

**ZONING ORDINANCE: CITY OF MANHATTAN BEACH**

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**APPENDIX**

**A-1 through A-18**

## **1.0 STATUTORY AUTHORIZATION, POLICY AND PURPOSE**

### **1.01 Statutory Authorization.**

This ordinance is adopted pursuant to the authorization and policies contained in the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462, and the Statewide Standards for Management of Shoreland Areas in Minnesota Statutes, Chapter 105, Minnesota Regulations, Parts 6120.2500 -6120.3900. If inconsistencies appear between State regulations and regulations outlined in this Zoning Ordinance then the stricter of the two applies.

### **1.02 Policy.**

For the purpose of promoting the public health, safety, morals and general welfare, the City of Manhattan Beach may by ordinance regulate on the earth's surface, in the air above the surface, and in subsurface areas, the location, height, width, bulk, type of foundation, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, conservation of shorelands, access to direct sunlight for solar energy systems, flood control or other purposes, and may establish standards and procedures regulating such uses (Minnesota Statutes Section 462.357, subd. 1).

The uncontrolled use of shorelands of the City of Manhattan Beach, Minnesota, affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environment values of shorelands, and

provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the City of Manhattan Beach.

### **1.03 Purpose.**

As each piece of residential, commercial, agricultural, or other property is being developed and its use is being modified, the plans and development should conform to the Comprehensive Plan of the City, as amended, in order that they may contribute toward an attractive, orderly, stable and wholesome environment with adequate public services, safe roads and streets, adequate sanitary and water facilities, and adequate lot size. All properties shall be planned and developed to comply with the regulations set forth in this ordinance and with the official map.

## **2.0 GENERAL PROVISIONS AND DEFINITIONS**

### **2.01 Jurisdiction.**

The provisions of this ordinance shall apply to the City of Manhattan Beach. Except as this ordinance specifically provides, with provision for variances granted thereto, no structure shall be erected, converted, enlarged, reconstructed, moved onto or altered, and no structure or land shall be used for any purpose or in any manner which is not in conformity with this ordinance. The provisions for the management of shorelands of public water bodies shall apply to all lakes, ponds, flowages and watercourses as classified in Section 4.0 of this ordinance.

### **2.02 Compliance.**

The use of any shoreland of public waters; the size and shape of lots; the use, size, type and location of structures on lots; the installation and maintenance of water supply and sewage treatment systems; the grading and filling of any shoreland area; the cutting of shoreland vegetation; and the subdivision of land shall be in full compliance with the terms of this ordinance and other applicable regulations.

## **2.03 Enforcement.**

The City of Manhattan Beach is responsible for the administration and enforcement of this ordinance. Any violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses or home occupations) shall constitute a misdemeanor and shall be punishable by law. Violations of this ordinance can occur regardless of whether or not a permit is required for a regulated activity pursuant to Section 3.05 of this ordinance. In the event of a violation or threatened violation of any provision of this ordinance or the conditions of any permit issued pursuant to the ordinance, the City, in addition to other remedies, may act or institute action to prevent, restrain, correct or abate such violation or threatened violation. The failure of any officer of the City or board or employees of the City to act pursuant to this ordinance, except as an individual acting on his own behalf, shall not be an offense and shall not subject the officer, board or employee to any penalty.

### **Section 2.03.01 Costs and Expenses of Enforcement.**

- A. **Civil and criminal enforcement.** Any violations of the provisions of this Ordinance or any other City ordinance, rule, or regulation in effect in the City of Manhattan Beach, or failure to comply with any of the City's requirements by a landowner or authorized agent, including but not limited to violations of or failure to comply with the conditions and safeguards established in connection with the granting of a structure, land use, or shoreland alteration permit, or contained within variances or conditional uses, shall constitute a misdemeanor and shall be punishable as defined by Minnesota State Statutes § 609.03. The provisions of this Ordinance may be enforced through criminal prosecution, civil remedy, or both. Utilization of a civil remedy shall not prevent a criminal prosecution for the same violation. A criminal prosecution for a violation shall not be a bar to a civil remedy.
  
- B. **City's costs and expenses of enforcement.** In all cases where the City incurs any costs reviewing, investigating, enforcing, or administering any of its ordinances, rules, regulations, land or use application, or permit,

then any party(ies), contractor(s), real estate owner(s), and/or permit holder(s) who is or are found to be in violation of any such ordinance, rule, regulation, land or use application, or permit shall be required, jointly and severally, to reimburse the City for all of the reasonable fees and costs the City incurs in enforcing compliance with its ordinances, rules, regulations, land or use applications, or permits. Fees and costs include, but are not limited to, attorney's fees, engineering fees and costs, consultant fees, survey costs, and other professional services deemed necessary by the City.

- C. **Permit does not protect permit holder.** Violations of this Ordinance can occur regardless of whether or not a permit is required for a regulated activity pursuant to this Ordinance.
- D. **Separate offenses.** Each day, after notification to the property owner, that a violation of this Ordinance continues shall constitute a separate offense.
- E. **Citations.** The City shall have the power to enforce this Ordinance by issuing citations for criminal violations of this Ordinance upon the owner of a property and/or their authorized agent or by commencing appropriate civil actions against appropriate persons.
- F. **Cease and desist order.** The City Council, or duly authorized representative, may issue cease and desist orders to halt the progress of any property use or modification, based upon probable cause that a violation of this Ordinance has been committed. When any work has been stopped by a cease and desist order, it shall not be resumed until the reason for the work stoppage has been completely satisfied and the cease and desist order lifted. The City may require payment of any fees and costs it has incurred as of that date before work may be resumed.
- G. **Injunctive relief allowed.** The Manhattan Beach City Attorney, in cooperation with the City Council, may sue for injunctive relief on any violation, including restoration of the premises to its existing condition prior to the violation.

- H. **After the fact applications and fees.** Any person making application for a permit after the commencement of work requiring a permit may be charged an administrative fee, which shall be double the cost of the permit fee. In the event the application for a permit is denied or the activity permitted does not include all of the work commenced prior to approval of said permit, the Planning Commission/Board of Adjustment or the Administrator may require restoration of the subject property to its condition before such work commenced, including removal of structures or improvements not approved.
  
- I. **Certificate of Survey.** The City Council or duly authorized representative may require a certificate of survey when it is determined that said survey will or may assist with the resolution of a violation.

#### **2.04 Interpretation.**

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

#### **2.05 Severability.**

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

#### **2.06 Abrogation and Greater Restrictions.**

It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. When any condition implied by this ordinance on the use of land or buildings is either more or less restrictive than applicable conditions imposed by statute, rules, and regulations, other City ordinances or regulations or other jurisdictions, the more restrictive shall apply. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

## **2.07 Definitions.**

For the purposes of this Ordinance, certain terms and words are hereby defined. The word PERSON indicates a firm, association, organization, partnership, trust, company or corporation as well as the individual. The present tense includes the future tense, the singular number includes the plural, and the plural includes the singular, and the masculine gender includes the feminine gender and the neuter gender. The words WILL and SHALL are mandatory, the word SHOULD is strongly advisory, and the word MAY is permissive. The words USED or OCCUPIED include the words INTENDED, DESIGNED, or ARRANGED TO BE USED OR OCCUPIED. The words LOT or PARCEL are interchangeable. Specific definitions used within the ordinance, unless another is clearly given, are listed below.

**2.07.01** Abandoned Motor Vehicle. "Abandoned motor vehicle" means a motor vehicle as defined in Minnesota Statutes 169.01 that a) has remained on public property in an inoperable condition for more than 48 hours; b) has remained on private property for more than 48 hours without the permission of the property owner; or c) has remained on private property for more than 30 days, not stored inside or out of the public view, and is inoperable or is unlicensed. Refer also to Minnesota Statutes 168B.

**2.07.02** Accessory Structure or Facility. "Accessory structure" or "facility" means any building or improvement subordinate to a principal use which, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks.

**2.07.03** Agricultural Use. "Agricultural Use" means the production of livestock, dairy animals, dairy products, poultry or poultry products, fur bearing animals, horticultural nursery, stock, fruit, vegetables, forage, grains, timbers, trees and apiary products. "Agricultural Use" also included wetlands, pasture, forest land, wildlife land, and other uses that depend on the inherent productivity of the land.

**2.07.04** Alley. "Alley" means a public way used primarily as a service access to the rear or side of a property which abuts on a road.

**2.07.05** Animal Unit. "Animal unit" means a unit of measure used to compare differences in the production of animal manure that employs as a standard the amount of manure produced on a regular basis by a slaughter steer or heifer for an animal feedlot or a manure storage area, calculated by multiplying the number of animals of each type in items A to I by the respective multiplication factor and summing the resulting values for the total number of animal units. For purposes of this chapter, the following multiplication factors shall apply:

1. Dairy cattle:

- a. One mature cow (whether milked or dry);
  - i. Over 1,000 pounds, 1.4 animal unit; or
  - ii. Under 1,000 pounds, 1.0 animal unit;
- b. One heifer, 0.7 animal unit; and
- c. One calf, 0.2 animal unit;

2. Beef cattle:

- a. One slaughter steer or stock cow, 1.0 animal unit;
- b. One feeder cattle (stocker or backgrounding) or heifer, 0.7 animal unit;
- c. One cow and calf pair, 1.2 animal unit; and
- d. One calf, 0.2 animal unit;

3. One head of swine:

- a. Over 300 pounds, 0.4 animal unit;
- b. Between 55 pounds and 300 pounds, 0.3 animal unit; and
- c. Under 55 pounds, 0.05 animal unit;

4. One horse, 1.0 animal unit;

5. One sheep or lamb, 0.1 animal unit;

6. Chickens:

- a. One laying hen or broiler, if the facility has a liquid manure system, 0.033 animal unit; or
- b. One chicken if the facility has a dry manure system:
  - i. over five pounds, 0.005 animal unit; or
  - ii. under five pounds, 0.003 animal unit;

7. One turkey:

- a. Over five pounds, 0.018 animal unit; or
- b. Under five pounds, 0.005 animal unit;

8. One duck, 0.01 animal unit; and

9. For animals not listed in items A to H, the number of animal units is the average weight of the animal in pounds divided by 1,000 pounds.

**2.07.06** Animal Wastes or Manure. "Animal wastes" or "manure" means wastes from animals and/or poultry, including bedding and all other solids or liquids mixed with or contained in any such animal or poultry wastes.

**2.07.07** Attorney. "Attorney" means the City Attorney of Manhattan Beach, as designated by the City Council, or his/her authorized representative.

**2.07.08** Bluff. A topographic feature such as a hill, cliff, or embankment having the following characteristics

- 1. Part or all of the feature is located in a shoreland area;
- 2. The slope shall rise at least 25 feet above the toe of the bluff;
- 3. The grade of the slope from the toe of the bluff to a point 25 feet or more above the toe of the bluff averages 30 percent or greater; and

4. The slope of the bluff must drain towards a public water. (See Appendix for bluff illustration)

**2.07.09** Bluff Impact Zone. "Bluff impact zone" means a bluff and land located within 20 feet from the top of bluff.

**2.07.10** Board of Adjustment. "Board of Adjustment" means the City Council acting as the Board of Adjustment for the City of Manhattan Beach, as created by this ordinance.

**2.07.11** Boathouse. "Boathouse" means a structure designed and used solely for the storage of boats or boating equipment within the shore impact zone.

**2.07.12** Boarding House/Bed and Breakfast. "Boarding house/bed and breakfast" means a single residence, other than a resort and containing no more than four bedrooms, where for compensation for definite periods of time, lodgings or meals and lodgings are provided.

**2.07.13** Buildable Area: The area remaining on a newly created parcel of land or platted lot after all public rights-of-way, road easements, setbacks, bluffs and wetland are subtracted.

**2.07.14** Building. "Building" means any structure having a roof, or completely enclosing an area for the purpose of sheltering persons, animals or property.

**2.07.15** Building Line. "Building line" means a line parallel to a lot line or ordinary high water level at the required setback beyond which a structure may not extend.

**2.07.16** Canopy Managed Lands. Lands on which the same restrictions as for managed lands exist except that the original tree canopy must be maintained, with the removal of vegetation 20 feet or shorter permitted.

**2.07.17** Canopy-unmanaged lands. Lands on which the same restrictions as for unmanaged lands exist except that the original tree canopy must be maintained, with the removal of vegetation 20 feet or shorter permitted.

**2.07.18** Certificate of Occupancy or Zoning Compliance. "Certificate of Occupancy or Zoning Compliance" means a certificate to be issued by the Zoning Administrator indicating compliance with this ordinance.

**2.07.19** Certificate of Survey. "Certificate of Survey" means a drawing to scale of subject property signed by a licensed professional land surveyor showing all essential data pertaining to the requested application.

**2.07.20** City Clerk. "City Clerk" means the duly elected person responsible for the administration of the City affairs.

**2.07.21** Cluster Subdivision. "Cluster Subdivision" is a subdivision design which involves grouping housing units into relatively tight patterns while providing for a unified network of open space and wooded area combined therein.

**2.07.22** Commercial Use. "Commercial use" means the principal use of land or buildings for the sale, lease, rental, production, manufacture, or trade of products, goods, and services.

**2.07.23** Commercial Use – Other. Any business or commercial enterprise that is not specifically defined herein or identified in the zoning use chart.

**2.07.24** Commissioner. "Commissioner" means the commissioner of the Minnesota Department of Natural Resources.

**2.07.25** Compatibility. "Compatibility" means the characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. Uses which are listed as permitted in the same district have been considered and judged to be compatible. Those uses which are listed as conditional uses are those which may not be generally suitable, but which may be made compatible through the development of conditions of approval, special performance standards, etc.

**2.07.26** Conditional Use. "Conditional use" means a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a

finding that certain conditions as detailed in the zoning ordinance exist, the use or development conforms to the comprehensive plan of the City, and the use is compatible with the existing neighborhood.

**2.07.27** Conforming. "Conforming" means to be, use or act in accord with this ordinance and any regulations or standards promulgated hereunder, and with any special requirements imposed hereunder, and with any special requirements imposed in the issuance of any permits hereunder, where such special requirements are required to allow the granting of such permits. In many situations it is implied or required that the laws and regulations of the State of Minnesota also be complied with in order to be in accord with this ordinance and the regulations or standards promulgated hereunder.

**2.07.28** Cultivated vegetation. "Cultivated vegetation" means vegetation whose growth is fostered.

**2.07.29** Cutting (Clear, Open, Select). See "Vegetation Removal."

**2.07.30** Deck. "Deck" means a horizontal, unenclosed platform, on the ground or raised above the ground, with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site. This does not include on-grade walks, stairs or stoops four feet or less in width.

**2.07.31** Development. "Development" means a human-created change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filing, grading, paving, excavating, and drilling. An activity, action, or alteration that changes undeveloped property into developed property.

