OF THE
CITY OF KERKHOVEN
PERTAINING TO ZONING OF ADULT ESTABLISHMENTS**

Be it ordained by the City of Kerkhoven as follows:

ZONING ORDINANCE AMENDED. The Zoning Ordinance of the City of Kerkhoven, as amended, is hereby further amended by adding thereto the following sections, to be known as Section 24, thereof.

Section 24, Subd. 1. Sex-Related Activities as Conditional Uses; Adult Establishments.

- A. Purpose and Intent. It is the purpose of this section to protect the public health, safety, welfare and morals of the community, and to protect individuals and neighborhoods from the adverse effects of having activities and standards involving pandering to gross sexuality imposed on them.
- B. Definitions. As used in this section, the following terms will have the following meanings, unless the context clearly indicates a different meaning:
- (1) Specified sexual activities: (a) human genitals in a state of sexual stimulation or arousal; (b) acts of human masturbation, sexual intercourse or sodomy; (c) fondling or other erotic touching of human genitals, pubic region, buttock or female breast.
 - (2) Specified anatomical areas: (a) less than completely and opaquely covered human genitals, pubic region, buttocks or female breast below a point immediately above the top of the areola; (b) human male genitals in a discernibly turgid or aroused state, whether or not covered.
- C. Conditional Uses. None of the following uses, which shall be considered Adult Establishments, shall be permitted in any district unless a conditional use permit for such use has been obtained. These requirements for a conditional use permit shall be in addition to all other requirements of all other applicable sections of this Ordinance:
- (1) Book sales and magazine sales, where either the advertising or the displays or signs in or out of the location offer materials showing specified sexual activities or specified anatomical areas. This does not apply to the availability for sale of any material displayed in such a way that only the name of the book or magazine appears.
 - (2) Movie theaters offering movies or other displays showing specified sexual activities or specified anatomical areas.
 - (3) Any type of theater or establishment offering any kind of show emphasizing specified sexual activities or specified anatomical areas.
 - (4) Any coin-operated devices and any place offering coin-operated devices which show specified sexual activities or specified anatomical areas.
 - (5) Any cabaret, club or tavern offering any entertainment showing specified sexual activities or specified anatomical areas.
- D. Procedure. Any person desiring a conditional use permit for any use specified in this section shall apply in the manner provided by ordinance for a conditional use.
- E. Duration. Conditional use permits issued under this section shall expire one year after issuance, and may be renewed by the same procedure that an original conditional use permit is granted.

Section 24, Subd. 2. Sex-Related Activities Restricted to Specific Areas. In order to protect public health, welfare, morals and safety, and to prevent degradation of property values or other injury to the people

of the City of Kerkhoven, conditional use permits shall issue for adult establishments offering specified sexual activities or displaying specified anatomical areas as defined in this Ordinance only in areas zoned as C-1 and C-2. It is further provided, however, that no conditional use permit for such use or establishment shall be issued for any location which is within 250 feet of any residence, church or other place of religious worship, school, public park or playground. No conditional use permit shall issue for any establishment, location or use which is part of, adjacent to or within 250 feet of any establishment licensed to sell, at off sale or on sale, any alcoholic beverage, beer, wine or intoxicating spirits, or is licensed as a bottle club. In addition to any other conditions established pursuant to Section 24, an annual fee in an amount to be set by annual resolution of the City Council shall be paid to the City of Kerkhoven general fund in recognition of additional law enforcement and other related public safety costs. Said fee shall be payable on approval of the conditional use permit by the City Council, and thereafter on the anniversary date thereof.

**AN ORDINANCE TO AMEND CHAPTER 12:
BEERS AND LIQUORS OF THE KERKHOVEN CITY CODE**

The City of Kerkhoven does ordain:

Chapter 12, Sections 120.01 through 120.16, are hereby *amended* as follows:

**CHAPTER 12
120.00 ALCOHOLIC BEVERAGES**

120.01 Provisions of State Law Adopted. Except to the extent the provisions of this chapter are more restrictive, the provisions of Minnesota Statutes, Chapter 340A, as amended, regarding the terms, licensing, consumption, sales, hours of sale, and all other matters pertaining to the retail sale, distribution and consumption of intoxicating liquor and 3.2 percent malt liquor are adopted and made a part of this chapter as if set out in full.

120.02 Definitions.

Alcoholic Beverage. “Alcoholic beverage” is any beverage containing more than one-half percent alcohol by volume.

Restaurant/Supper Club. “Restaurant/Supper Club” is an establishment that serves food in or on non-disposable dishes to be consumed primarily while seated at tables or booths within the building.

Display. The term “Display” means the keeping, storing or permitting to be kept or stored of an alcoholic beverage which has been poured, dispensed or has had its package seal broken on, in or at any table, booth, bar or other area of a licensed premises accessible to the general public, except when the alcoholic beverage is stored in a normal storage area during non-sale hours.

Exclusive Liquor Store. “Exclusive liquor store” is an establishment used exclusively for the sale of those items authorized in Minnesota Statutes, Section 340A 412, subdivision 14.

Interest. The term “Interest” as used in this chapter includes any pecuniary interest in the ownership, operation, management or profits of a licensed premises.

Intoxicating Liquor. Ethyl alcohol, distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 percent of alcohol weight.

Licensed Premises. The term “Licensed Premises” is the premises described in the approved license application.

Off-Sale. “Off-Sale” is the sale of alcoholic beverages in the original packages for consumption off the licensed premises only.

On-Sale. “On-Sale” is the sale of alcoholic beverages for consumption on the licensed premises only.

Operating Manager. The term “Operating Manager” as used in this chapter means a person who is under the legal drinking age as provided by Minnesota States, Chapter 340A.

120.03 Licenses Required. No person, except as otherwise provided in Minnesota Statutes, Chapter 340A shall directly or indirectly deal in, sell, deep for sale or delivery any intoxicating liquor and/or 3.2 percent malt liquor as part of a commercial transaction without first having received a license to do so as provided in this chapter, nor shall any private club or public place, directly or indirectly, or upon any pretense or by any device,

allow the consumption or display of intoxicating liquor and/or 3.2 percent malt liquor or serve any liquid for the purpose of mixing the intoxicating liquor and/or 3.2 percent malt liquor without first obtaining a license from the city as provided in this chapter. The number of liquor licenses issued by the city is restricted by Minnesota Statutes, Section 340A.413.

120.04 Types of License. The licenses issued under this section are subject to all laws and ordinances governing the sale of liquor, including furnishing of a form of financial responsibility. The following types of licenses are issued under this chapter.

- (A) On-Sale Intoxicating Liquor License. On-Sale intoxicating liquor licenses shall be granted only to restaurants, supper clubs and exclusive liquor stores where food is prepared and served for consumption on the premises only and shall permit on sale of intoxicating liquor and 3.2 percent malt liquor.
- (B) Off-Sale Intoxicating Liquor License. Off-Sale intoxicating liquor licenses may be issued to an exclusive liquor store and shall permit off-sale of intoxicating liquor and 3.2 percent malt liquor.
- (C) On-Sale 3.2 Percent Malt Liquor License. On-sale 3.2 percent malt liquor licenses may be issued to restaurants and supper clubs where food is prepared and served for consumption on the premises only and shall permit on-sale 3.2 percent malt liquor.
- (D) Off-Sale 3.2 Percent Malt Liquor License. Off-sale 3.2 percent malt liquor licenses may be issued to general food stores and permit the sale of 3.2 percent malt liquor at retail in the original package for consumption off the premises only.
- (E) Temporary Licenses. Temporary on-sale 3.2 percent malt liquor licenses may be issued to a club or charitable, religious or nonprofit organization in existence for at least three (3) years. The license may authorize the on-sale of 3.2 percent malt liquor for not more than three (3) consecutive days, and may authorize on-sale of 3.2 percent malt liquor on premises other than premises the licensee owns or permanently occupies. The license may provide that the licenses may contract for 3.2 percent malt liquor with the holder of a full-year on-sale liquor license issued by the City. The licenses are subject to the terms, including the license fee, normally imposed by the City.
- (F) Restricted On-Sale Liquor License. Restricted on-sale intoxicating liquor licenses may be issued to a restaurant/supper club for the sale of beer and wine coolers only.

120.05 License Application.

- (A) Applications for a license required by this division shall be required upon initial application, upon renewed application and upon any change of ownership of business control of a licensed premise. Every application for a license to sell liquor shall be verified and filed with the City Clerk. It shall state the following:
 - 1. The name of the applicant;
 - 2. The age of the applicant;
 - 3. Representations as to the applicant's character, with such references as may be required;
 - 4. The applicant's citizenship;
 - 5. Whether the application is for on-sale or off-sale;
 - 6. The business in connection with which the proposed license will operate and its location;
 - 7. The nature of the business and its location on the property;
 - 8. Whether the applicant is owner and operator of the business;

9. How long the applicant has been in that business at that place; and
10. Such other information as the City Council may require from time to time.

In addition to containing such information, each application for a license shall be in a form prescribed by the liquor control commissioner. No person shall make a false statement in an application.

120.06 Renewal Application.

- (A) Applications for renewal of an existing license shall be made at least forty-five (45) days prior to the date of the expiration of the license, and shall state that everything in the prior application(s) remains true and correct except as otherwise indicated.
- (B) Renewal applications for an on-sale license for restaurant/supper clubs and exclusive liquor stores shall include a Certified Public Accountant statement showing totals of sales, food sale, liquor sales and percentage of total sales for the previous year. The City Council shall not renew the license unless at least forty (40) percent of the establishment's annual gross sales are from food prepared and served for consumption on the premises only.

120.07 Liability Insurance. All applicants for any liquor license or consumption and display permits must, as a condition to the issuance of the license, demonstrate proof of financial responsibility with regard to liability imposed by Minnesota Statutes, Section 340A. The minimum requirement for proof of financial responsibility may be given by filing a certificate of insurance providing coverage as required by state law.

State law references: Liability insurance, Minnesota Statutes, Section 340A.409.

120.08 License Fee and Term.

- (A) The annual fee for a liquor license shall be determined by the City Council and set by resolution subject to the provisions of Minnesota Statutes, Section 340A.408.
- (B) Each application for a license shall be accompanied by a receipt from the City Treasurer for payment in full of the license fee. All fees shall be paid into the general fund. If an application for a license is rejected, the Treasurer shall refund the amount paid, except where the rejection is for a willful misstatement in the license application.
- (C) Each license shall be issued for a period of one year except that if the application is made during the license year, a license may be issued for the remainder of the year for a pro rate fee, with any expired fraction of a month being counted as one month. Every license shall expire January 1 of each year. (Amended by Ordinance adopted on November 28, 2005)
- (D) No refund shall be made except as authorized by Minnesota Statutes, Section 340A.408.

120.09 Investigations.

- (A) At the time of making an initial application, or renewal application, or request for a new manager, the application shall, in writing, authorize the city police department to investigate all facts set out in the application and do a personal background and criminal record check on the applicant and operating manager. The applicant shall further authorize the city police department to release information received from such investigation to the City Council.
- (B) Should the City Council deny the applicant's request for a license due, partially or solely, to the applicant's prior conviction of a crime, the City Council shall notify the applicant of the grounds and reasons for denial; the applicable complaint and grievance procedure as set forth

in Minnesota Statutes, Section 364.06; the earliest date the applicant may reapply for a license; and that all competent evidence of rehabilitation will be considered upon reapplication.

120.10 Hearing Required for New License. A public hearing for the issuance of a license for new premises, or for a different licensee at the same premises, shall be preceded by ten (10) days published notice and ten (10) days posted notice at City Hall and on the premises to be licensed. In addition, the public hearing for the issuance of a license for new premises shall also be preceded by ten (10) days mailed notice to all owners of property located within five hundred (500) feet of the boundaries of the property on which the business that is the subject of the application is located. A public hearing is not required for temporary license.

120.11 Information Considered for License Approval. The City Council shall consider the following in addition to conformity with state statutes and City Ordinances in determining whether a new or renewal license shall be granted:

- (A) The investigative and staff report submitted by the police department and City Clerk;
- (B) Information received through the public hearing process;
- (C) Whether the applicant has or will take affirmative action to minimize public safety problems commonly associated with on-sale liquor establishments including, but not limited to, DWI drivers, illegal sale to minors, disturbing the peace, et;
- (D) Any other relevant information.

120.12 License Approval. At the time a license is issued pursuant to this chapter or a consumption and display permit is approved, the City Council may attach special conditions to the approval based upon the nature of the business, the location of the business, and verified complaints, if any, to protect the health, safety, welfare and quietude of the community and ensure harmony with the location where the business is located. Violation of any of the conditions shall be grounds for revocation of the license.

120.13 License Conditions; Transferability.

- (A) Applicant. A license shall be issued to the applicant only, and no license shall be transferred except as provided in this chapter.
- (B) Premises. Each license shall be issued only for the exact rooms and square footage described in the application. A license is valid only in the compact and contiguous building or structure situated on the premises described in the license, and all transactions relating to a sale under such license must take place within such building or structure.
- (C) Building Under Construction. When a license is granted for premises where the building is under construction or otherwise not ready for occupancy, the City Clerk shall not issue the license until notified by the Building Official that the building is ready for occupancy.
- (D) Death of Licensee. In the event of the death of a person holding a license, the personal representative of that person shall be allowed to continue to operate the business within the terms of the license for a period not to exceed ninety (90) days after the death of the licensee.

120.14 License Ineligibility.

- (A) State Law. No license shall be granted to or held by any person:

- (1) made ineligible by state law;
 - (2) who is a person under twenty-one (21) years of age;
 - (3) who is not a citizen of the United States or a resident alien;
 - (4) upon whom it is impractical to conduct a background and financial investigation due to the unavailability of information;
 - (5) who has had a liquor license revoked within five years of the license application, or to any person who at the time of the violation owns any interest, whether as a holder of more than five percent of the capital stock of a corporation licensee, or to a corporation, partnership, association, enterprise, business or firm in which any such person is in any manner interested;
 - (6) who is not of good moral character and repute;
 - (7) who has a direct or indirect interest in a manufacturer, brewer or wholesaler; or
 - (8) who within five years of the license application, has been convicted of a felony or a willful violation of a federal or state law or local ordinance governing the manufacture, sale, distribution or possession for sale or distribution of an alcoholic beverage and who cannot show competent evidence under Minnesota Statutes, Section 364.03 of sufficient rehabilitation and present fitness to perform the duties of a licensee.
- (B) Real Party in Interest. No license shall be granted to a person who is the spouse of a person ineligible for a license under this chapter or who, in the judgment of the City Council, is not the real party in interest or beneficial owner of the business operated, or to be operated, under the license.
- (C) Residency Requirement. A license will not be renewed if the applicant is not a resident of the state at the time of the date for renewal. The time for establishing residency within the state may, for good cause, be extended by the City Council.
- (D) Delinquent Taxes or Charges. No license shall be granted for operation on any premises on which state, city or county taxes, assessments or other financial claims of the state, city or county are delinquent and unpaid. Notwithstanding the foregoing, if the delinquent taxes, assessments or financial claims are against a landowner, and licensee is a tenant of landowner and has no financial interest in landowner, then the City Council may, in its discretion, but shall not be required to, grant a license to an applicant so long as the applicant is not delinquent on any taxes, assessments or financial claims as set forth herein.
- (E) Distance from School. No on-sale or off-sale intoxicating liquor license or on-sale or off-sale 3.2 percent malt liquor license may be granted within the same block of any school or within 500 feet of any school. The distance shall be measured from the freestanding parcel or lot upon which the business to be licensed is located or from the exterior wall of the approved area leased or owned by the business to be licensed within a shopping center to the nearest point of the parcel or lot upon which the school is located. The erection of a school within a prohibited area after the original license application has been granted shall not, in and of itself, render such premises ineligible for renewal of the license.

- (F) Federal Stamps. No licensee shall possess a federal wholesale liquor dealer's special tax stamp or a federal gambling stamp.

120.15 License Suspension or Revocation. The City Council may suspend or revoke any license for the sale of intoxicating liquor or 3.2 percent malt liquor for any of the following reasons:

- (A) False or Misleading Statements. False or misleading statements made on a license application or renewal including, but not limited to, the timely payment of real estate taxes and all other charges.
- (B) Violation of Special Conditions. Violation of any special conditions under which the license was granted including, but not limited to, the timely payment of real estate taxes and all other charges.
- (C) Violation of Law. Violation of any federal, state or local law regulating the sale of intoxicating liquor, 3.2 percent malt liquor or controlled substance.
- (D) Nuisance. Creation of a nuisance on the premises or in the surrounding area.
- (E) Illegal Acts Unrelated to Sale of Intoxicating Liquor. That the licensee suffered or permitted illegal acts upon the licensed premises or on property owned or controlled by the licensee adjacent to the licensed premises, unrelated to the sale of intoxicating liquor or 3.2 percent malt liquor.
- (F) Illegal Act Related to Sale of Intoxicating Liquor or 3.2 Percent Malt Liquor. That the licensee had knowledge of illegal acts upon or attributable to the licensed premises, but failed to report the same to the police.
- (G) Insurance. Expiration or cancellation of any required insurance, or failure to notify the City within a reasonable time of changes in the term of the insurance or the carriers.
- (H) Inactive License. The City Council may revoke the intoxicating liquor and/or 3.2 percent malt liquor license of any establishment granted a license that is not under construction and exhibiting satisfactory progress toward completion within six (6) months from its issuance, or any establishment that ceases operation for a period of six (6) months. A hearing shall be held to determine what progress has been made toward opening or reopening the establishment and, if satisfactory progress is not demonstrated, the City Council may revoke the license.
- (I) Hearing Notice. Revocation or suspension of a license by the City Council shall be preceded by public hearing conducted in accordance with Minnesota Statutes, Section 14.57 to 14.70. The City Council may appoint a hearing examiner or may conduct a hearing itself. The hearing notice shall be given at least ten (10) days prior to the hearing, include notice of the time and place of the hearing and state the nature of the charges against the licensee.

120.16 License Suspension and Revocation. The City Council may revoke any liquor license for violation of any statute or ordinance relating to the sale of liquor or may suspend the licensee for a period not exceeding sixty (60) days if revocation is not mandatory. The licensee shall be granted a hearing upon at least ten (10) days notice before revocation or suspension is ordered except where mandatory revocation is provided by law.

120.17 Retail Sales Regulations.

(A) Responsibility of Licensee.

- (1) *Orderly Conduct.* Every licensee shall be responsible for the conduct on the licensee's place of business including conduct and activity attributable to the business on property owned or controlled by the licensee. Every licensee shall also cooperate with the City in controlling activity attributable to the business in surrounding areas.
- (2) *Act of Employee.* The act of any employee in violation of this chapter on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable for all penalties provided by this chapter and other laws equally with the employee.

(B) Hours of Operation.

- (1) *Hours and Days of Sale.* Hours and days of sale shall be as allowed by state law. There shall be no consumption or display of intoxicating liquor or 3.2 percent malt liquor during the hours that sale is prohibited by state law.
- (2) *Non-employees on Premises.* A liquor licensee shall not allow non-employees on the business premises from thirty (30) minutes after the sale of intoxicating liquor and/or 3.2 percent malt liquor is prohibited until the sale is again permitted except as hereinafter provided. On-sale intoxicating liquor licensees and on-sale 3.2 percent malt liquor licensees may permit non-employees on the premises during its normal hours of operation when the sale of intoxicating liquor and 3.2 percent malt liquor is prohibited, provided, that there be no sale, consumption or display of intoxicating liquor and 3.2 percent malt liquor during the hours in which the sale or consumption of liquor is prohibited, and provided that the licensee has closed of all access to the bar area in a manner approved by the City.

(C) Posting License. All liquor licensees shall have the license posted in a conspicuous place that is visible to the public in the licensed establishment at all times.

(D) Building Changes. Proposed enlargement or substantial alteration which changes the character of the establishment or extension of premises previously licensed, shall be reported to the City Clerk at or before the time application is made for a building permit for any such change. The enlargement or substantial alteration shall not be allowed unless the City Council approves an amendment to the license.

(E) Restrictions Involving Underage Persons.

- (1) No licensee, his agent or employee shall serve or dispense upon the licensed premises any intoxicating liquor or 3.2 percent malt liquor to a person under the legal drinking age; nor shall such licensee, his agent or employee, permit any such person to be furnished or allowed to consume any such liquors on the licensed premises; nor shall such licensee, his agent or employee, permit any such person to be delivered any such liquors.
- (2) No person under the legal drinking age shall enter licensed premises for the purpose of purchasing or consuming any alcoholic beverage. It is not unlawful for any person who has attained the age of eighteen (18) years to enter licensed premises for the following purposes:

- (a) to perform work for the establishment, including the serving of alcoholic beverages, unless otherwise prohibited by statute;
 - (b) to consume meals; and
 - (c) to attend social functions that are held in a portion of the establishment where liquor is not sold.
- (3) No person under the age of sixteen (16) shall enter licensed premises in any portion of the establishment where liquor is sold without a parent or guardian. No person between the ages of sixteen (16) and seventeen (17) shall enter licensed premises in any portion of the establishment where liquor is sold with a parent or guardian after the hour of 7:30 p.m.
- (4) *Misrepresenting Age.* No underage person shall misrepresent the person's age for the purpose of obtaining intoxicating liquor and/or 3.2 percent malt liquor, nor shall the person enter any premises licensed for the retail sale of intoxicating liquor and/or 3.2 percent malt liquor for the purpose of purchasing or having served or delivered any alcoholic beverage. Nor shall any such person purchase, attempt to purchase, consume or have another person purchase for the underage person any intoxicating liquor and/or 3.2 percent malt liquor.
- (5) *Identification Requirements.*
 - (a) *Identification Required.* Any person shall, upon demand of the licensee, employee or agent, produce and permit to be examined one of the forms of identification provided under Minnesota Statutes, Section 340.503, subdivision 6.
 - (b) *Prima Facie Evidence.* In every prosecution for a violation of the provisions of this section relating to the sale or furnishing of intoxicating liquor and/or 3.2 percent malt liquor beverages to underage persons and in every proceeding before the City Council with respect thereto, the fact that the underage person involved has obtained and presented to the licensee, his employee or agent, a driver's license, passport or identification card from which it appears that said person was not an underage person and was regularly issued such identification card, shall be prima facie evidence that the licensee, his agent or employee is not guilty of a violation of such a provision and shall be conclusive evidence that a violation, if one has occurred, was not willful or intentional.
- (F) Employment of Person Under Eighteen Years of Age. No person under eighteen (18) years of age may serve or sell intoxicating liquor and/or 3.2 percent malt liquor in a retail liquor establishment, or work in any portion of the establishment where liquor is sold.
- (G) Prohibited Conditions.
 - (1) *Prostitution.* No licensee shall knowingly permit the licensed premises or any room in those premises or any adjoining building directly under the licensee's control to be used by prostitutes.
 - (2) *Controlled Substances.* No licensee shall knowingly permit the sale, possession or consumption of controlled substances on the licensed premises in violation with state law.

- (3) *Gambling.* Gambling and gambling devices are permitted on licensed premises as allowed by state law and city law.
- (H) Ownership of Equipment. No equipment or fixture in any licensed place shall be owned in whole or in part by any manufacturer or distiller, except such as shall be expressly permitted by state law.
- (I) Display of Liquor. No on-sale liquor establishment shall display liquor to the public during the hours when the sale of liquor is prohibited.

120.18 Violations and Penalties.

- (A) Any person, firm or corporation who violates any provisions of this chapter for which another penalty is not specifically provided by Minnesota Statutes shall, upon conviction, be guilty of a misdemeanor.

First reading: November 14, 2005

Second reading: November 28, 2005

Publication: November 30, 2005

CHAPTER 13

130.00 PUBLIC NUISANCES

130.01 **Public Nuisances Defined.** A nuisance is a thing, act, occupation or use of property which:

- 1) Maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public;
- 2) Interferes with, obstructs or renders dangerous for passage, any public highway or right-of-way or waters used by the public;
- 3) Is guilty of any other act or omission declared by law or this Ordinance to be a public nuisance and for which no sentence is specifically provided.

130.02 **Public Nuisances Affecting Health.** The following are hereby declared to be nuisances affecting health:

- 1) Exposed accumulation of decayed or unwholesome food or vegetable matter;
- 2) All diseased animals running at large;
- 3) All ponds or pools of stagnant water;
- 4) Carcasses of animals not buried or destroyed within 24 hours after death;
- 5) Accumulations of manure, refuse or other debris;
- 6) Privy vaults and garbage cans which are not rodent free or fly-tight or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;
- 7) The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste, or other substances;
- 8) All noxious weeds and other rank growths of vegetation upon public or private property;
- 9) Dense smoke, noxious fumes, gas and soot or cinders, in unreasonable quantities;
- 10) All public exposure of people having contagious disease;
- 11) Any offensive trade or business as defined by statute not operating under local license;
- 12) Keeping, harboring or permitting of cattle, horses, sheep, goats, fowl, swine, pigs or other animals, unless temporarily in a stock yard awaiting transportation or slaughter.
- 13) Accumulation of unlicensed or inoperable motor vehicles, trailers, boats, motorcycles, snowmobiles, lawn mowers, tillers or other recreational or yard vehicles or machinery, unless entirely enclosed within a building.
- 14) Accumulation of discarded or unused tires, engines, vehicle bodies, batteries, seats, fenders, hoods, engine parts, transmissions, axles, wheels, frames, bumpers, tires, exhaust systems,

drive shafts or any other vehicle or machinery parts, unless entirely enclosed within a building.

- 15) Accumulation of brush, tree branches, limbs, grass clippings, dead or cut weeds, leaves, tree stumps, vegetative matter, paper, clothing, cloth, pallets, plastic, scrap lumber, window frames, cardboard, doors, construction materials, pieces of cement, cement blocks, bricks, stones, metal, scrap metal, barrels, cans, piles of earth, wire, pipe, sinks, toilets, stoves, furnaces, junk, inoperable equipment or appliances, any waste materials or rubbish accumulated in a manner creating or conducive to rodent harborage of rats, mice, snakes or other vermin, any material which in any other way creates a fire, safety or health hazard, or the rank growth of vegetation among the items so accumulated.

130.03 Public Nuisances Affecting Peace and Safety. The following are declared to be nuisances affecting public peace and safety.