**2.07.32** Duplex Residence. "Duplex Residence" means a dwelling structure on a single lot, having two units, being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities.

**2.07.33** Dwelling Site. "Dwelling site" means a designated location for residential use.

**2.07.34** Dwelling Unit. "Dwelling unit" means any structure or portion of a structure, or other shelter designed as short- or long-term living quarters for one or more persons, including rental or timeshare accommodations such as motel, hotel, and resort rooms and cabins.

**2.07.35** Effective Screening: When a phrase is used saying the screening shall be "40% effective," it shall mean a person standing on one side of such screen can see through such screen to an extent of 60% or less of the cross section view of that part of such screening between the ground and (6) feet above the ground at those times of the year when screening vegetation is fully leafed-out. Thus, "20% effective" means an ability to see through 80% or less of the cross section of view.

**2.07.36** Exterior Storage. "Exterior storage" means storage of goods, materials, equipment, vehicles or manufactured products outside of an enclosed building.

**2.07.37** Extra Heavy Screening: Screening shall also be determined by the Planning Commission for the individual situation. "Extra Heavy Screening" shall be in excess of "Heavy Screening" or such degree as shall be determined by the Planning Commission for the individual situation.

**2.07.38** Extractive Use. "Extractive use" means the use of land for surface or subsurface removal of sand, gravel, rock, industrial minerals, other nonmetallic minerals, topsoil, and peat not regulated under Minnesota Statutes, Sections 93.44 to 93.51.

**2.07.39** Feedlot. "Feedlot" means a lot or building, or combination of lots and buildings, intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. For purposes of the Minnesota Pollution Control Agency rules, open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered to be animal feedlots under these rules. Feedlots are not allowed.

**2.07.40** Fence. "Fence" means a partition, wall or gate erected as a divider, marker, barrier or enclosure on a property or property boundary.

**2.07.41** Forest Land Conversion. "Forest land conversion" means the clear cutting of forested lands to prepare for a new land use other than reestablishment of a subsequent forest stand.

**2.07.42** Forest Management. "Forest Management" includes activities such as road construction and maintenance, timber harvesting, site preparation for reforestation, pesticide application and prescribed burning.

**2.07.43** Foundation. "Foundation" means a concrete, concrete and concrete block, or treated wood portion of a structure which totally encloses the perimeter of the structure, supports the bearing loads of the superstructure and penetrates the ground to provide frost protection. Every dwelling unit shall have a permanent foundation.

**2.07.44** Grooming: "Grooming" means raking, mowing, removing dead vegetation, etc.

**2.07.45** Guest Quarters. "Guest quarters" means a structure used as a dwelling unit that may contain sleeping spaces and kitchen and bathroom facilities in addition to those provided in the primary dwelling unit on a lot.

**2.07.46** Height of Building. "Height of Building" means the vertical distance between the highest adjoining ground level at the building or ten feet above the lowest ground level, whichever is lower, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof or ten feet below the peak, whichever is higher (See Appendix for illustration)

**2.07.47** Home Business. "Home Business" means a use of commercial nature conducted in and/or outside the principle structure or any accessory structure, which use is clearly incidental and secondary to the use of the dwelling for residential purposes. This may include, but is not limited to, off-site sandblasting, lawn-care services, and small subcontractor businesses.

**2.07.48** Home Occupation. "Home occupation" means a use of commercial nature conducted entirely within the dwelling or accessory structures or facilities, which use is clearly incidental and secondary to the use of the dwelling for residential purposes. This may include, but is not limited to, insurance sales, hair salon and computer repair.

**2.07.49** Impervious Surface: "Impervious surface" means a hard surface which does not permit the absorption of fluids. Common impervious surfaces include, but are not limited to, roofs, walkways, patios, driveways, parking lots, storage areas, areas which are paved, graveled or made of packed or oiled earthen materials or other surfaces which do not allow water to soak into the ground. Impervious surfaces result in runoff from the surface in greater quantities and/or an increased note when compared to natural or vegetated conditions. Open uncovered flow control or water quality treatment facilities shall not be considered as impervious surfaces.

**2.07.50** Industrial Use. "Industrial use" means the use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities, or other wholesale items.

**2.07.51** Intensive Vegetation Clearing: "Intensive vegetation clearing" means the complete removal of trees or shrubs in a contiguous patch, strip, row, or block.

**2.07.52** Interim Use. An "interim use" is a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit.

**2.07.53** Land disturbing activity. "Land disturbing activity" is an activity that results in a change in the existing soil cover, both vegetative and non-vegetative, or to the existing soil topography. "Land disturbing activity" includes, but is not limited to, demolition, construction, clearing, grading, filing, excavation, and compaction. "Land disturbing activity" does not include tilling conducted as part of agricultural practices, landscape maintenance or gardening.

**2.07.54** Long-Term Care Facility: "Long term care facility" means a facility, such as a nursing home, where medical care is administered to residents for periods of time typically greater than one month.

**2.07.55** Lot. "Lot" means a parcel of land designated by plat, metes and bounds, registered land survey, auditor's plat, or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease, or separation.

**2.07.56** Lot Area. "Lot area" means the area of a horizontal plane bounded by the lot lines and the ordinary high water level if bounded by water.

**2.07.57** Lot, Corner. "Lot, corner" means a lot situated at the junction of, and abutting on, two or more intersecting road right-of-ways, or a lot at the point of deflection in alignment of a continuous road, the interior angle of which does not exceed 135 degrees.

**2.07.58** Lot Line. "Lot line" means the property lines bounding a lot except that where the description extends into a public right-of-way, or a proposed public right-of-way, the line of such public right-of-way shall be considered the lot line.

**2.07.59** Lot Line, Front. "Lot line, front" means the boundary or boundaries of a lot, which abut on a public right-of-way. If the lot abuts public water, that side shall also be considered a front lot line.

**2.07.60** Lot Line, Rear. "Lot line, rear" means that boundary of a lot, which is opposite the front lot line.

**2.07.61** Lot Line, Side. "Lot line, side" means any boundary of a lot, which is not a front lot line or a rear lot line.

**2.07.62** Lot of Record. "Lot of record" means one lot heretofore duly approved and filed, or one unit of an auditor's subdivision or registered land survey, or a lot created by metes and bounds that has been recorded in the office of the County Recorder prior to the effective date of this ordinance.

**2.07.63** Lot Width. "Lot width" means the shortest distance between lot lines measured at the midpoint of the building line.

**2.07.64** Managed soils: "Managed Soils" means soils in which there has been no deep cultivation or excavation. Raking, hoeing or the use of hand shovels during construction/replanting is permitted.

**2.07.65** Metes and Bounds. "Metes and bounds" means descriptions of property and descriptions for lots other than lots in recorded subdivision plats.

**2.07.66** Mining. See Extractive Use.

**2.07.67** Manufactured Home. "Manufactured home" means a factory-built dwelling transportable in sections, requiring only minor modifications prior to occupancy, and complying with Minnesota Statutes 327.21 to 327.35 and Federal Department of Housing and Urban Development Standards.

**2.07.68** Manufactured Home Development. "Manufactured home development" means a form of planned unit development designed for manufactured homes licensed by the State of Minnesota.

**2.07.69** Motel/Hotel. "Motel/hotel" means a commercial planned unit development to provide lodging, with related facilities such as restaurants, bars and other recreational amenities. Includes a bed breakfast designed for over 4 separate bedrooms for rent.

**2.07.70** Multiple-Family Residential: Any dwelling structure on a single-lot having three or more units, attached by common walls and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities.

**2.07.71** Natural Vegetation: "Natural Vegetation" is vegetation that is indigenous to the area or like areas.

**2.07.72** Nonconformity. "Nonconformity" means any legal use, structure or parcel of land already in existence, recorded, or authorized before the effective date of this ordinance but not in conformance with the provisions of this ordinance.

**2.07.73** Nuisance. "Nuisance" means, by authority and direction of Minnesota Statutes, Section 412.221, subdivision 23 and 24; Section 429.031, subdivision 8; and Sections 145.22 and 145.23, and Section 609.74, anything that interferes with the use or enjoyment of property, endangers personal health or safety, or is offensive to the senses, such as excessive smoke, odor, noise, heat, vibration, glare, traffic generation, visual impact, and other similar interferences or offenses.

**2.07.74** Official Map. "Official map" means the map of the City of Manhattan Beach, adopted in accordance with Minnesota Statutes 462.359.

**2.07.75** Open Space Subdivision Design. "Open Space Subdivision Design" is the clustering or concentration of allowable housing on one portion of a tract of land, in order to preserve the remainder of the tract as open space.

**2.07.76** Open Use. "Open use" means the use of land for: a) limited development due to flooding, erosion, limiting soil conditions, steep slopes, or other major physical constraints; or b) protection of flora or fauna in need of special protection and setting aside such areas for possible recreational use.

**2.07.77** Ordinary High Water Level. "Ordinary high water level" or "OHWL" means the boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation to the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool according to Minnesota Statutes Section 103G.005, Subd.14(3).

**2.07.78** Parking Space. A suitably surfaced and permanently maintained area within or outside of a building to place one standard automobile, comprised of not less than 180 square feet ( 10 feet by 18 feet) plus necessary maneuvering space, off public right-of-way.

**2.07.79** Permitted. "Permitted" means authorized use or establishment of land or structure provided for in this ordinance through the process of applying for and having issued a zoning permit as required.

**2.07.80** Pet. "Pet" means an animal, bird, reptile or fish commonly associated with human habitation, not considered under animal units and not raised for production of income.

**2.07.81** Planned Unit Development. "Planned unit development" or "PUD" means a type of development characterized by a unified site design for a number of dwelling units or dwelling sites on a parcel, whether for sale, rent, or lease, and also usually involving clustering of these units or sites to provide areas of common open space, density increases, and a mix of structure types and land uses. These developments may be organized and operated as manufactured home developments, condominiums, time-share condominiums, cooperatives, full fee ownership, commercial enterprises, or any combination of these, or cluster subdivisions of dwelling units, residential condominiums, townhouses, apartment buildings, resorts, hotels, motels, and conversions of structures and land uses to these uses.

**2.07.82** Planning Commission. "Planning Commission" means the Planning Commission of the City of Manhattan Beach, as created by this ordinance.

**2.07.83** Practical Difficulties. "Practical difficulties," as used in connection with the granting of a variance, means that (a) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; (b) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and (c) the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

**2.07.84** Principal Structure or Use. "Principal structure or use" means the single primary structure or use on a lot, as distinguished from accessory uses or structures.

**2.07.85** Property Owner. "Property owner" means the property owner named in the current tax books in the Office of the Treasurer of Crow Wing County.

**2.07.86** Public Waters. "Public waters" means any waters as defined in Minnesota Statutes, Section 103G.005.

**2.07.87** Recreational Use. "Recreational Use" includes all uses such as driving ranges, golf courses, horse-back riding trails, game farms, skiing, tennis courts, ball fields, picnic areas and the like, whether privately or publicly owned.

**2.07.88** Recreational Camping Vehicle. "Recreational Camping vehicle" includes the following, (a) any vehicles, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses; (b) any structure designed to be mounted on a truck chassis for use on a temporary dwelling for travel, recreation, and vacation. (c) any portable, temporary dwelling to be used for travel, recreation, and vacation, constructed as an integral part of a self propelled vehicle; and (d) and folding structure, mounted on wheels and designed for travel, recreation, and vacation use., as defined by Minnesota Statutes Section 327.14, Subd.7.

**2.07.89** Residence, Single. "Residence, single" means a dwelling structure containing one dwelling unit with sleeping, cooking, eating, living, and sanitation facilities.

**2.07.90** Residential Planned Unit Development. "Residential planned unit development" means a use where the nature of residency is nontransient and the major or primary focus of the development is not service-oriented. For example, residential apartments, manufactured home parks, time-share condominiums, townhouses, cooperatives, and full fee ownership residences would be considered as residential planned unit developments.

**2.07.91** Residential Use. "Residential use" means the use of land for dwelling units designed for permanent, continuous or long-term occupancy.

**2.07.92** Resort. "Resort" means a commercial planned unit development located in shoreland areas and having dwelling units and/or campsites for rent or owned by time interval with related facilities such as restaurants, bars, golf courses, or other recreational amenities.

**2.07.93** Retail Store: A place of business usually owned and operated by a retailer but sometimes owned and operated by a manufacturer or by someone other than a retailer in which merchandise is sold primarily to ultimate consumers.

**2.07.94** Right-of-Way. "Right-of-way" means a parcel of property dedicated to the public, connecting to other public right-of-ways, which affords primary access by pedestrians and vehicles to abutting properties.

**2.07.95** Road. "Road" means a public way which affords primary means of access by pedestrians and vehicles to abutting properties, whether designated as a street, avenue, highway, road, boulevard, land or however otherwise designated.

**2.07.96** Salvage Yard. "Salvage yard" means any premises where used waste, discarded or salvaged materials and items are bought, sold, exchanged, stored, cleaned, packed, parked, disassembled or handled, including but not limited to, vehicles and machinery of any and all types and/or parts thereof, scrap metal, paper, rags, cardboard, rubber products, plastic products, glass products, lumber products, masonry products, fiber products, and used building materials. Three or more vehicles without current license plates constitute a salvage yard.

**2.07.97** Self-service Storage Facility. "Self-service Storage Facility" or "Storage Facility" means real property designed and used for the purpose of owning, renting, or leasing individual storage spaces to occupants who are to have access for the purpose of storing and removing personal property.

**2.07.98** Semipublic Use. "Semipublic use" means the use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

**2.07.99** Sensitive Resource Management. "Sensitive resource management" means the preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive (as defined by the National Resources Conservation Service) or expansive soils (clay), steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection.

**2.07.100** Setback. "Setback" means the minimal horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, wetland, sewage treatment system, top of a bluff, road, highway, property line, or other facility. Three feet of roof overhang, stoops not exceeding 30 square feet, and steps from stoop to ground not over 4 feet wide may protrude into the setback.

**2.07.101** Sewage Treatment System. "Sewage treatment system" means a septic tank and soil absorption system or other individual or cluster type sewage treatment system as described and regulated in Section 9 of this ordinance.

**2.07.102** Sewer System. "Sewer system" means pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or appurtenances used for conducting sewage or industrial wastes to a point of ultimate disposal.

**2.07.103** Shore Impact Zone. "Shore impact zone" means land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the required principal structure setback.

**2.07.104** Shoreland. "Shoreland" means land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 1000 feet from a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved

are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the commissioner.

**2.07.105** Sidewalk “Sidewalk” is defined as a walkway or path for pedestrian traffic that does not exceed four (4) feet in width.

**2.07.106** Sign. "Sign" means a name, identification, description, display, illustration, advertisement or device which is displayed for the purpose of providing information or attracting attention to a person, product, place, activity, institution or business.