- 1) All snow and ice not removed from public sidewalks twenty-four (24) hours after the snow or other precipitation causing the condition has ceased to fall;
- 2) All trees, hedges, billboards or other obstructions which prevent people from having a clear view of all traffic approaching an intersection;
- 3) All wires which are so close to the surface of a sidewalk or street as to constitute a danger to pedestrians or vehicles;
- 4) All unnecessary noises or annoying vibrations;
- 5) Obstructions or excavating affecting the ordinary public use of streets, alleys, sidewalks or public grounds except under such conditions as are permitted by this code or other applicable law;
- 6) Radio aerials or television antennae erected or maintained in a dangerous manner;
- 7) Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk which causes large crowds of people to gather, obstructing traffic and the free use of the street or sidewalk;
- 8) All hanging signs, awnings and other similar structures over streets and sidewalks, or so situated so as to endanger public safety, or not constructed and maintained as provided by ordinance;
- 9) The allowing of rain water, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk;
- 10) Any barbed wire fence less than six feet above the ground and within three feet of a public sidewalk or way;
- 11) All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;
- 12) Wastewater cast upon or permitted to flow upon streets or other public properties;
- 13) Accumulation in the open of discarded or disused machinery, household appliances, automobile bodies or other material, in a manner conducive to the harboring of rats, mice,

snakes or vermin, or the rank growth of vegetation among the items so accumulated or in a manner creating fire, health or safety hazards from such accumulations;

- 14) Any well, hole or similar excavation which is left uncovered or in such other condition as to constitute a hazard to any child or other person coming on the premises where it is located;
- 15) Obstruction to the free flow of water in a natural waterway or a public street drain, gutter or ditch with trash or other materials;
- 16) The placing or throwing on any street, sidewalk or other public property of any glass, tacks, nails, bottles or other substance which may injure any person or animal or damage any pneumatic tire when passing over such substance;
- 17) The depositing of garbage or refuse on a public right-of-way or on adjacent private property;
- 18) All other conditions or things which are likely to cause injury to the person or property of anyone;
- 19) All limbs of trees which are less than eight (8) feet above the surface of the sidewalks or nine (9) feet above the surface of any street.

DERIVATION: July 24, 1969
Amended February 24, 1981
Amended August 19, 1999

130.04 **Noise Violations.**

- (A) Prohibited Noises. The following are declared to be nuisances affecting public health, safety, peace or welfare ~~if audible within 50 feet:~~ (amended September 23, 2013)
- (1) Any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace, safety or welfare of any person, or precludes their enjoyment of property, or affects their property's value (this general prohibition is not limited by any specific restrictions provided in this Ordinance);
 - (2) All obnoxious noises, motor vehicle or otherwise, in violation of Minn. R. Ch. 7030, as they may be amended from time to time, are hereby incorporated into this Ordinance by reference;
 - (3) The use of any vehicle so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling or other noise;
 - (4) The discharging of the exhaust or permitting the discharge of the exhaust of any statutory internal combustion engine, motor boat, motor vehicle, motorcycle, all terrain vehicle (ATV), snowmobile or any recreational device, except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws and regulations;
 - (5) Any loud or excessive noise in the loading, unloading or unpacking of any vehicle.

(B) Hourly Restriction of Certain Operations.

- (1) *Domestic power equipment.* The operation of a power lawn mower, power hedge clipper, chainsaw, mulcher, garden tiller, edger, drill or other similar domestic power equipment, may be used between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday. Snow removal equipment is exempt from this provision.
- (2) *Construction activities.* You may engage in or permit construction activities involving the use of any kind of electric, diesel or gas-powered machine or other power equipment, between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.
- (3) *Radio Receiving Set, Musical Instrument, Music Device, Paging System, Machine or other device for producing or reproduction of sound.* The operation of any of these devices between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building shall be prima facie evidence of a violation of this section.

- (C) Noise impact statements. The Council may require any person applying for a change in zoning classification or a permit or license for any structure, operation, process, installation, alteration or project that may be considered a potential noise source to submit a noise impact statement on a form prescribed by the Council. The Council shall evaluate each such statement and take its evaluation into account in approving or disapproving the license or permit applied for or the zoning changes requested.

130.05 Nuisance Parking and Storage.

- (A) Declaration of Nuisance. The outside parking and storage on residentially zoned property of large number s of vehicles and vehicles, materials, supplies or equipment not customarily used for residential purposes in violation of the requirements set forth below is declared to be a public nuisance because it: (1) obstructs views on streets and private property, (2) creates cluttered and otherwise unsightly areas, (3) prevents the full use of residential streets for residential parking, (4) introduces commercial advertising signs into areas where commercial advertising signs are otherwise prohibited, (5) decreases adjoining landowners' and occupants' use and enjoyment of their property and neighborhood, and (6) otherwise adversely affects property values and neighborhood patterns.
- (B) Unlawful Parking and Storage.
- (1) A person must not place, store or allow the placement or storage of ice fishing houses, skateboard ramps, playhouses or other similar non-permanent structures outside continuously for longer than twenty-four (24) hours in the front yard area of residential property unless more than one hundred (100) feet back from the front property line.
 - (2) A person must not place, store or allow the placement or storage of pipe, lumber, forms, steel, machinery or similar materials, including all materials used in conjunction with a business, outside on residential property, unless shielded from public view by an opaque cover or fence.

- (3) A person must not cause, undertake, permit or allow the outside parking and storage of vehicles on residential property unless it complies with the following requirements:
 - (a) No more than four (4) vehicles per lawful dwelling unit may be parked or stored anywhere outside on residential property, except as otherwise permitted or required by the City because of nonresidential characteristics of the property. The maximum number does not include vehicles of occasional guests who do not reside on the property.
 - (b) No motor vehicle, regardless of condition, shall be parked on front, back or side lawns in residential areas. Vehicles that are parked or stored outside must be on a paved or graveled parking surface or driveway area.
 - (c) Vehicles, watercraft and other articles stored outside on residential property must be owned by a person who resides on that property. Students who are away from school for periods of time, but still claim the property as their legal residence will be considered residents on the property.
 - (d) No recreational vehicles, motor homes, trailers or other non-motorized vehicles may be parked on city streets for more than 24 hours.

130.06 Duties of City Officers. The City law enforcement officers shall enforce the provisions of the ordinance relating to nuisances affecting public safety. The police department shall enforce provisions relating to other nuisances and shall assist the other designated officer(s) in the enforcement of provisions relating to nuisances affecting public safety. Such officers shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances.

130.07 Enforcement. Whenever in the judgment of the City law enforcement officers, they find upon investigation that a public nuisance is being maintained or exists within the City of Kerkhoven, they shall notify the owner of record or occupant in writing, who are maintaining said public nuisances and require them to terminate such nuisance and to remove said conditions or remedy such defect. If the owner of record is unknown, premises are not occupied, or the owner of record or occupant refuses to accept notice, the notice shall be served by posting it on the premises. Said written notice shall provide for removal of said nuisances within fifteen (15) days from the date of service. Any person aggrieved by the foregoing written order may demand a hearing relative to said nuisance before the City Council. Nothing in this section of this Ordinance shall prevent the City, without notice of process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.

130.08 Abatement. The City Council shall have the right when an order to abate a nuisance has not been complied with to take such legal proceedings as may be necessary in the name of the City of Kerkhoven to abate and enjoin the further continuation of said public nuisance, or if the City removes or eliminates public health or safety hazards from private property under city ordinance, a record of the cost of such removal shall be determined, and the City Clerk shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk.

- (1) Assessment. The owner of premises on which a nuisance has been abated by the City shall be personally liable for the cost to the City of the abatement, including administrative costs. If the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect-infected trees, the Clerk shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges against

each separate lot or parcel to which the charges are attributable under Minn. Stat. 429.101. The Council may then spread the charges against such property under that statute or other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding 10, as the Council may determine in each case.

130.09 **Penalty.** Any person, firm or corporation convicted of violating any provision of this Ordinance is guilty of a misdemeanor and shall be punished by a fine not to exceed \$1,000.00 and/or up to 90 days in jail.

The Ordinance shall be effective after its adoption and second publication.

This Ordinance introduced by Council Member Jerry Goblirsch on July 13, 2009

This Ordinance published on July 22, 2009

Hearing held August 10, 2009

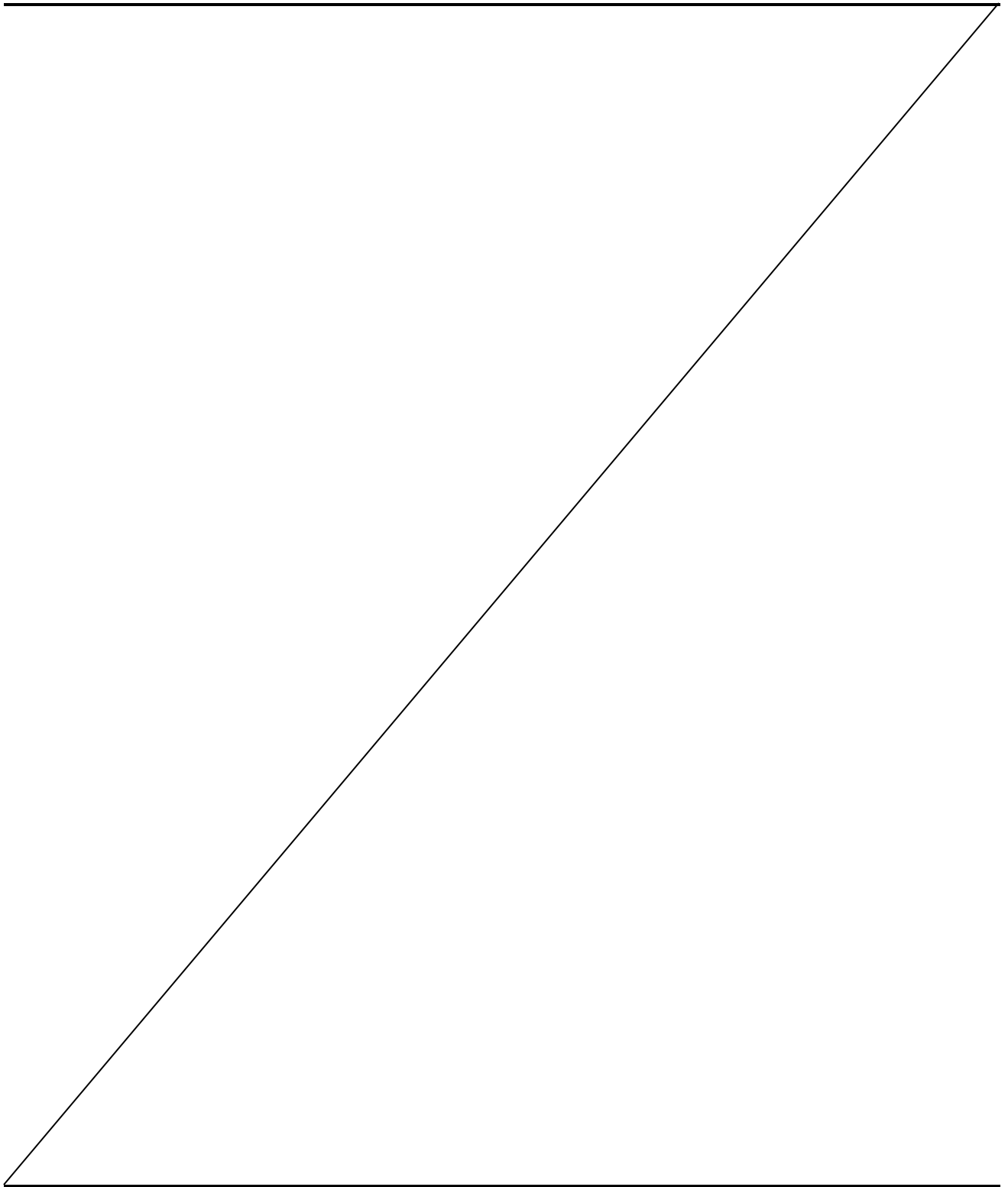
Ordinance adopted August 10, 2009

Ordinance published August 19, 2009

/s/ Brian Thompson, Mayor

/s/ Kim Harkema, Clerk-Treasurer

**ORDINANCE NO. 131.00
REPLACED BY ORDINANCE NO. 134.00**



132.00

PROHIBITING THE STORING OF JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY

132.01 The following is declared to be a nuisance affecting community aesthetics, public peace, safety and general welfare.

132.02 It shall be unlawful for any person, firm, partnership or corporation to pile, store or keep for longer than a seven day period wrecked, junked or abandoned vehicles on private property within the City of Kerkhoven, without a special use permit granted by the City Council.

132.03 Any vehicle shall be deemed to be covered by Section 2 of this Ordinance if said vehicle does not have attached thereto a valid and current license plate issued by the proper state agency, or be covered by a valid dealer's license issued by the proper state agency. A vehicle shall be deemed to be a junked motor vehicle within the meaning of this Ordinance if for a period of thirty (30) days or more:

- A. It is not in an operable condition, or
- B. It is partly dismantled, or
- C. It is used for sale of parts or as a source of repairs or replacement parts for other vehicles, or
- D. It is kept for scraping, dismantling or salvaging of any kind.

That except as herein provided, said Ordinance shall continue in full force and effect.

This amendment shall be in full force and effect from and after the date of publication.

132.04 A special use permit may be issued only in accordance with the following provisions:

- A. The person desiring such permit shall make applications to the City Council of the City of Kerkhoven and shall pay a fee of One Dollar (\$1.00) at the time of application.
- B. The person desiring said permit shall be required to keep said vehicle OUT OF VIEW OF THE GENERAL PUBLIC ("out of view" shall be deemed by the City Council), or erect a seven foot high solid fence, with solid gate, constructed of either painted wood, prefinished metal, fiberglass, aluminum or such materials as shall be approved in advance by the City Council. If the fence is of wood, it is to [be] kept painted. The area surrounding shall be kept free of weeds and other unsightly objects and the entire area shall be property maintained.

132.05 It shall be the duty of the police department to investigate all written and signed complaints submitted to the City Council and if after investigation there appears to be a violation of this Ordinance, the investigating officer shall sign a complaint.

132.06 **Penalty.** Any person, firm, partnership or corporation violating any section of this Ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000.00 and/or up to 90 days in jail. (Amended by Ordinance adopted August 10, 2009)

132.07 This Ordinance shall be in full force and effect from and after its date of publication.

DERIVATION: February 24, 1981

/s/ Roy Krueger, Mayor

/s/ Mona Doering, Clerk-Treasurer

CHAPTER 133
TALL GRASS AND WEEDS

Section

- 133.01 Legislative Intent.
- 133.02 Definitions.
- 133.03 Nuisance Declared.
- 133.04 Exemption and Conditions for Exemptions.
- 133.05 Inspection by Person Designated by City Council.
- 133.06 Appeals.
- 133.07 Abatement by City.
- 133.08 Owner Liability for Cost.

133.01 Legislative Intent. It is declared to be the purpose and intent of this chapter to protect and preserve this City's neighborhoods and the public health, safety and welfare of those who live. The Kerkhoven City Council determines that keeping the City free of tall grass and noxious weeds improves the quality of life of City residents by improving the aesthetics of the City, by eliminating harbor for rodents and insects and by eliminating fire hazards. At the same time the Council recognizes that requiring the mowing of grasses and noxious weeds is under certain circumstances impractical and unreasonable. The exemptions contained within this chapter are intended to cover these circumstances.

133.02 Definitions. The following definitions shall apply to words used in this chapter.

- a) "Boulevard" shall mean the area between the street and sidewalk or, in the absence of a public sidewalk, the area between the street and property line adjacent to all streets within the Kerkhoven city limits.
- b) "Buffer" or "buffer strip" shall mean a management area used to separate differing landscapes and land uses to minimize the impact from these adjacent land uses.
- c) "Landscaping" shall mean the active involvement in the encouragement of selected plants to grow on a site.
- d) "Noxious weeds" shall mean plants so designated by the Commissioner of Agriculture under authority of Minn. Stat. Sec. 18.77, Subd. 8.
- e) "Regularly cut" shall mean mowing or otherwise cutting vegetation so that it does not exceed 8 inches in height.
- f) "Traditional landscaping" shall mean the use of turf grasses and woody plants (shrubbery and trees) with defined areas for cultivation of annual and perennial plants.
- g) "Turf grasses" shall mean bluegrass, fescue and ryegrass blends with non-woody vegetation interspersed with them commonly used in regularly cut lawns.
- h) "Weeds" shall mean all noxious weed and any undesirable or troublesome plant that is horticulturally out of place, especially one that grows profusely where it is not wanted. For the purpose of this Ordinance, *Taraxacum spp* (common dandelion) is not considered a weed.
- i) "Wetlands" shall mean lands transitional between terrestrial and aquatic systems where the water table is near the surface. The boundary of wetlands for the purposes of this chapter

shall be determined according to the U. S. Army Corps of Engineers Wetland Delineation Manual (1987).

133.03 Nuisance Declared. It shall be unlawful and a public nuisance for any person having control of any property in the City of Kerkhoven to permit or maintain on such property any (1) noxious weed, or (2) growth of grass and weeds in excess of 8 inches in height, if the growth of grass and weeds occupies an area of at least 144 square feet and is located within 200 feet of a residence or developed property. No owner shall permit such grass and weeds to be a public nuisance, but shall abate the nuisance by cutting the weeds and grass and removing the clippings.

133.04 Exemptions and Conditions of Exemptions. The provisions of this chapter shall not apply to the following:

- a) Non-noxious weeds and grass vegetation in wetland areas;
- b) Non-noxious weeds, grasses and herbaceous vegetation within 50 feet of designated storm water ponds or within 50 feet of natural or altered creeks, rivers and stream corridors, including riparian buffer strips that convey water, provided they are cut to less than 8 inches at least once per year if located within 200 feet of an occupied residence or developed property;
- c) Non-noxious weed and grass vegetation growing on agriculturally zoned land, including pastures, that are fenced and contain animals;
- d) Temporary erosion control grasses;
- e) Ornamental grasses.

133.05 Inspection by Person Designated by the City Council. Upon receiving notice of the probable existence of weeds in violation of this chapter, a person designated by the City Council shall make such inspection as necessary and is hereby authorized to enter onto private property for the purpose of conducting such inspection. Upon finding such public nuisance a notice shall be served by certified mail or regular mail upon the record owner of the property ordering such owner to abate the nuisance by cutting the weeds or grass and removing the clippings within 15 days of receipt of the notice. The notice shall also state that if the owner fails to do so, the City will cause the weeds and grass to be cut and the clippings removed and the expense thereof, if unpaid by the owner, to be levied against the benefited property as a special assessment. Refusal to accept such notice by the owner of the property shall not constitute a defense that the notice was not received.

133.06 Appeals. The property owner may appeal by filing written notice to objection with the City Clerk within 48 hours of the notice, excluding weekends and holidays, if the property owner contests the findings of the inspector. It is the property owner's responsibility to demonstrate that the matter in question is shrubs, trees, cultivated plants or crops or is not otherwise in violation of this chapter, and should not be subject to destruction under the chapter. An appeal by the property owner shall be brought before the City Council and shall be decided by a majority vote of the Council members in attendance and being at a regularly scheduled or special meeting of the City Council.

133.07 Abatement by the City. In the event that the property owner shall fail to comply with the destruction orders within 15 regular business days and has not filed a notice within 48 hours to the City Clerk of an intent to appeal, the City Council may employ the services of city employees or outside contractors and remove the weeds and grass to conform to this chapter by all lawful means. A record shall be kept of the total cost of the abatement attributable to each parcel of property and be reported to the City Clerk and other appropriate staff.

133.08 Owner Liability for Cost. The property owner is liable for all cost of removal, cutting or destruction of weeds and grass as defined by this chapter. The property owner is responsible for all collection costs associated with weed and grass destruction including, but not limited to, court costs, attorney's fees and interest on any unpaid amounts incurred by the City. If the City uses municipal employees, it shall set and assign an appropriate per hour rate for employees, equipment, supplies and chemicals which may be used. All sums payable by the property owner are to be paid to the City Clerk and to be deposited in a general fund as compensation for expenses and costs incurred by the City. All sums payable by the property owner may be collected as a special assessment as provided by Minn. Stat. 429.101, as it may be amended from time to time.

ORDINANCE 134.00

AN ORDINANCE RELATING TO OPEN BURNING WITHIN THE CITY OF KERKHOVEN CORPORATE LIMITS

This Ordinance shall replace Ordinance #131.00

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

Open Burning. The burning of any matter if the resultant combustion products are emitted directly to the atmosphere without passing through a stack, duct or chimney, except a “recreational fire” as defined herein. Mobile cooking devices such as manufactured hibachis, charcoal grills, wood smokers and propane or natural gas devices are not defined as “open burning.”

Recreational Fire. A fire set with approved starter fuel no more than three feet in height, contained within the border of a “recreational fire site” using dry, clean wood; producing little detectable smoke, odor or soot beyond the property line; conducted with an adult tending the fire at all times; for recreational, ceremonial, food preparation for social purposes; extinguished completely before quitting the occasion; and respecting weather conditions, neighbors, burning bans and air quality so that nuisance, health or safety hazards will not be created. No more than one recreational fire is allowed on any property at one time.

Recreational Fire Site. An area of no more than a three foot diameter circle (measured from the inside of the fire ring or border); completely surrounded by a non-combustible and non-smoke or odor producing material, either of natural rock, cement, brick, tile or blocks or ferrous metal only on which the area is depressed below ground, on the ground or on a raised bed. Included are permanent outdoor wood burning fireplaces. Burning barrels are not a “recreation fire site” as defined herein.

Recreational fire sites shall not be located closer than 25 feet to any structure.

Starter Fuels. Dry, untreated, unpainted, kindling, branches, cardboard or charcoal fire starter. Paraffin candles and alcohols are permitted as starter fuels and as aids to ignition only. Propane gas torches or other clean gas burning devices causing minimal pollution must be used to start an open burn.

Wood. Dry, clean fuel only such as twigs, branches, limbs, “presto logs,” charcoal, cord wood or untreated dimensional lumber. The term does not include wood that is green with leaves or needles, rotten, wet, oil soaked or treated with paint, glue or preservatives. Clean pallets may be used for recreational fires when cut into three foot lengths.

134.02 **Prohibited Materials.**

- (A) No person shall conduct, cause or permit open burning oils, petro fuels, rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke such as tires, railroad ties, treated, painted or glued wood composite shingles, tar paper, insulation, composition board, sheet rock, wiring, paint or paint fillers.
- (B) No person shall conduct, cause or permit open burning of hazardous waste or salvage operations, open burning of solid waste generated from an industrial or manufacturing process or from a service or commercial establishment or building material generated from demolition of commercial or institutional structures.
- (C) No person shall conduct, cause or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving or consumption of food.

(D) No person shall conduct, cause or permit open burning of any leaves or grass clippings.

134.03 **Burning Ban or Air Quality Alert.** No recreational fire or open burn will be permitted when the City or DNR has officially declared a burning ban due to potential hazardous fire conditions or when the MPCA has declared an Air Quality Alert.

134.04 **Penalty.** Violation of any provision of this Ordinance is guilty of a petty misdemeanor and upon conviction shall be punished by a fine not to exceed \$300.00.

The Ordinance shall be effective after its adoption and second publication.

This Ordinance introduced by Council Member Jerry Goblirsch on July 13, 2009

This Ordinance published on July 22, 2009

Hearing held August 10, 2009

Ordinance adopted August 10, 2009

Ordinance published August 19, 2009

/s/ Brian Thompson, Mayor

/s/ Kim Harkema, Clerk-Treasurer

ORDINANCE 135.00
AN ORDINANCE REGULATING THE BURNING OF SOLID FUELS
IN EXTERNAL SOLID FUEL-FIRED HEATING DEVICES

THE CITY COUNCIL OF THE CITY OF KERKHOVEN, SWIFT COUNTY, MINNESOTA DOES ORDAIN:

Section 1. **Purpose.** This Ordinance is intended to promote the public health, safety and welfare and to safeguard the health, comfort, living conditions, safety and welfare of the citizens of the City of Kerkhoven by regulating the air pollution and fire hazards of external solid fuel-fired heating devices.

Section 2. **Applicability.** This Ordinance applies to all outdoor fire boilers within the City of Kerkhoven.

- 2.1 This Ordinance does not apply to grilling or cooking food using charcoal, wood, propane or natural gas in cooking or grilling appliances.
- 2.2 This Ordinance does not apply to burning for the purpose of generating heat in a stove, furnace, fireplace or other heating device within a building used for human habitation.
- 2.3 This Ordinance does not apply to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.
- 2.4 This Ordinance does not apply to campfires; a small outdoor fire intended for recreation or cooking but not including a fire intended for disposal of waste wood or refuse.

Section 3. **Definitions.**

- 3.1 “External solid fuel-fired heating device” means a device designed for external solid fuel combustion so that usable heat is derived for the interior of a building and includes solid fuel-fired stove, solid fuel-fired cooking stoves, and combination fuel furnaces or boiler which burn solid fuel. Solid fuel-fired heating devices do not include natural gas-fired fireplace logs or wood-burning fireplaces or wood stoves in the interior of a dwelling.
- 3.2 “Stacks or chimneys” means any vertical structure incorporated into a building and enclosing a flue or flues that carry off smoke or exhaust from a solid fuel-fired heating device, especially the part of such a structure extending above a roof.
- 3.3 “Person” means an individual, partnership, corporation, company or other association.

Section 4. **Requirements.** No external solid fuel-fired heating devices designed and intended and/or used, for the purpose of heating the principal structure or another accessory structure on the premises are allowed to be installed within the City of Kerkhoven.

Section 5. **Non-Conforming Use.**

- 5.1 At such time as the useful life of a non-conforming wood-burning unit or solid fuel-fired heating device has elapsed or would need to be repaired to function properly, the unit cannot be replaced and must be abandoned, not used, and removed from the property immediately.
- 5.2 No pre-existing, non-conforming wood-burning unit or solid fuel-fired heating device shall hereafter be extended, enlarged, or expanded.

- 5.3 The lawful use of any existing wood-burning unit or solid fuel-fired heating device existing at the time of the effective date of this Ordinance may be continued, although such use may not conform to the provision of this Ordinance.