**2.07.107** Sign Area. “Sign area” is the maximum area enclosed within a connected geometric shape completely enclosing as a single unit, all letters, graphics, illustrations, insignias, figures, designs, images, colors, or other symbols used. Structural members not bearing advertising matter shall not be included in computation of the surface area. When signs are grouped together, sign area is the maximum area enclosed within a connected geometric shape completely enclosing all individual signs.

**2.07.108** Sign, Off-Site. "Sign, off-site" means any sign not located on the contiguously owned property relating to the subject matter of the sign. Off-site signs are not allowed except as described in Section 9.

**2.07.109** Sign, On-Site. "Sign, on site" means any sign located on the contiguously owned property relating to the subject matter of the sign.

**2.07.110** Sign, Portable. “Sign, portable” refers to a name, identification, description, display, illustration, advertisement or device which is displayed for the purpose of attracting attention to a person, product, place, activity, institution or business which is able to be moved, with or without an undercarriage or wheels.

**2.07.111** Significant Historical Site. "Significant historical site" means any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls

under the provisions of Minnesota Statutes, Section 307.08. A historic site meets these criteria if it is presently listed in either register or if it is determined to meet the qualifications for listing after review by the Minnesota state archaeologist or the director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historical sites.

**2.07.112** Steep Slope. "Steep slope" means land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of this ordinance. Where specific information is not available, steep slopes are lands having average slopes over 12 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs. See Appendix for illustration.

**2.07.113** Stoop. "Stoop" is a landing or platform not including steps at the door to a dwelling or other structure. A stoop must not exceed (4) four feet by (6) six feet in dimension. Anything larger is considered a deck.

**2.07.114** Structure. "Structure" means any building or appurtenance constructed or erected on the ground or attached to the ground or on-site utilities, including additions, decks, concrete slabs-on-grade, satellite antenna dishes, and signs, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, towers, poles, and other supporting facilities.

**2.07.115** Subdivision. "Subdivision" means land that is divided for the purpose of sale, rent, or lease, including planned unit development.

**2.07.116** Water-oriented Commercial-Shoreland Use. "Water-oriented commercial-shoreland use" means the use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business. marinas, resorts, and restaurants with transient docking facilities are examples of such use.

**2.07.117** Theater, Indoor: “Theater, Indoor” means a building or room fitted with a stage or screen and tiers of seats for spectators.

**2.07.118** Theater, Outdoor: “Theater, Outdoor” means a stage or screen located outdoors for spectators who remain in automobiles.

**2.07.119** Toe of Bluff. “Toe of Bluff” means the point at the bottom of a bluff that is the lower end of a ten (10) foot segment with an average slope of eighteen (18) percent or is the OWHL. This definition shall be used for measuring setbacks. See Appendix for illustration.

**2.07.120** Top of Bluff. “Top of Bluff” means the point at the upper end of the bluff that is the higher end of a ten (10) foot segment with an average slope of eighteen (18) percent. This definition shall be used for measuring setbacks. See Appendix for illustration.

**2.07.121** Undisturbed Lands: “Undisturbed Lands” means lands on which the following provisions apply: a) No chemical, organic or inorganic, may be applied; b) No soils may be disturbed; c) No vegetation of any kind (any growing thing) may be removed or altered, with the exception of exotic, noxious, and nuisance plants or dead vegetation; d) Erosion control may be done only with a permit; and e) lands left "natural" that human activity does not change, alter, or affect the land in any way.

**2.07.122** Unmanaged Lands: “Unmanaged Lands” means lands on which vegetation may be removed to the top of the soil surface but no excavation (disturbance of surface soils) may occur. New vegetation may be introduced and established without the use of chemicals or periodic grooming. Annual pruning may occur to control height of vegetation to a minimum height of 4 feet.

**2.07.123** Variance. "Variance" means a modification or variation of the provisions of this zoning code as applied to a specific piece of property as that term is defined or described in Minnesota Statutes, Chapter 462.

**2.07.124** Vegetation. “Vegetation” means any and all flora.

**2.07.125** Vegetation Removal, Clear Cutting: “Vegetation Removal, Clear Cutting” means the removal of more than 75% and up to 100% of a stand of trees and brush over 10 feet in height on a lot or parcel of land.

**2.07.126** Vegetation Removal, Open Cutting: “Vegetation Removal, Open Cutting” means the removal of more than 25% and up to 75% of a stand of trees and brush over 10 feet in height on a lot or parcel of land.

**2.07.127** Vegetation Removal, Select Cutting: “Vegetation Removal, Select Cutting” means the removal of dead, diseased or damaged trees or shrubs, removal of trees for placement of structures and drives, and further removal of only individual trees to uniformly thin up to 25% of a stand, on a lot or parcel of land. Complete brush removal is allowable including trees under 10 feet in height.

**2.07.128** Vehicle Repair Shop: “Vehicle Repair Shop” means any building or premises used for major conditioning or rebuilding of worn or damaged motor vehicles, collision, service, including body, frame, fender repair and painting.

**2.07.129** Water-Oriented Accessory Structure or Facility: “Water-Oriented Accessory Structure or Facility” means a small, above ground building, structure or other improvement, except stairways, docks and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to the public waters than the normal structure setback. This type of structure is not generally permitted by this Ordinance except when a variance is granted, to allow the minimum size and use based on demonstrated need.

**2.07.130** Water-Oriented Commercial Use: The use of land for commercial purposes, where access to and use of surface water feature is an integral part of the normal conducting of business. Marinas, resorts and restaurants with transient docking facilities are examples of such use.

**2.07.131** Wetland. "Wetland" means a surface water feature as defined by Minnesota Statutes and Regulations, as amended from time to time.

**2.07.132** Zoning Administrator. "Zoning Administrator" means the Zoning Administrator for the City of Manhattan Beach, the duly appointed person responsible for the administration and enforcement of this ordinance.

**2.07.133** Zoning District. "Zoning District" means an area of the City of Manhattan Beach defined on the official map, having uniform zoning provisions.

**2.07.134** Zoning Permit. "Zoning permit" means a permit issued under this ordinance by the Zoning Administrator authorizing and permitting certain work to be done by the applicant as specified elsewhere in this ordinance.

### **3.0 ADMINISTRATION**

#### **3.01 Zoning Administrator.**

**3.01.01** The Zoning Administrator shall be appointed by the City Council. The City Council, in its discretion, may appoint a deputy.

**3.01.02** The duties of the Zoning Administrator shall be to:

1. Determine whether applications are complete and comply with the terms of this ordinance. No application for a variance, a permit of any type, or other approval required under this ordinance shall be considered complete if there are delinquent property taxes or any other unpaid fees or charges owed to the city concerning the parcel(s) that are the subject of the application.
2. Conduct site and setback inspections of buildings, sewage treatment systems, and other uses of the land to determine compliance with the terms of this ordinance.
3. Maintain permanent and current records of this ordinance including but not limited to maps, amendments, building or use permits, variances, appeals and applications, and a separate file for future conditions or expirations of permits.
4. Review, file, and forward applications for appeals, variances, conditional uses, plats, and zoning amendments.

5. Enforce the provisions of this ordinance by reviewing complaints and by pursuing contacts with any violator in accordance with standard procedure as adopted and modified from time to time and instituting with the City Council and/or the City Attorney in the name of the City any appropriate actions or proceedings against any violator.
6. Attend meetings and provide research and findings to the Board of Adjustment, Planning Commission, and City Council.
7. Issue permitted building or use permits upon application for structures on lots conforming to this ordinance when the conditions of this ordinance are met; to issue conditional use permits and variances when directed by the Board of Adjustment or City Council; to issue notices of zoning change when directed by the City Council.
8. Issue certificates of compliance as specified in Section 3.06.
9. Mail a copy of the findings to the applicant.
10. File copies of fully approved conditional use permits, variances and plats with the County Recorder within 15 days of approval.
11. When required, send notifications of public hearings and approvals of conditional uses, variances, plats and amendments to the Commissioner of the Department of Natural Resources.

**3.01.03** The Zoning Administrator and his duly appointed deputies shall have the right of trespass within the City of Manhattan Beach in the pursuit of their duties.

### **3.02 Planning Commission.**

The Planning Commission shall be the board appointed by the City Council as provided in Minnesota Statutes 462.354. No more than one member of the Planning Commission shall be a member of the Manhattan Beach City Council, who shall be a non-voting member. There shall be six members on the Planning Commission. Duties of the Planning Commission under this Ordinance include:

1. Public Hearings. To hold hearings after proper public notice in the official newspaper and individual notice by regular mail to any property owner within 600 feet of any land use in question, when required to do so by statute. Official newspaper notices shall be given at least 10 days before the hearing date.
2. To decide within the allowable time the following:
  - a. Make recommendations to the City Council of requested zoning district boundary changes or amendments to the Ordinance.
  - b. Review and accept Preliminary Plats and make recommendations to City Council for final plat.
  - c. Make recommendations to the City Council on all Metes and Bounds applications.
  - d. Make recommendations to the City Council regarding all requests for Conditional/ Interim Use permits.
  - e. Make recommendations for approval or denial of requests for variance in accordance with the time frames in Minnesota Statute Section 15.99, Subd. 1 (c) (d) Subd. 2, and Subd. 3.
  - f. To periodically review the zoning map and Ordinances and determine their role in shaping the growth of the community and to recommend changes to the City Council of these documents to guide growth and current land use toward the goals of the Comprehensive Plan.
  - g. To recommend on a timely basis that the City Council review the Comprehensive Plan when appropriate, or at least every three years
  - h. To keep a record of its proceedings, notifications and findings for its actions.

### **3.03 Board of Adjustment.**

The Board of Adjustment shall consist of the City Council. Matters appealed to and applications submitted to the Board of Adjustment shall be heard at the next

regularly scheduled City Council meeting, or at a Special Meeting called to address the appeal.

1. Duties of the Board of Adjustment.

- a. To hold hearings after proper public notice in the official newspaper and individual notice by regular mail to any property owner within 600 feet of any land use in question. Such notices shall be given at least 10 days before the hearing date.
- b. To approve or deny all requests for variance in accordance with the time frames in Minnesota Statute Section 15.99, Subd. 1 (c) (d) Subd. 2, and Subd. 3.
- c. To decide within a reasonable length of time, appeals of the action of the Zoning Administrator.
- d. To keep a record of its proceedings, notifications, and the findings for its action.

**3.04 City Council.**

The City Council shall have the following duties under this Ordinance:

- 1. Appoint the Zoning Administrator by a majority vote; to remove or terminate him or her by a 4/5 vote of the full Council.
- 2. Appoint the Planning Commission members by majority vote; to remove members by a 4/5 vote of the full Council.
- 3. To decide to accept, modify, or reject within the allowable time the following:
  - a. Recommendations from the Planning Commission for changes in zoning district boundaries or amendments to the ordinances.
  - b. Recommendations from the Planning Commission for acceptance of preliminary and final plats, condominium plats, or other recommendations.
  - c. Recommendations from the Planning Commission regarding requests for variance or appeals of the action of the Zoning Administrator.

d. To instigate a proceeding upon review of the Planning Commission recommendations if it finds these to deviate from the ordinance. Said investigation shall be started at the next normal Council meeting, following the Planning Commission recommendation. All original parties shall be notified by mail of the proceeding.

### **3.05 Permits Required.**

**3.05.01** A zoning permit is required prior to commencement of construction of any structure, the installation and/or alteration of sewage treatment systems, and those grading and filling activities not exempted by Section 8 of this ordinance. Application for a permit shall be made to the Zoning Administrator on the forms provided. The application shall include the necessary information so that the Zoning Administrator can determine the site's suitability for the intended use and that a compliant sewage treatment system will be provided.

**3.05.02** A permit authorizing an addition to an existing structure shall stipulate that an identified non-conforming sewage treatment system, as identified by Section 9, shall be reconstructed or replaced in accordance with the provisions of this ordinance.

**3.05.03** Where a proposed use requires action of the Planning Commission, Board of Adjustment, or City Council, said action shall occur and the conditional use permit, interim use permit, variance, zoning district change, or final plat approval shall be issued before the zoning permit is issued.

**3.05.04** Where a zoning permit has been issued but no action has occurred within 12 months, the zoning permit shall be null and void. The exterior of the structure shall be complete in 18 months. This time limit may be extended by the Zoning Administrator for good cause, by up to 150 days. Any second extension shall be decided by the City Council and shall not exceed 90 days.

**3.05.05** Granting of a zoning permit shall not be considered a statement of compliance with regional, state, or federal codes, statutes or laws, or approval of the design of the structure or accessories. Subsequent actions of the Zoning Administrator shall not be considered acceptance of structural components or

workmanship, but rather shall be for the purpose of determining compliance with this ordinance. All work done by an applicant under a permit must comply with all applicable City Council ordinances, state and federal statutes and regulations, and any other applicable law.

**3.05.06** If the Zoning Administrator determines that any violation of the permit or other section of this ordinance has occurred, the permit shall become null and void.

**3.05.07** The Zoning Administrator shall not accept for processing any permit application for property, including a portion of the property, where property taxes are delinquent, or where any fees, charges, or assessment owed the City are past due or delinquent.

**3.05.08** Exceptions: The following shall not require a zoning permit:

1. Structures not exceeding 25 square feet in size and complying with all other structure requirements of this ordinance.
2. Deer stands in compliance with the State of Minnesota Department of Natural Resources guidelines and hunting regulations.
3. Fish houses currently licensed by and in compliance with the State of Minnesota Department of Natural Resources fishing regulations.
4. Playground equipment not a component of a commercial or semipublic use.

### **3.06 Certificate of Zoning Compliance.**

The Zoning Administrator shall issue a certificate of zoning compliance for the installation and/or alteration of each sewage treatment system and for every structure or activity requiring a conditional use permit. The certificate will specify that the use of land conforms to the requirements of this ordinance. A certificate of compliance for a conditional use certifies that the use complies with the conditions of the permit as of the date of the certificate. A certificate of compliance for a conditional use is issued subject to continuous compliance with the conditions of the permit. Any use, arrangement, or construction at variance

with that authorized by permit shall be deemed a violation of this ordinance and shall be punishable as provided in Section 2.03 of this ordinance.

### **3.07 Variances.**

**3.07.01** Pursuant to Minn. Stat. Sec. 462.357, subd. 6, as it may be amended from time to time, the Board of Adjustment, may issue variances from the provisions of this zoning code. A variance is a modification or variation of the provisions of this zoning code as applied to a specific piece of property.

**3.07.02** Variances shall only be permitted:

1. When they are in harmony with the general purposes and intent of the ordinance; and
2. When the variances are consistent with the comprehensive plan.

**3.07.03** Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.

**3.07.04** The Board of Adjustment may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

**3.07.05** All applications for variances shall be submitted to the Zoning Administrator in a form approved by the city (see the appendix). The Zoning Administrator shall notify all property owners within 600 feet of the affected property and shall publish notice of the Board of Adjustment public hearing in the official newspaper at least 10 days prior to the date of the public hearing. If the proposed use is in shoreland areas the Zoning Administrator shall send the same notice to the Department of Natural Resources postmarked 10 days prior to the date of the public hearing, and after action by the Board of Adjustment, the Zoning Administrator shall provide the findings and determination to the Department of Natural Resources postmarked within 10 days of the final action.

The Board of Adjustment shall hear and make decisions on requests for variances in accordance with the rules that it has adopted for the conduct of business. Findings of fact regarding practical difficulty, as described in this ordinance, shall be prepared in substantially the form included in the appendix and be adopted as part of the Board's decision. When a variance for a structure or use in shoreland areas is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification to the DNR of the approved variance required in Section 3.09.02 below shall also include the Board of Adjustment's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.

**3.07.06** For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a non-conforming sewage treatment system, and a certificate of survey.

**3.07.07** A variance may be granted only if all of the following circumstances exist:

1. Special conditions and circumstances are present that are peculiar to the property involved.
2. The variance is proved necessary in order to secure for the applicant a right or rights that are enjoyed by other property owners in the same district.
3. The special conditions or circumstances do not result from the actions of the applicant.
4. Granting the variance requested will not be contrary to the public interest or to management policies of the district and will not confer on the applicant any special privilege that is denied by this ordinance to other property owners in the same district.
5. The variance requested is the minimum variance that would alleviate the hardship or practical difficulty.

**3.07.08** Variances shall be issued to the property and are transferable.

**3.07.09** Failure by the owner to act within 6 months on a variance, unless extended by the Board of Adjustment, shall void the variance. Any request for a second extension shall require a new public hearing.

**3.07.10** The Board of Adjustment shall make its decision in accordance with the time frames in Minnesota Statute Section 15.99, Subd. 1 (c) (d) Subd. 2, and Subd. 3.

Any approved variance shall be filed with the County Recorder within 15 days at the applicant's expense.

### **3.08 Conditional Uses.**

**3.08.01** All written applications for conditional use permits shall be submitted to the Zoning Administrator for review of the application for completeness. The Zoning Administrator shall send to the applicant a notice of an incomplete written application within 10 business days of the 1<sup>st</sup> submission if the application is not complete. The Zoning Administration shall itemize the missing information. When the application is complete, the submission date shall become the date the application is postmarked or hand-delivered to the Zoning Administrator. The Planning Commission shall review application at its next regular meeting. The Planning Commission shall instruct the Zoning Administrator to schedule a public hearing. The Zoning Administrator shall mail, at least 10 days before the scheduled hearing, a notice of the hearing to all property owners within 600 ft of the affected property. The Zoning Administrator shall publish notice of the public hearing in the official newspaper at least 10 days prior to the date of the public hearing. If the proposed use is in a Shoreland area, the Zoning Administrator shall send the same notice to the Department of Natural Resources postmarked 10 days prior to the date of the public hearing. The Planning Commission shall hear comments on the Conditional Use Permit. The Planning Commission, by majority vote, shall make a recommendation to the City Council for approval or denial of the Conditional Use Permit. Notice of the decision of the Planning Commission shall be mailed to the applicant no more than 3 days after the decision of the Planning Commission. The City Council shall hear the application for the Conditional Use Permit and consider the recommendation of the Planning

Commission at its next regularly scheduled meeting. The Planning Commission and City Council shall make its decisions in accordance with the time frames in Minnesota Statute Section 15.99, Subd. 1 (c) (d) Subd. 2, and Subd. 3.

**3.08.02** In reviewing an application for a conditional use permit, the Planning Commission and City Council shall evaluate the effect of the proposed use upon:

1. Whether safe and healthful conditions can be maintained.
2. Whether water pollution, including sedimentation accumulation, can be prevented and controlled.
3. Whether existing topographic and drainage features and vegetative cover on the site can prevent or control run-off.
4. Whether the location of the site has access to existing or future roads.
5. Whether the proposed Conditional Use is compatible with uses on adjacent land.
6. Whether the proposed Conditional Use is compatible with a desirable pattern of development in the area.
7. Whether the proposed sewage treatment system is adequate to contain the amount of liquid wastes to be generated by the proposed Conditional Use.

**3.08.03** In considering the application for a conditional use permit, the Planning Commission and City Council may adjourn the hearing to a future time and may defer consideration or recommendation until further information from the applicant is submitted, in accordance with the time frames and procedures in Minnesota Statute Section 15.99, Subd. 1 (c) (d) Subd. 2, and Subd. 3. Such information may include, but is not limited to, the following:

1. A plan of the area showing contours, soil types, ordinary high water level, groundwater conditions, bedrock, slope and vegetative cover.
2. Location of buildings, parking areas, traffic access, driveways, walkways, docks, open spaces and landscaping.

3. Plans of buildings, sewage treatment systems, water supply systems, and arrangements of operations.
4. Specifications for areas of proposed filling, grading, lagooning or dredging.
5. Other pertinent information necessary to determine whether the proposed use meets the requirements of this ordinance.
6. Certificate of Survey.

**3.08.04** In approving a conditional use, the Planning Commission and City Council may impose such conditions, in addition to the requirements specified by this ordinance, which the Planning Commission or City Council consider necessary to protect the best interest of the surrounding area and the City as a whole. Violation of any of these conditions shall be a violation of this ordinance. Such conditions may include specifications for type of shore cover, increased setbacks, sewage treatment and water supply systems, landscaping and screening, period of operation, operational control, sureties, deed restrictions, location of docks, parking and signs, appointment of a citizen advisory committee, type of construction or any other requirements necessary to fulfill the purpose and intent of this ordinance.

**3.08.05** Conditional use permits shall be transferable to subsequent owners of real property.

**3.08.06** Failure to act on a conditional use permit by the property owner within 6 months or failure to complete the work under the conditional use permit within one year, unless extended by the City Council prior to expiration, shall void the permit.

**3.08.07** Appeal. All City Council decisions shall be final, except that any aggrieved person or persons, or any department, board or commission of the jurisdiction of the State shall have the right to appeal within thirty (30) days after receipt of notice of the decision, to District Court in the County in which the land is located or question of law and fact.

### **3.09 Notifications to the Department of Natural Resources.**

**3.09.01** Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.

**3.09.02** A copy of approved amendments and subdivisions/plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of final action.

### **3.10 Interim Uses.**

**3.10.01** Applications for interim use permits shall be submitted to the Zoning Administrator, along with the appropriate fee. If the Zoning Administrator deems the application complete, the applicant will be notified of the next available hearing date. The Zoning Administrator shall notify all property owners within 600 feet of the affected property and shall publish notice of the public hearing in the official newspaper at least 10 days prior to the date of the public hearing. The Planning Commission will hear the Public Hearing and make a determination of findings to be presented to the City Council. If the proposed use is in shoreland areas, the Zoning Administrator shall send the same notice to the Department of Natural Resources postmarked 10 days prior to the date of the public hearing, and after action by the City Council the Zoning Administrator shall provide the findings and determination to the Department of Natural Resources postmarked within 10 days of the final action.

**3.10.02** Zoning regulations permit the governing body to allow interim uses and to set conditions on interim uses. The City Council may grant permission for an interim use of property if the use conforms to the zoning regulations, the date or event that will terminate the use can be identified with certainty, permission of

the use will not impose additional costs on the public if it is necessary for the public to take the property in the future, and the user agrees to any conditions that the governing body deems appropriate for permission of the use. Any interim use may be terminated by a change in zoning regulations. When considering interim permits the City Council shall consider:

1. Is the proposal consistent with the purpose and intent of the applicable city ordinances?
2. Is the proposal consistent with the Comprehensive Plan?
3. Will the proposal cause any adverse effect on adjacent property?
4. Will the proposal cause a density of land use greater than otherwise allowed under City Ordinances?
5. Will the proposal impede the normal and orderly development and improvement of the surrounding property for use predominant in the area?
6. Is the proposal's location, nature and character consistent with a desirable pattern of development?
7. Is the proposal developed so as to prevent soil erosion, prevent pollution of public waters during and after construction?
8. Is the proposal developed and sited as to minimize visual impact from public waters?
9. Does the proposal have adequate water supply and on-site sewage treatment?
10. Does the proposal generate a compatible use for public waters in regards to watercraft?
11. Does the proposal minimize the cumulative effect on shoreland/lake ecology, wetlands, vegetation removal, docks and sand blankets?

**3.10.03** An applicant for an Interim Use Permit may be required to furnish the Planning Commission, if requested by the Zoning Administrator or Planning Commission, the following:

1. A map showing, at minimum 10 foot contours, of the property.
2. Location of existing and proposed buildings, parking areas, traffic access, vegetation cover and open spaces.
3. Plans of sewage treatment facilities, water supply, and arrangements of operations.
4. Plans for any topographic changes to the property.
6. Description of how the Interim Use conforms to all the requirements of the zoning regulations.
7. The date or event that will terminate the use identified with certainty.
8. Certification that the applicant will agree to any conditions the City Council deems appropriate to protect public health, safety and welfare.
9. Other information deemed pertinent to determine if the proposal meets the requirements and intent of all the provisions of this ordinance.

**3.10.04** An Interim Use Permit shall expire one (1) year after the issued date, unless the applicant has officially begun operations of the proposed Interim Use. An Interim Use shall expire one (1) year after the continuous cessation of the Interim Use for one (1) year.

**3.10.05** The Zoning Administrator shall file a copy of all approved interim use permits with the County Recorder within 15 days of approval.

**3.10.06** All interim uses shall require a public hearing. If and when the City Council issues any Interim Use Permit, it will specify the date or event that will terminate the validity and effect of that Interim Use Permit. Any and all Interim Use Permits shall be personal to the individual(s) or business entity they are issued to. Interim Use Permits are not transferrable or assignable to any other

person, tenant, new owner, renter, or other occupant of any such home. Interim Use Permits do not run with the property and cannot be transferred to any other property. Any Interim Use permit may be terminated by a change in zoning regulations.

**3.10.07** The City shall follow MN Statue 15.99 regarding all zoning request timelines.

**3.10.08** The Zoning Administrator or Planning and Zoning Commission may, at its discretion, require any applicant for an IUP to allow the Zoning Administrator or any Planning and Zoning Commission member to inspect the property (outside of the home) prior to and after issuance of an IUP at its sole discretion to ensure compliance with these ordinances and permit conditions.

### **3.11 Environmental Review.**

**3.11.01** The Minnesota State Environmental Policy, Minnesota Statutes, Chapter 116D, and the rules of the Minnesota Environmental Quality Board, together with the provisions of this ordinance, shall be followed as the Environmental Review operating procedures.

**3.11.02** Preparation and review

1. The applicant for a permit for any action for which environmental documents are either required by the Environmental Quality Board or ordered by the City Council shall, in the manner prescribed by the Zoning Administrator, provide all unprivileged data or information reasonably requested by the City that the applicant has in his possession or to which he has reasonable access.

2. The applicant for a permit for any action for which an Environmental Assessment Worksheet (EAW) is mandated or is deemed required by the City Council when it has been designated as the Responsible Governmental Unit (RGU) by the Environmental Quality Board through the petition process shall pay all costs of preparation and review of the EAW and, upon the request of and in

the manner prescribed by the Zoning Administrator, shall prepare a draft EAW and supply all information necessary to complete that document.

3. The applicant for a permit for any action for which an Environmental Impact Statement (EIS) is mandated shall pay all costs of the scoping and preparation of the EIS until such time as the final EIS is deemed adequate by either the Responsible Governmental Unit or the Environmental Quality Board.

4. A petitioned or mandated EAW shall be produced and paid for by the applicant prior to the commencement of the review or any stage of review by the Planning Commission and/or the City Council.

5. When the EIS is mandatory, the applicant shall deposit with the City from time to time an amount determined by the Zoning Administrator to be necessary to cover such costs prior to commencement of the review stage of the Environmental Review. The applicant shall reimburse the security fund for any deficits caused if the amount actually expended or billed to the City by the consultants exceeds the security fund balance. The City shall refund any amount deposited in the security fund and not expended within thirty days after final action on the application. The City shall not pay interest on such security fund deposits.

### **3.11.03 Administration.**

1. The Zoning Administrator shall be the person responsible for the administration of the Environmental Review process.

2. The Zoning Administrator shall be responsible for determining whether an action for which a permit is required is an action for which an EAW or an EIS is mandatory and shall report his findings to the Planning Commission and/or the City Council.

3. The Zoning Administrator shall make a recommendation on all EAW petition requests to the City Council.

4. All EAW's and EIS's shall be prepared under the supervision of the Zoning Administrator and reviewed by the Planning Commission prior to review and approval by the City Council.
5. When reviewing any EAW or EIS, the Zoning Administrator and the Planning Commission may suggest design alterations which could lessen the environmental impact of this action. The City Council may require these design alterations to be made as a condition for issuing the permit when it finds that the design alterations are necessary to lessen the environmental impact of the action.
6. No permits shall be issued for a project for which environmental documents are required until the entire environmental review procedure established by this ordinance is completed. No work shall commence and any work in progress on any project for which environmental documents are required shall cease until the environmental review procedure established by this ordinance is completed.
7. All City Council decisions shall be final, except that any aggrieved person or persons, or any department, board or commission of the jurisdiction of the State shall have the right to appeal within thirty (30) days after receipt of notice of the decision, to District Court in the County in which the land is located or question of law and fact.

### **3.12 Schedule of Fees.**

The City Council shall annually adopt a schedule of fees for all permits, variances and plats. These fees shall be paid at the time the application is submitted to the Zoning Administrator.

### **3.13 Escrow for City Costs.**

**3.13.01** This ordinance and certain others require applicants for conditional permits, variance requests, subdivisions, tower permits, interim use permit and environmental review, and other types of privileges and permits to pay all city costs incurred for the professional services necessary to review such proposals, including but not limited to legal, planning, engineering, and financial assistance services.

**3.13.02** The Zoning Administrator shall determine the estimated amount of escrow funds necessary to pay for the city’s professional and administrative fees. The City Clerk shall serve as escrow agent.

**3.13.03** At the time of submission of an application for a city approval or permit, the applicant shall deposit escrow funds in the amount determined by the Zoning Administrator into the city’s escrow account. Failure to deposit the funds will render the application incomplete. No interest shall be paid on funds deposited to the escrow account.

**3.13.04** The city shall provide the applicant with all invoices for professional fees incurred by the city, and the applicant shall have 30 days to submit a written objection to the invoice, and the objection shall be heard by the City Council. After expiration of the 30 day objection period, and the applicant shall be deemed to have waived any objection to the fees, or upon a City Council ruling against the applicant’s objection, the invoice shall be paid out of the escrow funds.