Section 6. **Enforcement.** The City Maintenance Supervisor, Zoning Administrator or other designated officials shall enforce the provisions of this Ordinance.

Section 7. **Penalty.** Any person convicted or violating a provision of this Ordinance is guilty of a petty misdemeanor and shall be punished by fine of a least \$300.00 per occurrence plus the cost of prosecution in any case.

Section 8. **Effective Date.** This Ordinance shall take effect upon its passage and publication.

This Ordinance introduced by Council member Jerry Goblirsch on December 15, 2009

This Ordinance published on December 23, 2009

Hearing Held on January 11, 2010

Ordinance Adopted on January 11, 2010

Ordinance Published on January 20, 2010

/s/ Brian Thompson, Mayor

/s/ Kim Harkema, Clerk-Treasurer

CHAPTER 13A. DANGEROUS OR SUBSTANDARD BUILDINGS

Section

130.01A	Policy.
130.02A	Findings.
130.03A	Dangerous or Substandard Buildings Declared a Nuisance.
130.04A	Conditions Rendering Building Dangerous or Substandard.
130.05A	Securing Vacant Buildings.
130.06A	Inspections and Orders; Appeals.
130.07A	Council to Call Hearing.
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130.11A	Order to Repair, Vacate and Repair, Remove or Demolish.
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130.13A	Standards for Repair, Vacation and Repair, Removal or Demolition.
130.14A	Penalty for Disregarding, Defacing or Destroying Order; Council May Order Work.

130.01A **Policy.** Pursuant to authority provided in Minnesota Statutes, Section 463.26, permitting cities to enact and enforce ordinances on hazardous buildings, and in order to enhance the livability and preserve the tax base and property values of buildings within the city, and based upon the findings contained in Section 130.02A; and because of the need to assure that buildings which are capable of rehabilitation are promptly rehabilitated and buildings which are not capable of rehabilitation be promptly demolished, the City hereby declared that it is the policy of the City to promote rehabilitation of vacant and unoccupied buildings, and to assure a prompt process for demolition of hazardous buildings through a procedure fixing appropriate responsibility in accordance with due process requirements.

130.02A **Findings.** The City Council finds, determines and declares that buildings which remain vacant and unoccupied for any appreciable period of time become an attractive nuisance to children, a harborage for rodents, and invitation to derelicts, vagrants and criminals as a temporary abode, and an increased fire hazard, and that the unkempt grounds surrounding such property invite the dumping of garbage and rubbish thereon; that such buildings are permitted to become dilapidated since such buildings are often economically obsolete and the owners of such buildings are unwilling to expend the necessary funds to repair or raze the buildings; that such buildings contribute to the growth of blight within the City, depress market values of surrounding properties to the detriment of the various districts and require additional governmental services; that the use and maintenance of property in such condition and manner endangers the public safety and health, constitutes an unreasonable use and condition to the annoyance, discomfort and repose of a considerable number of the public, is detrimental to the public good and to the common welfare; and renders a considerable number of the public insecure in the use and enjoyment of their property and, thus, may constitute a nuisance condition. Adequate protection of public health, safety and welfare, therefore, requires the establishment and enforcement of the means by which such nuisance conditions may be abated.

130.03A **Dangerous or Substandard Buildings Declared a Nuisance.** Any structure or building, or portion of a structure or building, in which there exists any of the conditions listed in Section 130.04A is a dangerous or substandard building, and is hereby declared to be a public nuisance.

Conditions Rendering Building Dangerous or Substandard.**(A) Structural Hazards.**

- (1) Any stress in any material, element, member or portion thereof, due to all dead and live loads, which is greater than the working stresses deemed reasonable and safe by the Building Official.
- (2) Damage to any portion of a building by earthquake, wind, fire, flood, or by any other cause, in such a manner that the structural ability or strength thereof is appreciably less than the minimum requirements set forth in existing codes for a new building or structure of similar size, construction, location and purpose.
- (3) Likelihood of any portion of member or appurtenance of a building to fall, or become dislodged or detached, or to collapse, and thereby cause bodily injury or property damage.
- (4) Settling of any building or portion thereof to such an extent that walls or other structural portions have been displaced or distorted and rendered structurally unstable or dangerous, or that the basic function of such element has been impaired.
- (5) The building or structure, or any portion thereof, because of dilapidation, deterioration, decay, faulty construction, or because of the removal or movement of such portion of the ground necessary for the purpose of supporting such building or structure or portion thereof, or other cause, is likely to partially or completely collapse, or some portion of the foundation or underpinning is likely to fall or give way.
- (6) The building or structure, or any portion thereof, is for any reason whatsoever manifestly unsafe for the purpose for which it is used or intended to be used.
- (7) The exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity of that wall or structural member does not fall inside the middle third of the base.
- (8) The building or structure, exclusive of the foundation, shows 33 percent or more of damage or deterioration to the member or members, or 50 percent of damage or deterioration of a non-supporting enclosing or outside wall covering.
- (9) The building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated, from any cause whatsoever, as to become an attractive nuisance to children who might play therein to their danger, or as to afford a harbor for vagrants, criminals, or as to enable persons to resort thereto for the purpose of committing nuisances or unlawful acts.
- (10) Any building or structure which has been constructed or now exists or is maintained in violation of a specific requirement or prohibition, applicable to such building or structure, of the building code provisions of the City or of any law or ordinance of this State or City relating to the location, use and physical condition of buildings or structures.
- (11) Any building or structure which, whether or not erected in accordance with all applicable laws and this Code, because of dilapidation, deterioration, damage, or

other cause is so weakened or defective as to have in any non-support part, member or portion less than 50 percent, or in a supporting member less than 66 percent, of the strength or fire-resistive qualities or characteristics or weather-resistive qualities or characteristics required by law or ordinance in the case of a newly constructed building or structure of similar size, purpose and location.

- (B) Hazardous Wiring. All wiring except that which conformed with all applicable laws in effect at the time of installation and which has been maintained in good condition and is being used in a safe manner.
- (C) Hazardous Plumbing. All plumbing except that which conformed with all applicable laws in effect at the time of installation and which has been maintained in operating condition and which is free of cross-connections and siphonage between fixtures.
- (D) Hazardous Mechanical Equipment. All mechanical equipment, including vents, except that which conforms to all applicable laws in effect at the time of installation and which has been maintained in safe condition.
- (E) Faulty Weather Protection.
 - (1) Deteriorated, crumbling or loose plaster.
 - (2) Deteriorated or ineffective waterproofing of exterior walls, roof, foundations or floors, including broken windows or doors.
 - (3) Defective or lack of weather protection for exterior wall coverings, including lack of paint or weathering due to lack of paint or other approved protective covering.
 - (4) Broken, rotted, split or buckled exterior walls or roof coverings.
- (F) Inadequate Fire Protection. All buildings which are not provided with the fire-resistive construction required by the Minnesota State Building Code except those buildings which conformed to all applicable laws at the time of their construction and whose fire-resistive integrity has been adequately maintained or improved.

130.05A **Securing Vacant Buildings.**

- (A) In general, if any building becomes vacant or unoccupied and is deemed hazardous due to the fact that the building is open to trespass and has not been secured and the building could be made safe by securing the building, the City may order the building secured and shall cause notice of the order to be served upon the owner of the premises. Such notice may be served personally or by mail. Service by mail is complete upon mailing a copy of the order to the owner at the last known address. If the owner fails to comply with the order within six (6) days after the order is served, the Building Official shall cause the building to be boarded up pursuant to the authority of this chapter, the Building Official may cause all openings to the building to be boarded and secured.
- (B) Emergency. When it is determined by the Building Official or the chief of police, or the fire chief that an emergency exists with respect to the health or safety of persons in the community, and immediate boarding and securing of a building is required, and where danger will exist to children, transients or others in the absence of an immediate boarding or securing of the building, the director of inspections or the chief of police, or the fire chief may waive all requirements herein and immediately board or otherwise secure the building, provided that:

- (1) The conditions showing the existence of an exigency are documented in writing by the director of inspections or the chief of police or the fire chief or their designees.
 - (2) Notice is to be mailed immediately by the department invoking this section to the address of the owner and taxpayer, and, if recorded on the assessor's rolls the address of the mortgage holder, of the date of boarding or otherwise securing and the reasons therefore.
- (C) After a vacant or unoccupied building has been boarded or otherwise secured under this section, should the owner fail to maintain the building in a secured condition until such time as it has been repaired and reoccupied, the director of inspections shall resecure any openings into the building whenever it again becomes open to trespass, without further notice to the owner. An administrative fee of Seventy-five Dollars (\$75.00) and all other costs incurred by the City for boarding or otherwise securing a building under this chapter including, but not limited to, the actual costs for boarding, inspecting, posting and monitoring the building, shall be assessed as provided in Chapter 13. "Owner," for the purpose of this section, shall mean the person who is listed as the contact person on the current rental licensing application on file with the City, if any; or, if none, the person listed as owner by the City Assessor on the homestead record; or, if none, the taxpayer as shown by the records of the City Assessor.

130.06A **Inspections and Orders; Appeals.**

- (A) Inspection Responsibilities of Official. Whenever it shall come to the attention of the Building Official by written complaint of any person or agency, or otherwise, that a building or structure is a dangerous or substandard building, the Official shall cause a preliminary examination to be made of the building or structure and premises. In the execution of the inspection, the Official shall avail to the services of such other agencies, employees, departments and officers of the City as the Official deems necessary. Upon completion of the inspection, if it then appears that the building or structure is a dangerous or substandard building, the City shall issue a written order to the owner or occupant requiring repair, removal, demolition or compliance. If no appeal is filed within ten days of the order, the order shall be deemed final.
- (B) Appeal of Order. Any person who deems to be aggrieved by any such order may appeal the order of the City to the City Council by filing a written appeal with the Clerk within ten days of such order. Such appeal shall fully state the order appealed from, the date thereof, and the facts of the matter. Upon such an appeal being filed, the Official also shall make a written report, supplemented by written reports from the other agencies, employees, departments and officials called upon by the Official in the execution of the inspection and submit the reports to the Council.

130.07A **Council to Call Hearing.** The Council shall examine the report of the Official, and if there is probable cause to believe that the building or structure is a dangerous or substandard building, shall have the matter set for hearing.

130.08A **Notice of Hearing.** The Council shall hear the appeal not later than 30 days after the date the appeal is filed. Notice of the hearing shall be given in a form prescribed by the Council. It shall set forth the street address and legal description sufficient for identification of the premises upon which the building or structure is located. It shall contain a brief statement of the conditions mentioned in the report of the Official which shows probable cause to believe that the building or structure is a nuisance within the meaning of this section. It shall also state the date, hour and place of the hearing and shall order all interested parties who

desire to be heard in the matter to appear before the Council to show cause why the building or structure should not be ordered repaired, vacated and repaired, removed or demolished.

130.09A **Service of Notice.**

- (A) Person to Whom Notice is Served. One copy of the notice shall be served upon the person, if any, in real or apparent charge and control of the premises involved; the record owner, the holder of any mortgage, trust, deed or other lien or encumbrance of record; the owner or holder of any lease of record; and the record holder of any other estate or interest in or to the building or structure or and upon which it is located.
- (B) Posting of Notice. One copy of the notice shall be posted in a conspicuous place upon the building or structure or premises involved.
- (C) Date of Serving and Posting Notice. The notice of hearing shall be posted and served at least ten days prior to the date set for the hearing.
- (D) Notice Sent by Certified Mail. The notice of hearing shall be served upon all persons entitled thereto either personally or by certified mail. Service by certified mail shall be effective on the date of mailing if a copy of such notice is so mailed, postage prepaid, return receipt requested, to each such person at the address of such person as it appears on the last equalized assessment roll of the county or as known to the Clerk. If no such address so appears or is known to the Clerk, then a copy of the notice shall be addressed to such person at the address of the building or structure involved in the proceedings. The failure of any owner or other person to receive such notice shall not affect in any manner the validity of any of the proceedings taken.
- (E) Affidavit of Notice Served. The officer or employee upon serving the notice as provided herein shall file an affidavit thereof with the Clerk certifying to the time and manner in which such notice was served. The officer or employee shall also file therewith any receipt which may have been returned to the officer or employee in acknowledgement of receipt of such notice by certified mail.

130.10A **Hearing.**

- (A) Hearing and Considering Evidence. The Council shall, at such hearing, hear and consider any evidence offered by the person or persons having any estate or interest in such building or structure pertaining to the matter set forth in the report of the Official.
- (B) Conclusion of Hearing. After hearing the oral and written views of all interested persons, the Council shall make its decision at the same meeting or at a specified future meeting.

130.11A **Order to Repair, Vacate and Repair, Remove or Demolish.**

- (A) If the Council finds that the building or structure involved is a dangerous or substandard building within the terms of this section, then it shall issue an order:
 - (1) That the building or structure must be repaired, or vacated and repaired, or removed or demolished.
 - (2) That the occupant, lessee, or other person in possession must vacate the building, or that the occupant, lessee, or other person may remain in possession while repairs are being made.

- (3) That any mortgage, beneficiary under deed of trust, or any other person having an interest or estate in said building may, at their own risk, repair, vacate and repair, remove or demolish said building or structure according to existing law and code provisions.