## **4.0 ZONING DISTRICTS AND PROVISIONS**

### **4.01 Criteria for Designation.**

The land use districts in sections 4.02 and 4.03 and the delineation of a land use district's boundaries on the official map are based on the goals and policies of the City's Comprehensive Plan and the following criteria, considerations, and objectives:

1. General considerations and criteria for all land uses:
  - a. Preservation of natural areas;
  - b. Present ownership and development of shoreland areas;
  - c. Shoreland soil types and their engineering capabilities;

- d. Topographic characteristics;
  - e. Vegetative cover;
  - f. In-water physical characteristics, values, and constraints;
  - g. Recreational use of surface water;
  - h. Road and service center accessibility;
  - i. Socioeconomic development needs and plans of the City, especially as involve water and related land resources; and
  - j. The necessity to preserve and restore certain areas having significant historical or ecological value.
2. Factors and criteria for planned unit developments:
- a. Existing recreational use of the surface waters and likely increases in use associated with planned unit developments;
  - b. Physical and aesthetic impacts of increased density;
  - c. Suitability of lands for the planned unit development approach;
  - d. Level of current development in the area; and
  - e. Amounts and types of ownership of undeveloped lands.

#### **4.02 Land Use District Descriptions.**

The City of Manhattan beach is hereby divided into the land use districts provided below as shown on the official map, which may be amended from time to time according to the procedures of Section 10.01. This map shall be filed in the office of the City Clerk and is hereby made a part of this ordinance. These land use districts are in conformance with the criteria specified in Minnesota Regulation, Part 6120.3200, Subp. 3. Allowable uses are provided for in Sec. 4.03.

1. Residential – Shoreland

RS

Structures and land uses have intensified on shoreland lots. This district, known as “Residential – Shoreland” will protect water quality by reducing impervious surface and the resulting runoff of pollutants into the lake, provide less intensive use along the lakeshore to prevent overcrowding or excessive density, and to create open space.

2. Rural Residential District

RR

A Rural Residential District is intended to be semi-rural in character and to allow low density residential and compatible agricultural uses in shoreland and non-shoreland areas. Other compatible uses may be allowed under conditional use permits or interim use permits.

3. Commercial District

C

A Commercial District is intended for commercial or compatible public, semipublic or other uses in non-shoreland areas, generally near existing business areas. It is not intended for single-family detached residential or industrial use.

4. Commercial-Shoreland District

CS

A Commercial- Shoreland District is for shoreland areas and is intended to be used only to provide for existing or future commercial uses adjacent to water resources, uses that are functionally dependent on such close proximity to water resources.

5. Open District

OD

The intent of the Open District is to be used for two basic purposes, in both shoreland and non-shoreland areas. The first purpose is to limit and properly manage development in areas that are generally unsuitable for development or uses due to flooding, erosion, limiting soil conditions, steep slopes, or other major physical constraints. The second purpose is to protect flora or fauna in need of special protection and to set aside such areas for possible recreational use and for the protection of wildlife.

When reviewing development proposals in Open District, the City of Manhattan Beach should consider the following items in the review process. These items are based on a land use evaluation system to protect ground water, surface water, and natural areas, while respecting the rights of private landowners and the public:

- a. Utilize technical support from: BWSR, DNR, USGS, and USFWL
- b. Conduct an analysis of the ecosystem based on:

<b>a) Composition</b>	<b>b) Structure</b>	<b>c) Function</b>
Plants & Animals	Erosion	Watershed
Soils	Flood Plains	Animal Habitat
Lakes	Clean Water	Wetland Development
Wetlands		

- c. Shoreland requirements:
  - i. Commercial Planned Unit Developments (PUDs) shall be prohibited.
  - ii. Maintenance of a canopy on the building site managed to the impact zone.
  - iii. Impact zone unmanaged with canopy.
  - iv. A set of complete (all ground surface) photos be provided to the City of Manhattan Beach before construction begins.

## 6. Public District

P

A Public District is intended to be for publicly owned lands, such as City building property, public recreational facilities, Memorial Forests, public maintenance facilities, etc.

The uses designated in these provisions for each land use district, shown in the land use classification tables, are the only allowable uses for that district. (Any use, which is not specified in this Ordinance as being allowed, shall be prohibited.)

(See following page)

<u>Requirements</u>		<u>Zoning District</u>				
P = Denotes Permit Required I = Denotes Interim Use Permit Required C = Denotes Conditional Use Permit Required A = Denotes Allowed Use W/O Permit X = Denotes Prohibited Use		P = Public C = Commercial CS = Commercial Shoreland RR = Rural Residential RS = Residential Shoreland OD = Open District				
<u>Use</u>	<u>RS</u>	<u>RR</u>	<u>C</u>	<u>CS</u>	<u>P</u>	<u>OD</u>
Accessory Structures	P	P	P	P	P	I
Adult Use	X	X	I	I	X	X
Agriculture	A	A	A	A	A	X
Auto Sales (more than one car per month)	X	X	C	X	X	X
Auto Salvage Yard	X	X	X	X	X	X
Bed and Breakfast	C	C	C	C	X	C
Camping	X	C	C	X	X	X
Cemetery	C	C	C	X	X	X
Church	C	C	C	C	C	X
Commercial Use- Other	X	X	C	C	I	X
Day Care Centers	C	C	C	X	X	X
Day Care, In-Home	State	County	Comp	liance		
Dirt Moving LESS than 10 cubic yards	A	A	P	P	P	P
Dirt Moving MORE than 10 cubic yards	P	P	P	P	P	P
Dirt Moving LESS than 50 cubic yards	P	P	P	P	P	P
Dirt Moving MORE than 50 cubic yards	C	C	C	C	C	C
Drive-In Restaurant	X	X	X	X	X	X
Dwelling, Duplex	C	C	X	X	X	X

Dwelling, Multi-Family	X	X	C	X	X	X
Dwelling, Single-Family	P	P	C	X	X	C
Extractive Use – Mining	X	I	I	X	X	X
Forest Management (with BMP)	A	A	C	C	P	C
Forest Land Conversion	C	C	C	C	C	C
Gas Stations (with or without minor repairs)	X	X	C	X	C	X
Government Buildings	X	X	C	X	C	C
Guest Quarters	C	C	X	X	X	X
Home Occupation	A	A	A	A	X	A
Home Business	X	I	I	I	X	X
Hotel/Motel	X	X	C	C	X	X
Liquor, Off-Sale	X	X	C	C	C	X
Liquor, On-Sale	X	X	C	C	X	X
Laundromat	X	X	C	X	X	X
Long-Term Care Facility	X	C	C	C	X	X
Manufactured Home (PUD)	C	C	C	X	X	X
Manufacturing, Limited	X	X	C	X	X	X
Marinas	X	X	X	C	X	X
Medical Facilities	X	X	C	X	X	x
Mining of Metallic Materials and/or Peat	X	X	X	X	X	X
Packaging/Warehouse	X	X	C	X	X	X
Parks and Historic Sites	C	C	C	C	C	C
Professional Office Building	X	X	C	X	X	X
PUD, Residential	C	C	X	X	X	C

Recreational Use	C	C	C	C	C	C
Recycling Center	X	X	C	X	X	X
Restaurants/Cafes	X	X	C	C	X	X
Retail Stores	X	X	C	C	X	X
Schools/Educational Buildings	C	C	C	X	C	X
Self-service Storage Facility <sup>1</sup>	X	X	X	X	X	X
Semi-Public Use	C	C	C	C	P	X
Sensitive Resource Management	X	X	X	X	X	C
Sewage/Water Treatment Facilities	X	X	X	X	C	X
Sign, Off-Site	X	X	X	X	X	X
Sign, On-Site	P	P	P	P	P	P
Theaters (Indoor)	X	X	C	X	X	X
Vehicle Repair Shop (with Major Repairs)	X	X	C	X	X	X
Water Oriented Commercial	X	X	I	I	X	X
Wetland Setback less than required	C	C	C	C	C	C

#### 4.03 Shoreland Classification System.

The public waters of the City of Manhattan Beach have been classified below consistent with the criteria found in Minnesota Regulations, Part 6120.3300, and the Protected Waters Inventory Map for Crow Wing County, Minnesota.

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<sup>1</sup> Amended 8/1/23

**4.03.01** The shoreland areas for the water bodies listed in Sections 4.03.02 and 4.04.03 shall be as defined in Section 2.07.103 and as shown on the official map.

<b>4.03.02</b>	Lakes	Protected Waters
a) Natural Environment Lakes:		Inventory ID Number
	Meyer	18-301
	Little Ox	18-302
	Four Acre	18-626
b) General Development Lakes:		
	Big Trout	18-315
	Loon	18-268
	Ox	18-288

**4.03.03** Tributary Streams :

Four Acre Creek From FourAcre Lake to Big Trout Lake

**4.03.04** Structure setbacks from all wetlands shall be at least 50 feet.

Jurisdictional boundaries separating uplands from protected waters must be established by wetland delineation on the upland side of all wetlands.

4.03.05 If any use affects public waters or wetlands, it shall be the property owner's responsibility to secure necessary concurrent permits such as State Waste Disposal Permits, U.S. Army Corps of Engineers Permits, and Department of Natural Resources Public Water Permits and Department of Natural Resources Water Appropriation Permits. Approval by the City does not imply approval by other agencies.

## **5.0 ZONING PROVISIONS**

### **5.01 Lot Width, Area and Coverage and Other Standards.**

**(See Following Page)**





## **5.02 Residential Use Standards.**

**5.02.01** It shall be the policy of the City to encourage well- planned areas for residential use. Such use will be encouraged to be on larger lots in Rural Residential Districts. Open space subdivision design techniques are also encouraged to preserve open space. Second dwellings on a single lot may be allowed only under a conditional use permit. However, no dwelling unit shall be rented, leased, or subleased more than four times per year. Normal uses accessory to the principal use are allowed, although the principal use must first be established. However, no temporary storage structure (such as those with no permanent foundation, and covered with canvas, vinyl, or other flexible membranes) shall be placed on residential property unless it meets all setbacks, and is properly screened from public view Current non-conforming temporary structures shall be removed or brought into compliance by June 1, 2013. It shall also be the policy of the City to discourage residential use where it is not in the best interests of health, safety and general public welfare to allow such use.

**5.02.02** Household pets of a reasonable number, which do not constitute a nuisance, are allowed in the Rural Residential and Residential Shoreland Districts. Animals or birds, other than household pets, may be kept or pastured in the Rural Residential district under a conditional use permit provided that:

1. The lot area of the premises concerned is at least one acre;
  2. Not over one animal unit per four acres is kept on the premises concerned. A fraction of an acre may be used to calculate the number of animals allowed;
  3. The keeping or pasturing of such animals does not pollute public waters or the ground water under the land;
  4. Accumulation of animal wastes or manure shall not be allowed;
  5. The applicant has the facilities and a plan for caring for the animals properly;
- and

6. The animals do not constitute a nuisance for adjacent properties or the City.

**5.02.03** No structures in non-shoreland area residential districts, except churches and agricultural buildings, shall exceed 35 feet in height. All dwellings, including manufactured homes, must be at least 20 feet wide for at least 50% of their depth, or 20 feet deep for at least 50% of their width and on a permanent foundation.

**5.02.04** Home occupations are allowed as specified in Section 5.07.

**5.02.05** Fertilizer must be used in accordance with the provisions of Protecting Water Quality in Urban Areas, "Best Management Practices for Minnesota." Fertilizers containing phosphorous are not allowed for residential use.

### **5.03 Agricultural Use Standards.**

**5.03.01** Restrictions on agricultural uses are intended primarily to:

1. Protect agricultural uses from undue encroachment by other uses, and
2. Promote the compatibility of agricultural land use with adjacent property or nearby land uses.

**5.03.02** Animal wastes or manure shall be acceptable fertilizer for use in all districts provided that:

1. The application thereof is done to preclude any such material from being carried by surface water run-off into public waters.
2. The application thereof does not contaminate the water supply of anyone
3. No phosphorous shall be used for fertilizer unless certified testing shows that the soil is "phosphorous poor."

**5.03.03** Feedlots are not a permitted use in any district.

**5.03.04** No corral or barn for the keeping of animals shall be constructed in an agricultural district closer than 200 feet from a residence on adjacent property.

**5.03.05** Agricultural uses permitted in shoreland areas, i.e., cropland and grazing, must maintain steep slopes and shore and bluff impact zones in permanent vegetation or operated under an approved conservation plan (Resource Management Systems) consistent with the field office technical guides of the local soil and water conservation districts or the United States Soil Conservation Service, as provided by a qualified individual or agency. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high water level.

**5.03.06** Fertilizer, pesticides, or animal wastes must be used in such a way as to minimize impact on shore impact zones or all waters by proper application and use of earth or vegetation. The provisions of "Agriculture and Water Quality: Best Management Practices for Minnesota" must be followed.

Definitions. For the purpose of this section, the following terms have the meanings given them:

1. "Agricultural operation" means a facility consisting of real or personal property used jointly or severally and its appurtenances for the production of crops, livestock, including breeding and grazing, poultry, dairy products or poultry products, forages and sod crops, fruits, vegetables, flowers, seeds, grasses, trees, fish, and apiaries, but not a facility primarily engaged in processing agricultural products. Agricultural operation shall also include certain farm activities and uses as follows: chemical and fertilizer spraying, farm machinery noise, manure collection, disposal spreading or storing, open storage of machinery, feedlots, odors produced from farm animals, crops of products used in farming, marketing produce at roadside stands, aerial seeding and spraying, and the employment and use of seasonal labor.
2. "Established date of operation" means the date on which the agricultural operation commenced. If the agricultural operation is subsequently expanded or significantly altered, the established date of operation for each expansion or

alteration is deemed to be the date of commencement of the expanded or altered operation.

3. “Family farm” means an unincorporated farm unit owned by one or more persons or spouses of persons related to each other within the third degree of kinship according to the rules of the civil law, at least one of whom is residing or actively engaged in farming on the unit, or a “family farm corporation,” as that term is defined in Minnesota Statutes § 500.24, Subd. 2.

4. Agricultural operation not a nuisance. An agricultural operation, which is a part of a family farm, is not and shall not become a private or public nuisance after six years from its established date of operation. The provisions of this subdivision do not apply:

a. To a condition or injury which results from the negligent or improper operation of an agricultural operation or from operations contrary to commonly accepted agricultural practices or to applicable state or local laws, ordinances, rules, or permits.

b. When an agricultural operation causes injury or direct threat of injury to the health or safety of any person.

c. To pollution of, or change in the conditions of, the waters of the state or the overflow of waters on the lands of any person.

d. To any prosecution for the crime of public nuisance as provided in Minnesota Statutes § 609.74 or to an action by public authority to abate a particular condition which is a public nuisance.

5. Severability. If a provision of this section or application thereof to any person or set of circumstances, is held invalid or unconstitutional, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application. To that end, the provisions of this section are declared to be severable.

## **5.04 Commercial Use Standards.**

**5.04.01** All structures shall be compatible with neighboring structures. Signing and parking shall conform to Section 8.0.

**5.04.02** Except for the display of merchandise for sale, outside storage shall be screened.

**5.04.03** Business operations shall be compatible with the surrounding development.

**5.04.04** Single residences may be allowed under a conditional use permit or interim use permit if occupied by the owner or manager of the commercial operation on the premises.

**5.04.05** No animals other than household pets or those necessary for the maintenance, operation or protection of facilities or premises shall be allowed in any commercial districts. Pets shall be of a reasonable number and shall not constitute a nuisance.

**5.04.06** Fertilizer must be used in accordance with the provisions of Protecting Water Quality in Urban Areas, "Best Management Practices for Minnesota." Fertilizers containing phosphorous are not allowed for commercial use.

**5.04.07** All structures in commercial districts except churches, shall not exceed 35 feet in height.

**5.04.08** All commercial Uses require a CUP or IUP prior to operation. The CUP or IUP may consider long term projected or intended uses, stormwater retention plans, and other appropriate plans based on future or projected use. This CUP or IUP may be included with Commercial or business use as generally indicated in Section 4.03.

### **5.05 Commercial -Shoreland Standards.**

All Commercial standards apply to Commercial-Shoreland uses. In addition, all standards established by the Minnesota Pollution Control Agency, specifically those dealing with storage tanks regulated by Minnesota statutes 116.46 and 116.48, and all regulations established by the Fire Marshal for development or storage in shoreland areas also apply.

### **5.06 Open District Standards.**

**5.06.01** Lands in the Open District consist of publicly owned and privately owned lands. The privately owned lands generally lie on the periphery of this district. It shall be the policy of the City to allow more intensive uses on privately-owned lands on the periphery of the District and allow less intensive uses on publicly- owned, more primitive areas. These less intensive uses are uses, which require little or no development or construction and will have minimal impact on the environment.

**5.06.02** For a lot crossing the Open District boundary into another district, the minimum lot size shall be the same as the other district with no credit given to the special Open District area.

**5.06.03** All shoreland areas not specifically classified as Rural Residential, Residential-Shoreland, or Commercial-Shoreland shall be classified as Open District.

**5.06.04** Upland requirements:

1. Apply the drainfield requirements to all potential developments where chemicals would be applied to soil surfaces or a chance of chemical or hazardous substances would be stored or transported.

2. Establish a set of conditions for excavation on all new developments that would deal with slopes, percentage of canopy loss, percentage of hard surface, buffers and berms, channeling of run-off, erosion control, etc.

**5.06.05** Commercial Forestry requirements:

1. All harvests shall be open to city inspection.
2. Forest harvest in the City of Manhattan Beach managed by a government agency shall use the most recent edition of “Sustaining Minnesota Forest Resources” guidebook, published by the Minnesota Forest Resources Council, as a mandatory requirement for site-level forest management and harvest.
3. Forest harvest in the City of Manhattan Beach managed by any non-government entity shall apply and use the most recent edition of “Sustaining Minnesota Forest Resources” guidebook, published by the Minnesota Forest Resources Council, as a voluntary site-level forest management guideline for management and harvest.

**5.06.06** Fertilizer must be used in accordance with the provisions of Protecting Water Quality in Urban Areas, "Best Management Practices for Minnesota."

**5.07.01** INTENT – Home Occupations and Home Businesses are important to the community in allowing reasonable use of residentially zoned property while protecting the commercial and residential tax base within the City. Home Occupations are allowed without a permit as long as they meet the minimum standards below and Home Business are allowed with an Interim Use Permit within the City as long as they meet the following minimum performance standards, subject to being allowed in the zones use chart.

**5.07.02 Home Occupation Performance Standards**

1. The home occupation shall be conducted entirely from the principal structure on the property and/or in an attached garage or detached accessory structure.

2. The home occupation shall not require any external alteration to the principal structure and/or an attached or detached accessory structure that would not otherwise be customary for the residential nature of the property.
3. No more than two persons not residing on the premises shall be allowed as employees of the home occupation at the dwelling.
4. There may only be one sign on the parcel advertising the business which shall not be illuminated, and shall not measure greater than 4 square feet in area. The sign shall be attached to the principal or accessory structure.
5. There shall be no exterior display of equipment, materials or goods associated with the home occupation.
6. Vehicles associated with the home occupation with advertising on them shall be screened from public view, and which shall not be parked within public right-of-way.
7. The city shall also consider the amount of liquid wastes to be generated and the adequacy of the sewage treatment system, and may require the inspection of the existing system, when deemed appropriate.

#### **5.07.031 Home Business Performance Standards.**

1. There shall be a primary residence on the property that is occupied by the business owner. The Home Business may be conducted outside as well as within the buildings at the residence.
2. There may only be one sign on the parcel advertising the business which shall not be illuminated, and shall not measure greater than 4 square feet in area. The sign shall be attached to the principal or accessory structure.
3. Persons other than those that occupy the dwelling may be regularly employed, but not to exceed three (3) employees on the site of the Home Business.

4. The outdoor storage of those items associated with the home business shall be screened from view, subject to section 9.03 of this ordinance, from public roads, abutting residences, property lines, public surface water and public recreational facilities. The outdoor storage location of the items associated with the home business shall be set back at least 30 feet from property line.

5. Vehicles associated with the Home Business with advertising on them shall be screened from public view, and shall not be parked within public right-of-way.

6. All activities will be controlled to prevent nuisance noise, vibration, smoke, dust, fumes, or litter, subject to 9.10 and 9.11 through 9.12 of this ordinance.

7. The city shall also consider the amount of liquid wastes to be generated and the adequacy of the sewage treatment system, and may require the inspection of the existing system, when deemed appropriate.

8. The City Council may impose conditions on home businesses such as, but not limited to, hours of operation, parking provisions, and equipment storage.

**5.07.04** Merely meeting and complying with these standards does not obligate the City Council to issue an Interim Use Permit; however, the City Council shall not issue any Interim Use Permit unless applicants do meet and comply with these standards and any conditions that the City Council imposes under subpart 8 of this Ordinance. If any applied-for use creates a risk to public health, safety, or welfare, or if the use would be inconsistent with the City's Comprehensive Plan, then the City Council shall not issue any Interim Use Permit, and the City shall decline to issue any Interim Use Permit if the applied-for use does not comply with these Home Business Standards.

#### **5.08 Earth Materials - Extractive Use Standards.**

**5.08.01** POLICY: The use of property in certain Zoning Districts, for a use or structure customarily incidental to the construction of roads, streets, airports, and similar projects may be allowed. The Planning Commission or such body as the City Council shall designate shall determine the duration of the Conditional Structure and Use Permit, and shall attach those conditions that will safeguard

the public health, safety; and general welfare. Upon issuance of the permit, the use shall be subject to, but not limited to Sec 5.08.04

PURPOSE: The purpose of this Ordinance is to ensure that extracting earth materials will proceed in an environmentally sound manner and that the area will be left in a safe, nonpolluting condition that has some future land value.

**5.08.02** Temporary Gravel Pits Shall be allowed only in those pits that have been in continuous use. Should the gravel pit use have ceased for a period of twelve (12) months a Conditional Use Permit shall be obtained to re-establish the pit.

1. Operator owner may be required to submit a history of the pit along with proof of continuous operation. Copies of lease agreements may be required.
2. Temporary Permits shall not exceed thirty (30) days.
3. A ninety (90) day temporary permit may be granted through a Conditional Use Permit.
4. A two week extension may be granted should the contractor/operator determine the project cannot be completed. Upon expiration of the two week extension the operation shall cease.
5. Gravel Pit Standards Sec 5.08.04 shall be adhered to.
6. Those borrow pits in operation shall have 6 months from the date of adoption of the Ordinance to file a restoration plan, submit the required bond and obtain a permit for continued operation.
7. Said Permit shall be renewable every two years, after inspection for compliance, providing bonding is current.

**5.08.03 Application for new Borrow Pit.**

All new borrow/gravel pit applications shall contain:

1. An index map using the USGS Map showing all features within one (1) mile of the pit. Features shall include all residences, wetlands, lakes, rivers, streams, roads, existing borrow pits, location of any other structure, utility lines and other features.
2. A written description of the pit and operation including:
  - a. Volume of materials to be excavated.
  - b. Length of time the pit is to be in operation.
  - c. Amount of truck activity at highest and average levels and dust control measures.
  - d. Buffer area.
  - e. Depth to ground water table.
  - f. Proposed hours of operation.
  - g. Existing vegetation, additional buffer type and area (if needed) to screen pit from adjacent residences
  - h. Proposed haul road location, routes trucks will take to and from the site, established property lines, and the type of barriers proposed to be established.
  - i. Noise level at property line and crusher locations should they be included in the overall plan for pit.
  - j. Drainage from site, location and adequacy of top soils set aside for reclamation, reclamation plan and future plans for pit.
3. A detailed drawing at a scale of 1 inch per 100 feet, unless the pit property covers 40 acres or more, then 200 feet per inch. The drawing shall show the following:
  - a. Contour intervals of no more than 10 feet.
  - b. Location of pit operation.

- c. Horizontal dimensions of pit site.
- d. All setbacks from roads and adjacent property lines.
- e. Location, size and use of all structures on the parcel.
- f. Location of all adjacent structures and their use.
- g. Area of excavation.
- h. Extent of vegetation in Buffer area.
- i. Location of utilities.
- j. Location of all interior roads, barricades, right of ways and easements.
- k. Location of all lakes, rivers, streams and wetlands on the property.
- l. Timing of reclamation effort, ongoing reclamation plan.
- m. Ground water study performed by a hydrologist.
- n. Notation that all Sec 5.08.04 Standards for operations and reclamation shall be adhered to.

#### **5.08.04 Standards.**

1. Reclamation of property to an acceptable and safe condition:
  - a. Where natural vegetation exists, a buffer strip (a minimum of fifty (50) feet in width) shall remain along the border of the property lines and road right-of-ways. Said Buffer area may contain a haul road, if for safety purposes the pit access needs to be within the buffer area. The haul road may be placed in buffer area if necessary to avoid wetlands. Haul roads must move away from property lines as soon as feasible unless permission has been received from the adjacent property owner.
  - b. If authorized in an approved reclamation plan the buffer area may be used for storage of topsoil for final sloping. All topsoil storage areas must be seeded and mulched to prevent erosion.

- c. A buffer strip shall also remain along all public roads and highways. The buffer strip shall begin at edge of right of way.
  - d. Property lines shall be established either by a Registered Survey or Written Agreement as to property lines with adjacent property owner and pit operator/owner. A copy shall be on file in the Zoning Office.
  - e. Where vegetation is lacking, planting of evergreen seedlings and acceptable grasses or legumes shall be done to establish a screen.
  - f. Pit slopes shall be left in a safe and non-hazardous condition.
2. An ongoing reclamation plan shall be submitted and adhered to in order that the pit be kept in a safe, nonhazardous condition, as follows:
- a. Any non-working face of pit shall be maintained at slope not exceeding 2:1. except at cessation of operation slope shall not exceed 2.5: 1. The working face shall be permitted a greater slope than 2:1 provided that by December 1<sup>st</sup> of each year banks that are higher than 15 feet shall be rounded for safety purposes, or shall be fenced. Pits may be exempted from this standard providing the operator demonstrates to the Zoning Administrator that these safety measures are not needed and that other measures are more appropriate.
  - b. Erosion and sediment control measures shall conform to the Standards and Specifications of the Soil Conservation Service "Field Office Technical Guide" or that of the Minnesota Dept of Transportation.
  - c. All trees, brush and stumps and any other debris removed for the sole purpose of operation of the pit shall be disposed of in a manner acceptable to the fire warden and local solid waste authority. In no case shall vegetation from over a ten (10) acre area be kept on the property unless it is burned or buried.
  - d. All slopes shall be stabilized, equipment and structures removed, top soil properly placed, permanent seeding and mulching completed, banks rounded and conform to surrounding topography and any other reclamation on

approved plan completed. The Zoning administrator is to be notified upon completion and an inspection made before any bond is released.

e. Pits may be reclaimed for wetland mitigation or creation. If it is the owner or operator's intent to reclaim in this manner it must be approved by the Zoning Administrator as part of the reclamation plan.

f. No more than five (5) acres of land on the excavation site shall be opened at any time.

3. A performance bond of \$2,500 per acre, with a minimum of \$2,500, or other amount designated by the Planning Commission shall be posted with the Zoning Administrator to assure satisfactory pit reclamation. The actual dollar amount shall be established during the hearing process with the Planning Commission. A photocopy of the bond, or any bond required by the State, shall be provided by the operator to the Planning Office.

4. Evidence of possession of valid State and Federal permits as required shall be shown. The contractor shall present operational permits as required by the Minnesota Pollution Control Agency when applying for a permit.

5. Noise, Water and Air Pollution. The contractor or operator shall conform to the city standards and the requirements of the Minnesota Pollution Control Agency for operation of the gravel pit, and:

a. Dust control measures shall be utilized on non-paved routes in accordance with the local road authority.

b. Dust control measures shall take place in the pit if dust leaves the pit and affects adjacent residential properties.

6. Water Setbacks – No new gravel pit source shall be established within Shorelands as defined by Minnesota Rules Parts 6120.2500 – 6120.3900.

7. Excavation may not be below the water table without appropriate State Permits being on file and provided there is no adverse impact on surface water or nearby wells.

8. Residential Setbacks - No plant shall operate within 1,000 feet of any adjacent occupied residence unless the operator obtains written permission from the residence owner.
9. The contractor or operator shall provide traffic safety devices in the proximity of the operation, including:
  - a. All entrances and exits shall be constructed so as not to create a safety hazard.
  - b. "Trucks Hauling" Signs shall be placed along all roadways a distance of not less than 500 ft. Signs must be covered or removed when the pit is not in operation.
  - c. A pit shall have a barrier access and such barriers shall be clearly-marked chain or similar materials. The control barrier shall deny access to the pit when pit is not in operation.
  - d. Any haul road shall be constructed in such a manner that minimizes the view into the pit from the public road or adjacent residences unless improved visibility is required for safety purposes.
  - e. All road and weight limits as well as other road restrictions placed in effect by the local road authority shall be observed.
10. The operator must strictly adhere to all blasting and dynamiting regulations.
11. Hours of operation shall be within the period of 7:00 A.M. to 10:00 P.M., Monday through Saturday. No borrow pit operation shall take place on Sundays or Legal Holidays. Equipment maintenance may take place during those hours when the pit is not in operation providing such maintenance is in an enclosed structure.
  - a. Pit hours may be extended when an emergency exists. An emergency is a short term, unplanned and unexpected event where an immediate need for borrow material exists in order to address a significant threat to public safety.

b. Pit hours may be otherwise extended providing the operator of the pit obtains written permission from all property owners within one half mile of the borrow operation, with a copy provided to the Zoning Administrator.