130.12A **Order to be Served.** Copies of the order to repair, or vacate and repair, or remove or demolish shall be served upon the individuals and in the manner as prescribed in Section 130.09A. A copy of the order shall also be posted in a conspicuous place upon the building or structure as prescribed in said subsection.

130.13A **Standards for Repair, Vacation and Repair, Removal or Demolition.** The following standards shall be followed in substance and spirit by ordering the repair, vacation and repair, removal or demolition of any building or structure. Any order to remove or demolish, rendered pursuant to this section, shall not indicate an alternative permission to repair; however, an order to repair may be satisfied by removal or demolition.

- (A) Repairing Building. If the dangerous or substandard building can reasonably and economically be repaired so that it will no longer exist in violation of the provisions of this section, it shall be ordered repaired. For the purposes of this section, the term "repair" shall include any improvements necessary to make such building comply with the applicable provisions of this Code.
- (B) Vacating Building. If the dangerous or substandard building is in such condition as to make it dangerous to the health, moral, safety or general welfare of its occupants, it shall be ordered to be vacated.
- (C) Damaged Buildings. In any case where a dangerous building is 50 percent or more damaged, decayed or deteriorated, it shall be ordered to be removed or demolished.
- (D) Unrepairable Buildings. In all cases where a dangerous or substandard building cannot be repaired, with reasonable economy, so that it will no longer exist in violation of the terms of this section, it shall be ordered to be vacated and removed or demolished.
- (E) Fire Hazardous Buildings. In all cases where a dangerous or substandard building is a fire hazard, whether existing or erected in violation of the provisions of this Code, or state law, and cannot reasonably and economically be repaired pursuant to subsection 470.08, it shall be ordered demolished.
- (F) Particulars of Order. The order shall set forth the street address of the building or structure and a legal description of the premises sufficient for identification. It shall contain a statement of the particulars which render the building or structure a dangerous or substandard building, and a statement of the things required to be done. The order shall state the time within which the work required must be commenced, the time being not earlier than ten days and no later than 30 days after the issuance of the order, and the order shall further specify a reasonable time within which the work shall be completed. The time for completion may, by action of the Council, be extended for just causes and such authority for extended time shall be given in writing by the Council upon written application of any interested party or parties.

Penalty for Disregarding, Defacing or Destroying Order; Council May Order Work.

- (A) Penalty.
- (1) The owner or other person having charge and control of the building or structure cited in the order who shall fail to comply with any order to repair, or vacate and repair, or remove or demolish said building or structure shall be subject to the penalties as provided by M.S. § 609.02, Subd. 3.
 - (2) The occupant or lessee in possession cited in the order who shall fail to comply with any order to vacate said building or structure in accordance with any order given as provided for in this section shall be subject to the penalties provided by M. S. § 609.02, Subd. 3.
- (B) Defacing or Destroying Order. Any person who removes or defaces or destroys a notice or order posted as required in this section shall be subject to the penalties as provided by M. S. § 609.02, Subd. 3.
- (C) Council May Order Repair or Removal. The Council may order the repair or removal of the building or structure cited in the order and enforcement of the order by the District Court shall be in accordance with M. S. §§ 463.15 to 463.26 where such statutory provisions apply, which statutes are hereby adopted and incorporated into this chapter by reference and made a part of this chapter.

ORDINANCE 145

AN ORDINANCE REGULATING ANIMALS

This Ordinance shall replace Ordinance #141 “An Ordinance regulating dogs,” and also shall replace Ordinance #142 “An Ordinance relating to Barking Dogs.”

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

Animal. Any mammal, reptile, amphibian, fish, bird (including fowl and poultry) or other member commonly accepted as a part of the animal kingdom. Animals shall be classified as follows:

- (1) *Domestic Animals.* Those animals commonly accepted as domesticated household pets. Unless otherwise defined, domestic animals shall include dogs, cats, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-constricting reptiles or amphibians, and other similar animals.
- (2) *Farm Animals.* Those animals commonly associated with a farm or performing work in an agriculture setting. Unless otherwise defined, farm animals shall include members of the equine family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens, turkeys), fowl (ducks, geese), swine (including Vietnamese pot-bellied pigs), goats, bees, and other animals associated with a farm, ranch or stable.
- (3) *Non-Domestic Animals.* Those animals commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered inherently dangerous to the health, safety and welfare of people. Unless otherwise defined, non-domestic animals shall include:
 - (a) Any member of the large cat family (family felidae) including lions, tigers, cougars, bobcats, leopards and jaguars, but excluding commonly domesticated house cats.
 - (b) Any naturally wild member of the canine family (family canidae) including wolves, foxes, coyotes, dingoes, and jackals, but excluding commonly accepted domesticated dogs.
 - (c) Any crossbreeds such as the crossbreed between a wolf and a dog, unless the crossbreed is commonly accepted as a domesticated house pet.
 - (d) Any member or relative of the rodent family including any skunk (whether or not descended), raccoon, squirrel, or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets.
 - (e) Any poisonous, venomous, constricting, or inherently dangerous member of the reptile or amphibian families including rattlesnakes, boa constrictors, pit vipers, crocodiles and alligators.
 - (f) Any other animal which is not explicitly listed above but which can reasonably defined by the terms of this section including, but not limited to, bears, deer, monkeys and game fish.

At Large. Off the premises of the owner and not under the custody and control of the owner or other responsible person, either by leash, cord, chain or otherwise restrained or confined.

Dog. Both male and female of the canine species, commonly accepted as domesticated household pets, and other domesticated animals of a dog kind.

Owner. Any person or persons, firm, association or corporation owning, keeping, or harboring an animal.

145.02 **Dogs (Amended September 13, 2010).**

- (A) Running at Large Prohibited. It shall be unlawful for the dog of any person who owns, harbors, or keeps a dog to run at large. A person who owns, harbors, or keeps a dog which runs at large shall be guilty of a petty misdemeanor. Dogs on a leash and accompanied by a responsible person, so as to effectively restrain by command as by leash, shall be permitted in streets or on public land unless the City has posted an area with signs reading "Dogs Prohibited." Dogs leashed, chained or confined on the owner's private property must be so confined so that they cannot reach the adjoining property of another property owner or public property.
- (B) License Required.
- (1) All dogs over the age of three (3) months kept, harbored, or maintained by their owners in the City, shall be licensed and registered with the City. Dog licenses shall be issued by the City Clerk upon payment of the license fee as established by the City Council, which may be amended from time to time. The owner shall state, at the time application is made for the license, his or her name and address and the name, breed, color and sex of each dog owned or kept by him or her. No license shall be granted for a dog that has not been vaccinated against distemper and rabies, as evidence by a certificate by a veterinarian qualified to practice in the state in which the dog is vaccinated.
 - (2) It shall be the duty of each owner of a dog subject to this section to pay to the City Clerk the license fee established by the city council.
 - (3) The City Clerk shall issue to the owner a metal tag for each dog licensed. The tag shall have stamped on it the number corresponding with the number on the certificate. Every owner shall permanently affix the tag to the collar of the dog so licensed in such a manner that the tag may be easily seen. In case a dog tag is lost or destroyed, a duplicate shall be issued by the City Clerk for a fee of \$1.00. Dog tags shall not be transferable from one dog to another and no refunds shall be made on any dog license fee because of death of a dog or the owner's leaving the City before the expiration of the license period.
 - (4) The licensing provisions of this division (B) shall not apply to dogs whose owners are nonresidents temporarily within the City, nor to dogs brought into the City for the purpose of participating in any dog show. If the animal owned is a service animal which is capable of being properly identified as from a recognized school for Seeing Eye, hearing ear, service or guide animals, and the owner is a blind or deaf person, or a person with physical or sensory disabilities, then no license shall be required.

- C. Vaccination. All dogs kept, harbored, maintained, or transported within the City shall be vaccinated at least once every two (2) years by a licensed veterinarian for rabies and distemper. A certificate of vaccination must be kept on which is stated the date of vaccination, owner's name and address, the animal's name, sex, description and weight, type of vaccine, and the veterinarian's signature. Upon demand made by the City Clerk or authorized City personnel, or a police officer, the owner shall present for examination the required certificate(s) of vaccination for the animal(s). In cases where certificates are not presented, the owner or keeper of the animal(s) shall have seven (7) days in which to present the certificate(s) to the City Clerk or officer. Failure to do so shall be deemed a violation of this section.

145.03 Non-Domestic Animals. It shall be illegal for any person to own, possess, harbor or offer for sale, any non-domestic animal within the City. Any owner of a non-domestic animal at the time of adoption of this Code shall have 30 days in which to remove the animal from the City after which the City may impound the animal as provided for in this Ordinance. An exception shall be made to this prohibition for animals specifically trained for and actually providing assistance to the handicapped or disabled, and for those animals brought into the City as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

145.04 Farm Animals. Farm animals shall not be kept in any district within the City limits. An exception shall be made to this Ordinance for those animals brought into the City as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

145.05 Impounding.

- (A) Running at Large. Any unlicensed animal running at large is hereby declared a public nuisance. Any City personnel authorized by the City Council or any police officer may impound any dog or other animal found unlicensed or any animal found running at large and shall give notice of the impounding to the owner of the dog, if known. The provisions of this Ordinance may be enforced by City personnel authorized by the City Council or by a law enforcement officer. For the purpose of discharging the duties imposed by this section, the City personnel authorized by the City Council or a law enforcement officer is empowered to enter upon private property of another without permission.
- (B) Biting Animals. Any animal that has not been inoculated by a live modified rabies vaccine and which has bitten any person, wherein the skin has been punctured or the services of a doctor are required, shall be confined in the county shelter for a period of not less than ten (10) days, at the expense of the owner. The animal may be released at the end of the time if healthy and free from symptoms of rabies, and by the payment of all costs by the owner. However, if the owner of the animal shall elect immediately upon receipt of notice of need for the confinement by the officer to voluntarily and immediately confine the animal for the required period of time in a veterinary hospital of the owner's choosing and provide immediate proof of confinement in the manner as may be required, the owner may do so. If, however, the animal has been inoculated with a live modified rabies vaccine and the owner has proof of the vaccination by a certificate from a licensed veterinarian, the owner may confine the dog or other animal to the owner's property.
- (C) Reclaiming. All animals conveyed to the shelter shall be kept, with humane treatment and sufficient food and water for their comfort, at least five (5) regular business days, unless the animal is a dangerous animal as defined under Section 145.11 in which case it shall be kept for seven (7) regular business days or the times specified in Section 145.11, and except if the animal is a cruelly-treated animal in which case it shall be kept for ten (10) regular business days, unless sooner reclaimed by their owners or keepers as provided by this section. In

case the owner or keeper shall desire to reclaim the animal from the shelter, the following shall be required, unless otherwise provided in this Ordinance or established from time to time by resolution of the City Council.

- (1) Payment of maintenance costs, as provided by the shelter, per day or any part of day while animal is in the shelter.
 - (2) If a dog is unlicensed, payment of a regular license fee and a valid certificate of vaccination for rabies and distemper shots is required.
- (D) Unclaimed Animals. At the expiration of the times established in division (C) of this Ordinance, if the animal has not been reclaimed in accordance with the provisions of this Ordinance, the person or officer appointed to enforce this section may let any person claim the animal by complying with all provisions of this Ordinance in this section, or cause the animal to be destroyed in a proper and humane manner and shall properly dispose of the remains thereof.

145.06 Kennels.

- (A) Definition of Kennel. The keeping of four (4) or more dogs on the same premises, whether owned by the same person or not and for whatever purpose kept, shall constitute a “kennel” except that a fresh litter of pups may be kept for a period of three (3) months before that keeping shall be deemed a “kennel.”
- (B) Kennel as a Nuisance. Because the keeping of four (4) or more dogs on the same premises is subject to great abuse, causing discomfort to persons in the area by way of smell, noise, hazard, and general aesthetic depreciation, the keeping of four (4) or more dogs on the premises is hereby declared to be a nuisance and no person shall maintain a kennel within the City.

145.07 Nuisances.

- (A) Habitual Barking. It shall be unlawful for any person to keep or harbor a dog which habitually barks or cries. Habitual barking shall be defined as barking for repeated intervals of at least five (5) minutes with less than one (1) minute of interruption. The barking must also be audible off of the owner’s or caretaker’s premises.
- (B) Damage to Property. It shall be unlawful for any person’s dog or other animal to damage any lawn, garden, or other property, whether or not the owner has knowledge of the damage.
- (C) Cleaning Up Litter. The owner of any animal or any person having the custody or control of any animal shall be responsible for cleaning up any feces in a sanitary manner whether on their own property, on the property of others or on public property.

145.08 **Seizure of Animals**. Any person authorized by the City Council or any law enforcement officer is empowered to enter upon private property without permission, if that person is also the owner of any dog or animal, provided the following exists:

- (A) There is an identified complainant making a contemporaneous complaint about the animal;
- (B) The person authorized by the City Council or law enforcement officer reasonably believes that the animal meets either the barking dog criteria set out in Section 145.07(A); the

criteria for cruelty set out in Section 145.13; or the criteria for an at large animal set out in Section 145.02(A);

- (C) The person authorized by the City Council or law enforcement officer can demonstrate that there has been at least one previous complaint of a barking dog: inhumane treatment of an animal; or that the animal was at large at this address on a prior date;
- (D) The officer has made a reasonable attempt to contact the owner of the animal and that attempt has either failed or been ignored;
- (E) Written notice of the seizure is left in a conspicuous place if personal contact with the owner of the animal is not possible.

145.09 Animals Presenting a Danger to Health and Safety of City. If, in the reasonable belief of any person or authorized City employee or law enforcement officer, an animal presents an immediate danger to the health and safety of any person, or the animal is threatening imminent harm to any person, or the animal is in the process of attacking any person, the person, authorized City employee or law enforcement officer may destroy the animal in a proper and humane manner whether or not the animal is on the property of the owner. Otherwise, the person, authorized City employee or law enforcement officer may apprehend the animal and deliver it to the shelter for confinement under Section 145.05. If the animal is destroyed, the owner or keeper of the animal destroyed shall be liable to the City for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examination. If the animal is found not to be a danger to the health and safety of the City, it may be released to the owner or keeper in accordance with Section 145.05(C).

145.10 Diseased Animals.

- (A) Running at Large. No person shall keep or allow to be kept on his or her premises, or on the premises occupied by them, nor permit to run at large in the City, any animal which is diseased so as to be a danger to the health and safety of the City, even though the animal be properly licensed under this section.
- (B) Confinement. Any animal reasonable suspected of being diseased and presenting a threat to the health and safety of the public, may be apprehended and confined in a shelter by any person, authorized City personnel or law enforcement officer. The officer shall have a qualified veterinarian examine the animal. If the animal is found to be diseased in a manner so as to be a danger to the health and safety of the City, the officer shall cause the animal to be painlessly killed and shall properly dispose of the remains. The owner or keeper of the animal killed under this section shall be liable to the City for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examinations.
- (C) Release. If the animal, upon examination, is not found to be diseased the animal shall be released to the owner or keeper free of charge.

145.11 Dangerous Animals.

- (A) Attack by an Animal. It shall be unlawful for any person's animal to inflict or attempt to inflict bodily injury to any person or other animal whether or not the owner is present. This section shall not apply to an attack by a dog under the control of an on-duty law enforcement officer or to an attack upon an uninvited intruder who has entered the owner's home with criminal intent.

- (B) Destruction of Dangerous Animal. The law enforcement officer shall have the authority to order the destruction of dangerous animals in accordance with the terms established by this chapter.
- (C) Definitions. For the purpose of this division, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
- (1) *Dangerous Animal.* An animal which has:
- (a) Caused bodily injury or disfigurement to any person on public or private property;
 - (b) Engaged in any attack on any person under circumstances that would indicate danger to personal safety;
 - (c) Exhibited unusually aggressive behavior, such as an attack on another animal;
 - (d) Bitten one or more persons on two or more occasions; or
 - (e) Been found to be potentially dangerous and/or the owner has personal knowledge of the same, the animal aggressively bites, attacks, or endangers the safety of humans or domestic animals.
- (2) *Potentially Dangerous Animal.* An animal which has:
- (a) Bitten a human or a domestic animal on public or private property;
 - (b) When unprovoked, chased or approached a person upon the streets, sidewalks, or any public property in an apparent attitude of attack; or
 - (c) Has engaged in unprovoked attacks causing injury or otherwise threatening the safety of humans or domestic animals.
- (3) *Proper Enclosure.* Securely confined indoors or in a securely locked pen or structure suitable to prevent the animal from escaping and to provide protection for the animal from the elements. A proper enclosure does not include a porch, patio, or any part of a house, garage, or other structure that would allow the animal to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only barriers which prevent the animal from exiting. The enclosure shall not allow the egress of the animal in any manner without human assistance. A pen or kennel shall meet the following minimum specifications:
- (a) Have a minimum overall floor size of 32 square feet.
 - (b) Sidewalls shall have a minimum height of five (5) feet and be constructed of 11 gauge or heavier wire. Openings in the wire shall not exceed two (2) inches, support posts shall be 13-inch or larger steel pipe buried in the ground eighteen (18) inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of eighteen (18) inches in the ground.

- (c) A cover over the entire pen or kennel shall be provided. The cover shall be constructed of the same gauge wire or heavier as the sidewalls and shall have no openings in the wire greater than two (2) inches.
 - (d) An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and shall have no openings in the wire greater than two (2) inches. The gate shall be equipped with a device capable of being locked and shall be locked at all times when the animal is in the pen or kennel.
- (4) *Unprovoked.* The condition in which the animal is not purposely excited, stimulated, agitated or disturbed.
- (D) Designation as Potentially Dangerous Animal. The law enforcement officer or persons authorized by the City Council shall designate any animal as a potentially dangerous animal upon receiving evidence that the potentially dangerous animal has, when unprovoked, then bitten, attacked or threatened the safety of a person or a domestic animals as stated in division (C)(2). When an animal is declared potentially dangerous, the law enforcement officer or persons authorized by the City Council shall cause one owner of the potentially dangerous animal to be notified in writing that the animal is potentially dangerous.
- (E) Evidence Justifying Designation. The law enforcement officer or persons authorized by the City Council shall have the authority to designate any animal as a dangerous animal upon receiving evidence of the following:
 - (1) That the animal has, when unprovoked, bitten, attacked, or threatened the safety of a person or domestic animal as stated in division (C)(1).
 - (2) That the animal has been declared potentially dangerous and the animal has then bitten, attacked, or threatened the safety of a person or domestic animal as stated in division (C)(1).
- (F) Authority to Order Destruction. The law enforcement officer, upon finding that an animal is dangerous hereunder, is authorized to order, as part of the disposition of the case, that the animal be destroyed based on a written order containing one or more of the following findings of fact:
 - (1) The animal is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning or multiple attacks: or
 - (2) The owner of the animal has demonstrated an inability or unwillingness to control the animal in order to prevent injury to persons or other animals.
- (G) Procedure. The law enforcement officer, after having determined that an animal is dangerous, shall proceed in the following manner: The law enforcement officer shall cause one owner of the animal to be notified in writing or in person that the animal is dangerous and may order the animal seized or make orders as deemed proper. This owner shall be notified as to dates, times, places and parties bitten, and shall give fourteen (14) days to appeal this order by requesting a hearing before the City Council for a review of this determination.
 - (1) If no appeal is filed, the law enforcement officer may order the animal destroyed.

- (2) If the owner requests a hearing for determination as to the dangerous nature of the animal, the hearing shall be held before the City Council, which shall set a date for hearing not more than three (3) weeks after demand for the hearing. The records of the law enforcement officer or City Clerk's office shall be admissible for consideration by the law enforcement officer without further foundation. After considering all evidence pertaining to the temperament of the animal, the City Council shall make an order as it deems proper. The City Council may order the law enforcement officer to take the animal into custody for destruction, if the animal is not currently in custody. If the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the law enforcement officer.
 - (3) No person shall harbor an animal after is has been found to be dangerous and ordered into custody for destruction.
- (H) Stopping an Attack. If any law enforcement officer is witness to an attack by an animal upon a person or another animal, the officer may take whatever means the officer deems appropriate to bring the attack to an end and prevent further injury to the victim.
- (I) Notification of New Address. The owner of an animal which has been identified as dangerous or potentially dangerous shall notify the law enforcement officer in writing if the animal is to be relocated from its current address or given or sold to another person. The notification shall include the current owner's name and address, the relocation address, and the name of the new owner, if any.

145.12 **Dangerous Animal Requirements.**

- (A) Requirements. If the City Council does not order the destruction of an animal that has been declared dangerous, the City Council may, as an alternative, order any or all of the following:
- (1) That the owner provide and maintain a proper enclosure for the dangerous animal as specified in Section 145(C)(3);
 - (2) Post the front and the rear of the premises with clearly visible warning signs, including a warning symbol to inform children, that there is a dangerous animal on the property as specified in M.S. 347.51 as may be amended from time to time;
 - (3) Provide and show proof annually of public liability insurance in the minimum amount of \$100,000;
 - (4) If the animal is a dog and is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash (not to exceed six feet in length) and under the physical restraint of a person sixteen (16) years of age or older. The muzzle must be of a design as to prevent the dog from biting any person or animal, but will not cause injury to the dog or interfere with its vision or respiration;
 - (5) All animals deemed dangerous by the law enforcement officer shall be registered with the county in which this City is located within fourteen (14) days after the date the animal was so deemed and provide satisfactory proof thereof to the law enforcement officer.
 - (6) The animal must be up to date on rabies vaccination.

- (B) Seizure. As authorized in M.S. 347.54, as it may be amended from time to time, the law enforcement officer shall immediately seize any dangerous animal if the owner does not meet each of the above requirements within fourteen (14) days after the date notice is sent to the owner that the animal is dangerous. Seizure may be appealed to district court by serving a summons and petition upon the City and filing it with the district court.
- (C) Reclaiming Animals. A dangerous animal seized under Section 145.12(B), may be reclaimed by the owner of the animal upon payment of impounding and boarding fees and presenting proof to the law enforcement officer that each of the requirements under Section 145.12(B), is fulfilled. An animal not reclaimed under this section within fourteen (14) days may be disposed of as provided under Section 145.11(F), and the owner is liable to the City for costs incurred in confining and impounding the animal.
- (D) Subsequent Offenses. If an owner of an animal has subsequently violated the provisions under Section 145.11 with the same animal, the animal must be seized by the law enforcement officer. The owner may request a hearing as defined in Section 145.11(G). If the owner is found to have violated the provisions for which the animal was seized, the owner may reclaim the animal under the provisions of Section 145.12(C). If the animal is not yet reclaimed by the owner within fourteen (14) days after the date the owner is notified that the animal may be reclaimed, the animal may be disposed of as provided under Section 145.11(F) and the owner is liable to the animal for the costs incurred in confining, impounding and disposing of the animal.

145.13 Basic Care. All animals shall receive from their owners or keepers kind treatment, housing in the winter, and sufficient food and water for their comfort. Any person not treating their pet in a humane manner will be subject to the penalties provided in this section.

145.14 Breeding Moratorium. Every female dog in heat shall be confined in a building or other enclosure in a manner that it cannot come in contact with another dog except for planned breeding. Upon capture and failure to reclaim the animal, every dog shall be neutered or spayed prior to being transferred to a new owner.

145.15 Enforcing Officers. The Council is hereby authorized to appoint City personnel or law enforcement officers to enforce the provisions of this section. In the appointed personnel or law enforcement officer's duty of enforcing the provisions of this section, he or she may from time to time, with consent of the City Council, designate assistants.

145.16 Interference with Officers. No person shall in any manner molest, hinder, or interfere with any person authorized by the City Council to capture dogs or other animals and convey them to the pound or shelter while engaged in that operation. Nor shall any unauthorized person take or attempt to take from any agent any animal taken up by him or her in compliance with this Ordinance, or in any other manner to interfere with or hinder the authorized personnel or law enforcement officer in the discharge of his or her duties under this chapter.

145.17 Penalty (Amended August 10, 2009).

- (A) Separate Offenses. Each day a violation of this chapter is committed or permitted to continue shall constitute a separate offense and shall be punishable under this section.
- (B) Misdemeanor. Unless otherwise provided, violation of this chapter shall constitute a misdemeanor, and upon conviction shall be punished by a fine of not more than \$1,000.00 and/or up to 90 days in jail.

- (C) Petty Misdemeanor. Violation of 145.02, 145.07, 145.13 and 145.14 are petty misdemeanors, and upon conviction shall be punished by a fine of not more than \$300.00.

/s/ Brian Thompson, Mayor

/s/ Mona Doering, Clerk-Treasurer

This Ordinance introduced by Council member Goblirsch on May 27, 2008

This Ordinance published June 5, 2008

Hearing held June 23, 2008

Ordinance adopted June 23, 2008

Ordinance published July 3, 2008

ORDINANCE NO. 150

**CHAPTER 6
MOVING BUILDINGS INTO, WITHIN AND OUT OF THE CITY**

23. All used buildings moved into, within or out of the City shall comply with the following:
- A. The building is well maintained and in a good state of repair.
 - B. The building will not materially depreciate surrounding property values.
 - C. The building will be consistent with the objectives of the City's Comprehensive Plan.
 - D. Will be designed, constructed, operated and maintained so to be compatible in appearance with the existing or intended character of the general vicinity and will not change the essential character of that area.
 - E. Will not be hazardous or disturbing to existing or planned neighboring uses or adversely affect the public health, safety or general welfare.
 - F. Will not create excessive requirements for public facilities and services and will not be detrimental to the economic welfare of the community.
 - G. The building will be placed upon a concrete block foundation, poured concrete foundation or other foundation acceptable to the City.
 - H. No person shall move or remove any building within the City without first obtaining a permit from the Zoning Administrator.
 - I. All permits shall be for the duration of one year, from the date of issuance. Any moving, remodeling, alteration or reconditioning of any building or structure must be completed within a one-year period. All landscaping and steps to all outside doors must be completed within the one-year period.
 - J. All rubbish and materials shall be removed and all excavations shall be filled to existing grade at the original building site, so that the premises are left in a safe and sanitary condition. This must be completed within 30 days of the building being moved.

Effective Date. This Ordinance shall be effective from and after its adoption and second publication.

This Ordinance introduced by Councilmember Thayer.

This Ordinance introduced on June 25, 2001.

This Ordinance published on June 28, 2001.

Public Hearing held July 9, 2001.

This Ordinance adopted July 9, 2001.