12. A borrow pit shall be used only for those operations directly related to a borrow pit. Any other use shall require a Conditional Use Permit.

13. It shall be the responsibility of the operator/owner to control activity within the pit as well as to clean up any debris or other materials left on site. No waste classified as hazardous by the Minnesota Pollution Control Agency shall be disposed of at the site.

14. No permit shall be issued to an operator who has received a Temporary Permit and the Planning and Zoning Office has determined that such pit was not adequately reclaimed.

15. Crushing operations shall be limited to no more than eighteen (18) days in one calendar year. Hauling may continue until completion of the permit. Operations beyond 18 days require a Conditional Use Permit.

16. All Utility easements shall be adhered to and any encroachment into said utility right of way shall only be permitted with written approval of the utility.

17. Any operating pit that cannot meet these Standards must be reviewed by the Planning Commission for review of applicant's basis for non compliance. The Planning Commission must agree the Standards cannot be met or require other mitigation measures relating to the pit.

18. Where several operators may work in the same pit at different times, the land owner shall see that mining activities take place according to the mining plan submitted. The landowner shall be considered as a joint permittee with the operator.

19. All gravel mining permits shall be renewable every two years after inspection for compliance and providing bonding is current.

### **5.09 Forest Management Use Standards.**

The harvesting of timber and associated reforestation or conversion of forested use to a non-forested use must be conducted consistent with the following standards:

1. The harvesting of timber and associated reforestation must be conducted in a manner consistent with the provisions of the “Sustaining Minnesota Forest Resources “1999””
2. If allowed, forest land conversion to another use requires the issuance of a conditional use permit and adherence to the following standards:
  - a. Shoreland and bluff impact zones must follow this ordinance regarding any vegetation removal.
  - b. An erosion and sediment control plan must be developed and be approved by the local soil and water conservation district before issuance of a conditional use permit for the conversion.

### **5.10 Mining of Metallic Minerals and Peat Standards.**

Mining of metallic minerals and peat, as defined in Minnesota Statutes, Sections 93.44 to 93.51, must satisfy the provisions of Minnesota Statutes, Sections 93.44 to 93.51.

### **5.11 Nonconformities .**

All legally established nonconformities as of the date of this ordinance may continue, but they will be managed according to applicable state statutes, this ordinance and other regulations of the City for the subjects of alterations and

additions, repair after damage, discontinuance of use, and intensification of use; except that the following standards will also apply in all areas of the City:

**5.11.01 Construction on nonconforming lots of record.**

1. A lot, which is non-conforming for building purposes under this Ordinance and for which a deed, recorded contract for deed, other legal conveyance, or plat has been recorded prior to the effective date of this Ordinance, shall be considered for a zoning permit without requiring a variance, provided it has at least 80% of the minimum lot area and lot width requirements of Section 5.01, all setbacks can be maintained and Ordinance established sanitary provisions for well and sewage disposal can be maintained. In all other cases, a variance shall be required.
2. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet 80% of the minimum lot area and lot width requirements of Section 5.01, the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of Section 5.01 as much as possible.
3. If setback requirements cannot be met, except as provided in Section 8.02.01, regarding shoreland areas, a variance must be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the variance, the Planning Commission shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.

**5.11.02 Additions and expansions to nonconforming structures.**

1. All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of this ordinance. Any deviation from these requirements must be authorized by a variance approved by the City Council.

2. Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water level of public waters or wetlands if all of the following criteria and standards are met:

- a. The structure existed on the date the structure setbacks were established;
- b. A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure;
- c. The deck encroachment toward the ordinary high water level or wetland does not exceed 15 percent of the existing setback of the structure from the ordinary high water level or does not encroach closer than 30 feet, whichever is more restrictive; and
- d. The deck is constructed primarily of wood or other approved materials and is not roofed or screened.

**5.11.03** If a **nonconforming use is discontinued** for a period of one year, further use of the structures or property shall conform to this ordinance.

**5.11.04** If a **nonconforming structure is destroyed** by any cause, to an extent exceeding fifty (50) percent of its fair market value as indicated by the records of the County Assessor, a future structure on the site shall be considered a new structure and shall comply with the provisions of this ordinance.

## **6.0 SUBDIVISION/PLATTING PROVISIONS**

### **6.01 Subdivision of Land**

In order to provide for the orderly, economic, and safe development of land, all subdivisions of land into two or more parcels shall require review by the Planning Commission and approval by the City Council. No permit for construction of buildings or sewage treatment systems shall be issued for lots created after the

date of this ordinance unless the lot was approved as part of a formal subdivision. All subdivisions resulting in residential parcels less than 20 acres in size or 500 feet in width and commercial parcels less than 5 acres in size or 300 feet in width and resulting in the creation of more than two parcels in any one year period counting the remnant shall be Subdivisions by Plat or Subdivisions by Condominium Plat as provided below. All plats shall comply with the requirements of **Minnesota Statutes Chapter 505**.

1. **Subdivision by Plat.** The subdivision into two or more parcels of any size according to Minnesota Statutes, Chapter 505, with documents prepared by a Registered Land Surveyor and approved by the Planning Commission and the City Council.
2. **Subdivision by Condominium Plat.** The subdivision of a building or the subdivision of real estate into two or more spaces or parcels of any size according to Minnesota Statutes, Chapter 515A, with documents prepared by a Registered Land Surveyor and approved by the Planning Commission and the City Council.
3. **Subdivision by Metes and Bounds.** Any division of real estate resulting in two or more parcels which are not platted, but divided by description prepared and signed by a Registered Land Surveyor. All subdivisions by metes and bounds resulting in residential parcels less than 20 acres or 500 feet in width and commercial parcels less than 5 acres or 300 feet in width shall be considered for approval by the Planning Commission. The Planning Commission may request other reasonable information from the subdivider in order to make a proper evaluation of the proposal. The Planning Commission may include any requirement from Section 6.0, regarding subdivision by platting, to ensure orderly development. Subdivision by metes and bounds shall be limited to the creation of two parcels in any three (3) year period, counting the remnant. The subdivider shall submit six copies of the proposal to the Zoning Administrator along with payment of the subdivision application fee. Conditions may be attached to an approval requiring appropriate improvements. The resulting land descriptions shall be recorded in the office of the county recorder.

The following exceptions are not subdivisions and do not require approval of the City Council.

- a. Resulting parcels exceeding the dimensions in Subparagraph 3 above.
- b. Parcels resulting from a Court order.
- c. Adjustment of a lot line by the relocation of a common boundary.
- d. Cemetery lots.
- e. Transfers of small parcels in case of encroachments, road right-of-ways, or utility easements.

#### **6.02 Data Required for a Preliminary Plat.**

A preliminary plat for a Subdivision by plat or Subdivision by Condominium shall be submitted to the Zoning Administrator and shall include the following information:

1. Names and addresses of the owner, subdivider, surveyor, and designer of the plat as appropriate;
2. Legal description of the land within which the proposed subdivision is located;
3. Proposed name of the subdivision, which name shall not be a duplicate of the name of any other plat previously recorded in the County;
4. A drawing or print of the proposed subdivision with the scale identified;
5. The North point identified;
6. Certification by the surveyor;
7. Date of preparation of the plat;
8. Total acreage of the land contained within the proposed subdivision and the acreage adjoining under the same ownership but not to be included within the proposed subdivision.

9. Information on existing conditions within the parcel proposed to be subdivided as well as within the adjacent lands as will enable the Planning Commission to evaluate the suitability of the land for the proposed use. This information is to be provided at the subdivider's expense and includes:

- a. Property lines of all concerned properties shown;
- b. The name of any adjoining platted lands and the boundaries shown dotted on the plat;
- c. Platted roads, easements, and existing public and private roads, each specifically identified;
- d. Buildings and any other structures located on any such lands;
- e. Topographic contours at ten-foot intervals or less from United States Geological Survey maps or more accurate sources, showing limiting site characteristics;
- f. The surface water features required in Minnesota Statutes, Section 505.02, subdivision 1, to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;
- g. Adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot-from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;
- h. Information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; and proposed methods for controlling stormwater runoff and erosion, both during and after construction activities;
- i. Location of 100-year flood plain areas and floodway districts from existing adopted maps or data;

j. A line or contour representing the ordinary high water level, the "toe" and the "top" of bluffs, and the minimum building setback distances from the top of the bluff, wetlands, and the lake or stream; and

k. Other reasonable information as may be requested by the Zoning Administrator or the Planning Commission in order to make a proper evaluation of the proposal.

l. All required information shall be provided at the subdivider's expense.

9. Proposed design features of the subdivision to be shown on the plat include:

a. The layout of proposed roads, alleys, and easements, showing widths of the right-of-way of each;

b. All proposed areas of grading and filling;

c. All public and reserved areas, together with the covenants used to govern the use of such areas;

d. Layout, numbers, and dimensions of lots and blocks;

e. Survey monuments shall be set at all angle and curve points on the outside boundary lines of the plat and also at all block corners and at all intermediate points on the block lines indicating changes of direction in the lines. The plat shall indicate that all monuments have been set.

10. In addition to Items (a) through (j) above, a condominium plat shall include all information required by Minnesota Statutes 515B.2-110.

11. Preliminary and final plats require review and signature by a registered engineer.

### **6.03 Design Standards.**

For design standards and processing of cluster subdivisions refer to Section 7.0 in this Ordinance, Planned Unit Development (PUD).

### **6.03.01 Land Suitability.**

Each lot created through subdivision, including planned unit developments authorized under Section 7.0 of this ordinance, must be properly zoned and be suitable in its natural state for the proposed use with minimal alteration.

Suitability analysis by the City shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of residents of the proposed subdivision or of the City.

Sufficient information must be submitted by the applicant to enable the city to make a determination of land suitability.

### **6.03.02 Consistency with Other Controls.**

Subdivisions must conform to all official controls of the City. A subdivision will not be approved where a later variance from one or more provisions in this ordinance would be needed to use the lots for their intended purpose. A subdivision will not be approved unless domestic water supply is available and a sewage treatment system consistent with this ordinance can be provided for every lot. Each lot shall meet the minimum lot size and dimensional requirements of Section 5.01 including at least a minimum contiguous lawn area that is free of limiting factors sufficient for the construction of two standard soil treatment systems. Lots that would require the use of holding tanks shall not be approved.

### **6.03.03 Preservation of Rural Character.**

While reviewing a subdivision plat proposal the City should refer to the City Comprehensive Plan and include the following items in their Findings of Fact stating whether the proposal meets the following objectives:

1. Minimize Visual Impact. For example, locate residences near the edge of the woods, not in open fields; establish greater setbacks or have more tree preservation along shorelines; and do not place structures on ridge lines.

2. Retain Rural Features. For example, preserve farm roads and preserve tree lines.
3. Minimize Land Disturbance. Use existing contours where possible and limit dirt moving for roads or structures. Stormwater areas should use natural shapes and features
4. Retain Woodland Features: maintain trees on ridge lines; discourage large lawn areas; and building envelopes should not include any steep slopes or bluffs .

#### **6.03.04 Design of Blocks.**

1. In residential areas, other than along waterfronts or where topographic conditions necessitate otherwise for prudent land use, blocks shall not be less than 600 feet nor more than 1320 feet in length, measured along the greatest dimension of the enclosed block area. To conform to an adjoining plat, a portion thereof adjoining a partial block in the subdivision may be considered one block. Design features may require consideration of future plats of other adjoining property in relation to the proposed subdivision.
2. Blocks for commercial or industrial areas may vary from the design requirements in this Section upon evaluation and approval by the Planning Commission.
3. Blocks shall be wide enough to allow two tiers of lots with the minimum depth as required herein or as required by any applicable zoning regulation, except adjoining public waters, or adjoining a road that access is not provided to, or adjoining other topographic conditions of a peculiar nature, where only one tier of lots is necessary.

#### **6.03.06 Design of Lots.**

No lot shall be designed to have less area, width, or depth than is required in this ordinance. If soil percolation tests indicate that larger lots should be required, the Planning Commission shall set such increased sizes for the proposed subdivision. Other design features shall be as follows:

1. Side lots lines shall be substantially at right angles to straight road lines or radial to curved road lines or radial to shorelines unless topographic conditions necessitate otherwise.
2. Lots designed for commercial or industrial purposes shall contain sufficient area for on-site parking and loading facilities.
3. Except where roads or alleys are provided for utility easements, utility easements shall be provided along the side lines and/or back lines of lots, with such easements to be not less than 20 feet in width.

#### **6.04 Other Design Features and Requirements.**

**6.04.01** A reasonable portion of any proposed subdivision may be required as a dedication to the public or reserved for public use as roads, utilities, drainage, ponds, parks, playgrounds, trails, open space, and similar utilities and improvements.

**6.04.02** Surface water drainage shall be provided by drainage courses adequate to drain surface water from the subdivision so as to protect roadway surfaces and the property of others. When a land or easement dedication is a condition of subdivision approval, the approval must provide easements over natural drainage or ponding areas for management of stormwater and significant wetlands.

**6.04.03** Controlled Access or Recreational Lots. Lots intended as controlled accesses or easements across riparian lots to public waters or for recreational use area for use by nonriparian lots shall not be allowed.

**6.04.04** Where a community water supply and/or sewage treatment system is to be provided, plans and covenants shall be included with the preliminary plat. All such systems must conform to the provisions of this ordinance.

#### **6.05 Roads and Other Improvements.**

Before the City Council approves any final plat, the subdivider shall construct all roads dedicated to the public in accordance with City road specifications on file in

the office of the City Clerk. All fees, conditions, and dedications shall be paid and/or completed before the final plat is approved. Before recommending approval, The Planning Commission may require certain other improvements to be provided by the subdivider. These improvements may include, but are not limited to, roads, drainage, community water supply and sewage treatment systems, and lot improvement work. The subdivider shall also provide financial assurance of the construction costs of uncompleted work on common facilities and any other improvements required by the City. Any interest accrued on funds held by the City for this purpose shall belong to the City.

All roads, which are to be accepted and recorded as part of the City's transportation system must meet the following requirements.

#### **6.05.01 Residential Public Streets.**

1. The arrangement, character, extent, width and location shall conform to the comprehensive plan, the approved standard street sections and all applicable ordinances of the City and Crow Wing County, and shall be considered in their relation to existing and planned streets, to reasonable circulation of traffic, to topographical conditions, to runoff of stormwater, to public convenience and safety and in their appropriate relation to the proposed uses of the area to be served.
2. The minimum width for each road shall be 66 feet of right-of-way. However, additional right-of-way widths may be required to promote public safety and convenience when conditions require it, such as at corners or intersections for safe sight-distance, for excessive cut or fill sections of a roadway, or in areas in intensive use. Where a subdivision abuts or contains an existing road of inadequate width to conform to these standards, provision for additional width shall be made by the subdivider to meet these standards for a road passing through the proposed subdivision. No road shall be platted with a right-of-way width of less than 66 feet.
3. Access shall be given to all lots in the subdivision and to adjacent unsubdivided territory unless the topography clearly indicates that connection with adjacent

territory is not feasible or that it has alternative adequate access and additional access is not necessary for proper long-term planning. Access shall be provided to the limits of the subdivision. Reserve strips and land-locked areas shall not be created.