This Ordinance published second time July 12, 2001.

/s/ Mona Doering, City Clerk

/s/ Tim Fiebiger, Mayor

ORDINANCE 160.00
SHADE TREE PEST ORDINANCE

Section 160.01. Shade Tree Pest Control.

Subd. 1. Declaration of policy. The health of the trees in the City is threatened by shade tree pests, and the loss or ill health of trees growing upon public and private property substantially depreciates the value of property within the City and impairs the safety, good order, general welfare and convenience of the public. In addition to and in accordance with Minn. Stat. §§ 89.001, 89.01 and 89.51.64, the provisions of this section are adopted as an effort to control and prevent the spread of these shade tree pests.

Subd. 2. Jurisdiction. The City shall have control of all street trees, shrubs and other plantings now or hereafter in any street, park, public right-of-way or easement, or other public place within the City limits, and shall have the power to plant, care for, maintain, remove and replace such trees, shrubs and other plantings.

Subd. 3. Declaration of a shade tree pest. The Council may by ordinance declare any vertebrate or invertebrate animal, plant pathogen, or plant in the community threatening to cause significant damage to a shade tree or community forest, as defined by Minn. Stat. § 89.001, to be a shade tree pest and prescribe control measures to effectively eradicate, control, or manage the shade tree pest, including necessary timelines for action.

Subd. 4. Public nuisances defined. A shade tree pest, as defined by Section 160.02, occurring within a defined control zone is a public nuisance.

Subd. 5. Shade tree pest nuisances are unlawful. It is unlawful for any person to permit any public nuisance as defined in this section to remain on any premises the person owns or controls within the City. The nuisance may be abated as provided in this section.

Subd. 6. Tree inspector. The Council may appoint a tree inspector to coordinate the activities of the City relating to the control and prevention of damage by shade tree pests. The tree inspector will recommend to the Council the details of any program for the declaration, control, and prevention of shade tree pests. The tree inspector is authorized to enforce or cause to be enforced the tasks incident to such a program adopted by the Council. The term "tree inspector" includes any person designated by Council or the tree inspector to carry out activities authorized in this section.

Subd. 7. Abatement of shade tree pest nuisances. In abating a nuisance, defined by ordinance under section 160.01, subdivision 3, the organism, condition, plant, tree, wood, or material identified as injurious to the health of shade trees shall be removed or effectively treated so as to destroy and prevent as fully as possible the spread of the shade tree pest. Such abatement procedures shall be carried out in accordance with the control measures and areas prescribed by Section 160.02.

Subd. 8. Reporting discovery of shade tree pest. Any owner or occupier of land or any person engaged in tree trimming or removal who becomes aware of the existence of a public nuisance caused by a shade tree pest as defined under subdivision 3 shall report the same to the City.

Subd. 10. Inspection and application of control measures.

(A) The tree inspector is authorized to inspect premises and places within the City to determine whether shade tree pests exist thereon and to investigate all reported incidents of shade tree pests. The tree inspector is authorized to take all reasonable measures to prevent the maintenance of public nuisances and may enforce the provisions relating to abatement in

this section. Diagnosis of shade tree pests may be by the presence of commonly recognized symptoms; by tests as may be recommended by the Commissioner of the Minnesota Department of Agriculture or the Commissioner of the Minnesota Department of Natural Resources; or other reliable means.

- (B) Except in situations of imminent danger to human life and safety, the tree inspector shall not enter private property for the purpose of inspecting or preventing maintenance of public nuisances without the permission of the owner, resident, or other person in control of the property, unless the tree inspector has obtained a warrant or order from a court of competent jurisdiction authorizing the entry.
- (C) No person, firm or corporation shall interfere with the tree inspector or with anyone acting under the tree inspector's authority while engaged in activities authorized by this section.

Subd. 11. Standard abatement procedure. Except as provided in subdivisions 12 and 14, whenever a tree inspector determines with reasonable certainty that a public nuisance, as described by this Ordinance, is being maintained or exists on premises in the City, the tree inspector is authorized to abate a public nuisance according to the procedures in this subdivision.

- (A) The tree inspector will notify in writing the owner of record or occupant of the premises that a public nuisance exists and order that the nuisance be terminated or abated. The notice may be given in person or by mail. Failure of any party to receive the mail does not invalidate the service of the notice. A copy of the notice shall be filed with the City Clerk.
- (B) The notice of abatement shall state that unless the public nuisance is abated by the owner or occupant, it will be abated by the City at the expense of the owner or occupant. The notice shall specify the control measures to be taken to abate the nuisance, and provide a reasonable amount of time to abate the nuisance. The notice will also state that the owner or occupant has the right to appeal the determination that a public nuisance exists by submitting a request in writing to the City Clerk within seven (7) days after service of the notice, or before the date by which abatement must be completed, whichever comes first.
- (C) If no timely appeal is submitted, and the control measures prescribed in the notice of abatement are not complied with within the time provided by the notice or any additional time granted, the tree inspector or designated person shall have the authority to obtain permission or an administrative search warrant, enter the property, and carry out abatement in accordance with the notice of abatement.

Subd. 12. High-cost abatement. If the tree inspector determines that the cost of abating a nuisance will exceed \$5,000 based on a reasonable, good faith estimate, the written notice referred to in subdivision 11 must provide that if the nuisance is not abated within the reasonable amount of time provided, the matter will be referred to the City Council for a hearing. The date, time and location of the hearing must be provided in the notice.

Subd. 13. Appeal procedure. If the City Clerk receives a written request for a hearing on the question of whether a public nuisance exists, the City Council shall hold a hearing within seven (7) calendar days following receipt by the Clerk of the written request. At least three (3) days notice of the hearing shall be given to the individual who made the written request for the hearing. The Council may modify the abatement notice or extend the time by which abatement must be completed. Each owner, agent of the owner, occupant, and lien holder of the subject property or properties in attendance, if any, shall be given the opportunity to present evidence at the hearing. After holding the hearing, the City Council may issue an order requiring abatement of the nuisance.

Subd. 14. Abatement procedure in event of imminent danger.

- (A) If the tree inspector determines that the danger of infestation to other shade trees is imminent, and delay in control measures may put public health, safety or welfare in immediate danger, the tree inspector may provide for abatement without following subdivision 11 or 12. The tree inspector must reasonably attempt to notify the owner or occupant of the affected property of the intended action and the right to appeal the abatement and any cost recovery at the next regularly scheduled City Council meeting.
- (B) Nothing in this section shall prevent the City, without notice or other process, from immediately abating any condition that poses an imminent and serious hazard to human life or safety.

Subd. 15. Recovery of cost of abatement; liability and assessment.

- (A) The owner of premises on which a nuisance has been abated by the City shall be personally liable for the cost to the City of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Clerk or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk.
- (B) After notice and hearing, as provided in Minn. Stat. § 429.061 (which may be amended from time to time), the City Clerk shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges as well as other charges for current services to be assessed under Minn. Stat. § 429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then certify the charges against the property to the County Auditor for collection along with current taxes the following year or in annual installments as the city council may determine in each case.

Subd. 16. Penalty.

- (A) Any person, firm or corporation that violates any provision of this section shall, upon conviction, be guilty of a misdemeanor. The penalty, which may be imposed for any crime that is a misdemeanor under this section, including Minnesota Statutes specifically adopted by reference, shall be a sentence of not more than 90 days, or a fine of not more than \$1,000, or both.
- (B) Upon conviction of a misdemeanor, the costs of prosecution may be added. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.
- (C) The failure of any officer or employee of the City to perform any official duty imposed by this section shall not subject the officer or employee to the penalty imposed for a violation.
- (D) In addition to any penalties provided for in this section, if any person, firm or corporation fails to comply with any provision of this section, the City Council or any official designated by it may institute appropriate proceedings at law or at equity to restrain, correct or abate the violation.

Subd. 17. Severability. Should any part or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part held to be invalid.

Section 160.02. **Declared Shade Tree Pests, Control Measures and Control Areas.**

Subd. 1. Oak Wilt.

(A) *Oak wilt disease* is a shade tree pest and is defined as any living or dead tree, log, firewood, limb, branch, stump or other portion of a tree from any species of the genus *Quercus* existing within the control area defined that has bark attached and that exceeds three (3) inches in diameter or ten (10) inches in circumference and contains to any degree any spore or reproductive structures of the fungus *Ceratocystis fagacearum*.

(B) *Control measures* that may be taken to abate oak wilt disease are:

(1) *Installation of a root graft barrier.* A root graft barrier can be ordered installed to prevent the underground spread of oak wilt disease. The city will mark the location of the root graft barrier. The barrier disrupts transmission of the fungus within the shared vascular systems of root grafted trees. The barrier is created by excavating or vibratory plowing a line at least forty-two (42) inches deep between any oak tree infected with oak wilt disease and each nearby and apparently healthy oak tree within fifty (50) feet of the infected tree.

(2) *Removal and disposal of trees.*

(a) *On property zoned for residential and commercial use.* On property that is zoned residential and commercial the City may mark for removal trees that have the potential to produce spores of the fungus *Ceratocystis fagacearum*. After, and in no case before, the installation of the root graft barrier and no later than May 1 of the year following infection, all marked trees must be felled. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked.

If, however, after the City prescribes the location for a root graft barrier, the City determines that installation of the barrier is impossible because of the presence of pavement or obstructions such as a septic system or utility line, the City may mark for removal all oak trees whether living or dead, infected or not and located between an infected tree and the marked barrier location. These marked trees must be felled and disposed of no later than May 1 of the year following infection. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked.

(b) *On all other property.* On all other property, the City may mark for removal all oak trees whether living or dead, infected or not and located between an infected tree and the marked barrier location. These marked trees must be felled and disposed of no later than May 1 of the year following infection. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked.

All wood more than three (3) inches in diameter or ten (10) inches in circumference from such felled trees must be disposed of by burying, debarking, chipping, or sawing into wane-free lumber, or by splitting into firewood, stacking the firewood, and immediately covering the woodpile with unbroken four (4)-mill or thicker plastic sheeting that is sealed into the

ground until October 1 of the calendar year following the calendar year in which the tree was felled, or by burning before May 1 of the year following infection. Wood chips from infected trees may be stockpiled or immediately used in the landscape.

- (C) The *control area* for oak wilt disease is defined as: All lands within the boundaries of the City.

Subd. 2. Emerald Ash Borer.

- (A) *Emerald ash borer* is a shade tree pest and is defined as an insect that attacks and kills ash trees. The adults are small, iridescent green beetles that live outside of trees during the summer months. The larvae are grub- or worm-like and live underneath the bark of ash trees.
- (B) *Control measures* that may be taken to abate emerald ash borer are those provided in the document, *Minnesota Emerald Ash Borer Science Advisory Group Recommendations on Preparing for Emerald Ash Borer in Minnesota*.
[\[www.mda.state.mn.us/news/publications/pestsplants/pestmanagement/eab-recommends.pdf\]](http://www.mda.state.mn.us/news/publications/pestsplants/pestmanagement/eab-recommends.pdf)
- (C) *Definition of control areas.* The control area for emerald ash borer is defined as: All lands within the boundaries of the City.

Subd. 3. Dutch Elm Disease.

- (A) *Dutch elm disease* is a shade tree pest and is defined as a disease of elm trees caused by the fungus *Ophiostoma ulmi* or *Ophiostoma novo-ulmi*, and includes any living or dead tree, log, firewood, limb, branch, stump, or other portion of a tree from any species of the genus *Ulmus* existing within the control area defined that has bark attached and that exceeds three (3) inches in diameter or ten (10) inches in circumference and could contain bark beetles or any spore or reproductive structures of the fungus *Ophiostoma ulmi* or *Ophiostoma novo-ulmi*.
- (B) *Control measures* that may be taken to abate Dutch elm disease are:
- (1) *Use of fungicide.* Fungicides may be effective in preventing Dutch elm disease when injected into living trees that do not already show symptoms of Dutch elm disease. Fungicide injections on private lands are optional and, if performed, are at the landowner's expense.
- (2) *Removal and disposal of trees.* Prompt removal of diseased trees or branches reduces breeding sites for elm bark beetles and eliminates the source of Dutch elm disease fungus. Trees that wilt before July 15 must be removed within 20 days of detection [alternative: 30 days]. Trees that wilt after July 15 must be removed by April 1 of the following year. Diseased trees not promptly removed will be removed by the City at the landowner's expense. Wood may be retained for use as firewood or saw logs if it is debarked or covered from April 15 to October 15 with four (4)-mill plastic. The edges of the cover must be buried or sealed to the ground.

[Refer to the USDA publication [How to Identify And Manage Dutch Elm Disease](http://www.na.fs.fed.us/spfo/pubs/howtos/ht_ded/ht_ded.htm) (www.na.fs.fed.us/spfo/pubs/howtos/ht_ded/ht_ded.htm) for further details on management recommendations.]

- (C) Definition of control areas. The control area for Dutch elm disease is defined as: All lands within the boundaries of the City.

This Ordinance introduced by Council Member Mona Doering on October 22, 2012.

This Ordinance published on October 31, 2012

Hearing Held on November 13, 2012

Ordinance Adopted on November 13, 2012

Ordinance Published on November 21, 2012

/s/ Brian Thompson, Mayor

/s/ Kim Harkema, Clerk-Treasurer