4. Street jogs shall have a centerline off-set of two-hundred (200) feet or more.

5. Streets shall have a bituminous surface with a minimum width of 28 feet (two 12-foot travel lanes and two 2-foot shoulders) and shall meet a minimum seven (7) ton design requirement unless otherwise specified by the City.

6. Access to County highways shall be approved by the respective authorities, shall be kept to a minimum through the use of frontage roads, and shall be located in accordance with approved intersection design standards.

7. A tangent of at least fifty (50) feet long shall be introduced between reverse curves on streets.

8. Where connecting street lines deflect from each other at any one point, the design requirements of the Minnesota Department of Transportation Road Design Manual, latest revision, shall apply in order to meet 30 mph design standards.

9. Property lines at street intersections shall be rounded with a radius of at least 20 feet or with comparable cutoffs or chords in place of rounded corners.

10. Street grades, wherever feasible, shall not exceed seven (7.0) percent and in no case shall they be less than five-tenths (0.5) percent. Wherever feasible, grades within 30 feet of street intersections shall not exceed three (3.0) percent.

11. Different connecting street gradients shall be connected with vertical curves. Minimum length, in feet, of these curves shall conform to the requirements of the Minnesota Department of Transportation Road Design Manual, latest revision, to meet 30 mph design standards.

**6.05.02** Cul-de-sac streets shall be measured along the center line of the street from the intersection of origin to the end of the cul-de-sac right-of-way. The design standards for cul-de-sac streets are as follows:

1. Each cul-de-sac shall have a terminus of nearly circular shape unless modified by the city with a minimum right-of-way radius of sixty-six (66) feet and a minimum pavement radius of fifty (50) feet. Corners at the entrances to the turnaround portions of cul-de-sacs shall be rounded by a radius of not less than ninety (90) feet.
2. The property line at the intersection of the cul-de-sac turnaround and the straight portion of the street shall be rounded at a radius of not less than 20 feet.
3. Center islands in cul-de-sacs are prohibited.
4. Cul-de-sac streets may not be longer than 500 feet unless a majority of the city council permits a longer length based upon one or more of the following conditions:
  - a. Severe topography, where the resulting street grade is more than seven percent or where substantial grading is required such that the physical character of the property or adjacent properties is severely impacted;
  - b. Significant vegetation: the cul-de-sac would serve to preserve mature trees on the property, whereas an extension or through street would cause their destruction. Significant vegetation is defined to include but not limited to indigenous deciduous hardwood trees of 12 inches in diameter or more and indigenous coniferous trees of 15 feet high or more;
  - c. Existing development: the pattern of existing development requires that the only practical method of providing public access is a long cul-de-sac; or
  - d. Temporary cul-de-sac: the cul-de-sac is temporary and designed to be extended to provide access to an adjacent property that has not undergone development.
5. Cul-de-sac roads which are temporarily designed as such with the intent that such road may be extended at some future time shall have the turn-around right-of-way placed adjacent to the subdivision property line, and the right-of-way of the same width as the road concerned shall be carried to the property line in such a way as to permit future extension of the road into the adjoining property.

Provision should be made so that at such time as the road is extended beyond the concerned subdivision, the coverage created by the turnaround and outside the normal boundaries of the extended road shall revert in ownership to the property owners fronting on the temporary cul-de-sac turnaround.

6. Dead-end roads shall be prohibited except as stubs to permit future road extension into adjoining parcels, or when designated as cul-de-sac roads.

**6.05.03** Minor streets shall be so aligned that their use by through traffic will be discouraged.

**6.05.04** Half-streets shall be prohibited, except where essential to the reasonable development of the subdivision in conformity to other requirements of these regulations and where the planning commission finds that it will be practicable to require the dedication of the other half when the adjoining property is subdivided.

**6.05.05** In a case where a proposed plat is adjacent to a limited access highway, other major highway or major thoroughfare, the planning commission may require the developer to provide local service drives along the right-of-way of such facilities or they may require that lots should back on the highway or street in question, in which case vehicular and pedestrian access between the lots and highway, or thoroughfare, shall be prohibited.

**6.05.06** Street intersections shall be ninety (90) degrees with a fifty (50) foot minimum tangent from the radius return. Intersections of more than four corners shall be prohibited. Roadways of street intersections shall be rounded by a radius of not less than fifteen (15) feet.

**6.05.07** All street signs shall be in accordance with the Minnesota Manual on Uniform Traffic Control Devices.

**6.05.08** Street names shall conform to the pattern of the City, continue an existing name on the same alignment and generally promote order and direction in the community.

**6.05.09** The entire right-of-way may be cleared for safety purposes, however at least minimum clearing must be done to facilitate water run-off and snow storage. Stumps, rocks and all other debris shall be hauled away. Under no circumstances shall it be acceptable to bury stumps, rocks or other debris under the roadbed or right-of-way.

**6.05.10** The roadbed shall be constructed entirely within the platted right-of-way. In extreme conditions, the City may specifically allow, by City Council approval, a maximum of a 20 foot deviation from the centerline as an exception to this specification. If the City allows the exception, a deviation from the centerline of more than five feet requires a foot for foot successive right-of-way acquisition on the deviated side to accommodate nominal ditch requirements and to avoid trespassing on private property.

**6.05.11** All centerline culverts shall be a minimum diameter of eighteen (18) inches.

**6.05.12** The upper two (2) feet of the sub-grade shall be a granular material with suitable materials below. Unsuitable materials such as organic materials (peat, muck) shall be excavated and disposed of a minimum of four (4) feet outside the edge of the shoulder. The top one (1) foot of the sub-grade shall be free of rocks greater than three (3) inches in diameter and sticks greater than one (1) inch in diameter and six (6) inches in length.

**6.05.13** Embankments shall be constructed in layers not to exceed six (6) inches in plastic soils or twelve (12) inches in non-plastic soils, with mechanical compaction applied to each layer until no evidence of appreciable deflection exists under a motor grader tire while driven over the surface (Ordinary Compaction Method). The subdivider may be required to provide a third-party density test, as directed by the City.

**6.05.14** All disturbed areas shall have four (4) inches of topsoil placed over the area and turf established as approved by the City.

**6.05.15** All improvement projects shall incorporate Best Management Practices (BMPs) to provide perimeter sediment control and minimize the risk of

erosion from exposed soils by using BMPs and establishing turf as soon as possible. All exposed soils shall be stabilized within 14 days after construction activity for that area has temporarily or permanently ceased. Exposed soils within 200 lineal feet of a surface water or connection to a surface water shall be stabilized within 24 hours.

**6.05.16** All projects disturbing more than one (1) acre of surface area are required to obtain a Minnesota Pollution Control Agency (MPCA) National Pollutant Discharge Elimination System (NPDES) permit. The subdivider shall provide a copy of the Storm Water Pollution Prevention Plan (SWPPP) to the City prior to beginning grading activities.

**6.05.17** All storm sewer facilities, streets, concrete curb, gutters, sidewalks, sod, drainage swales and other public utilities (improvements) shall be made and constructed on or within the subdivided lands or where otherwise required and dedicated to the City and shall be designed in compliance with City standards by a registered professional engineer. Plans and specifications shall be submitted to the City Engineer for approval prior to construction. All of the improvements shall be completed by the subdivider and acceptable to the City Engineer for approval prior to construction. All of the improvements shall be completed by the subdivider and acceptable to the City Engineer and shall be free and clear of any lien, claim, charge or encumbrance, including any for work, labor or services rendered in connection therewith or material or equipment supplied therefor. Subdivider shall warrant and guarantee the improvements against any defect in materials or workmanship for a period of one (1) year following completion and acceptance thereof. In the event of the existence of any defect in materials or workmanship within said one (1) year period, the warranty and guarantee shall be for a period of two (2) years following said completion and acceptance. Defects in material or workmanship shall be determined by the City Engineer. Acceptance of improvements by the City Engineer may be subject to such reasonable conditions as he/she may impose at the time of acceptance. Subdivider through his engineer shall provide competent daily inspection during the construction of all improvements. As-built drawings of streets and storm water facilities on reproducible mylar shall be delivered to the City Engineer within sixty (60) days of

completion of the improvements together with a written certification from a registered engineer that all improvements have been completed, inspected and tested in accordance with City-approved plans and specifications.

**6.05.18** Subsequent to approval by the Council and before execution by the City of the final plat or other appropriate forms of City approval, subdivider shall:

1. Execute and deliver to the City an agreement whereby subdivider shall undertake performance of the obligations imposed by this Chapter and containing such other terms and provisions and in such form as shall be acceptable to City.
2. Submit a letter of credit or cash deposit (“security”) which guarantees completion of all improvements within the times specified by the City Engineer and in accordance with the terms of this section of the Ordinance. The amount of the security shall be 125% of the estimated construction cost of said improvement subject to reduction thereof to an amount equal to 25% of the cost of the improvements after acceptance thereof by the City Engineer and receipt of as-built drawings. The security shall be in such form and contain such other provisions and terms as may be required by the City Engineer. The subdivider’s registered engineer shall make and submit for approval to the City Engineer a written estimate of the costs of the improvements.
3. The security will be returned to the subdivider upon acceptance of the improvements by City and after the warranty period.

**6.05.19** The following provisions apply to private streets in the city:

1. Any private street adjoining a public street shall have a top width of twenty-six (26) feet when within the public right-of-way of said street. Private streets shall not have grades exceeding three (3) percent within 30 feet of the intersection, wherever feasible.
2. Any private streets requested to be accepted as a public street must provide documentation to the City Engineer that the street meets all criteria for a public street prior to it being adopted as a city public street, and subject to approval by the City Council.

## **6.06 Variances.**

Application for a variance from the provisions of this ordinance shall be submitted by the subdivider at the time the preliminary plat is submitted. In recommending variances the Planning Commission shall take into account location of the subdivision, proposed land use, existing land use in the vicinity, probable effect on the safety, health, and general welfare of the community, and other applicable laws or regulations, in order to preserve the general intent of this ordinance while allowing the subdivider to develop the property in a reasonable manner. There are two types of variances; use variances and area variances:

A use variance is permission to use or develop land other than that prescribed by this zoning ordinance, including restrictions placed on non-conformities. No variance may be granted that would allow any new use that is prohibited in the zoning district in which the subject property is located.

An area variance is an exception from official controls concerning lot restrictions , such as area, height, setback, density, and parking requirements. Area variances do not change the character of the zoned district.

Undue hardship on the land, as described in Section 3.07.01, shall be the basis for granting a variance. The City Council may impose conditions in the granting of variances to insure compliance and to protect adjacent properties.

## **6.07 Procedure.**

1. The subdivider shall submit to the Zoning Administrator six copies of the preliminary plat, covenants, and supporting documents, along with payment of the Preliminary Plat fee, as delineated in the application form provided in the Appendix. Developer shall provide the escrow required by Section 3.13.
2. The Zoning Administrator shall submit the plat to the Planning Commission and shall publish notice of the time and place of the public hearing in the official newspaper at least ten days before the hearing. Notice shall also be sent to all property owners within 600 feet of the proposed subdivision.

3. A subdivision shall be preliminarily approved or disapproved within 120 days following submission of an application completed in compliance with this ordinance, unless an extension of the review period has been agreed to by the City and the applicant. The Planning Commission may, after having notified the subdivider, employ qualified persons to check and verify the surveys and plat and to determine the suitability of the plat from the standpoint of City planning. The subdivider shall reimburse the City for the cost of such services. The Planning Commission may require the applicant to fulfill certain conditions before the subdivision may be given final plat approval.

4. Following preliminary approval by the Planning Commission, the applicant may request final approval, and upon such request, the Planning Commission will review to make sure all conditions are met by applicant. Upon a finding by the Planning Commission that all conditions have been met, the plat shall be submitted to the City Council for final approval. The City shall certify final approval within 60 days if the applicant has complied with all conditions and requirements of applicable regulations and the preliminary approval. The subdivider shall provide six (6) copies of the final plat along with a certification from the County Treasurer that the current years taxes have been paid.

5. Following final approval, when duly certified and signed, the plat must be recorded in the office of the county recorder.

6. Approved Preliminary Plat is valid for one (1) year following approved date by the Planning Commission, unless the applicant and the City Council agree otherwise.

[Sections 6.08 through 6.49 are reserved for future use.]

### **6.50 Storm Water Management/ Erosion Control.**

Findings and purpose: The city council finds it is in the best interest of the City of Manhattan Beach to protect, preserve, and enhance the city's natural resources, stormwater and right-of-way systems and public and private land and to encourage a resourceful and prudent approach to the development and alteration of land. In the interest of achieving these objectives, the City of

Manhattan Beach has established the stormwater management and erosion and control regulations as provided herein.

**6.50.01 Definitions.**

For purposes of this section, the following terms shall be defined as stated:

1. “Applicant” means any person or entity that is required to submit and implement a city-approved land disturbance and erosion control plan under this section.
2. “Best Management Practices (BMPs)” shall have the meaning as set forth in the post construction regulations set forth in this Code.
3. “Critical root zone of a tree” means the area of tree roots within the drip line of the tree.
4. “Drip line of a tree” means a line on the ground drawn vertically from the outer edge of the tree’s branches and leaves; the furthest extent to which rainwater will drip from the trunk of the tree.
5. “High water level (HWL)” means the calculated peak pond or storm water storage elevation for a one percent probability rainfall storm or snowmelt event as defined by the city stormwater management plan.
6. “Land” or “parcel of land” or “subject property” means an entire lot or parcel as defined by the zoning ordinance, on or within the boundaries of which a project subject to the requirements of this section is occurring, has occurred or is to occur.
7. “Land disturbing activity” means any excavating, grading, clearing, filling, or other earth change which may result in the disturbance of more than 500 square feet of earth. For purposes of this section, excavation or grading for agricultural purposes on agriculturally zoned property shall not constitute land disturbing activity.

8. "Land Disturbance and Erosion Control Plan (LDECP)" means and consists of required general information, an erosion and sedimentation control component, and a drainage and grading component.
9. "New building construction" means the construction of any principal building or structure upon a parcel of land or platted lot.
10. "New development" means the process whereby improvement to an entire site occurs in one continuous process or in more than one distinct phase, including but not limited to the following activities: initial site grading; installation of utilities; construction of public streets; construction or grading of drainage ways; other grading or filling of any area within the site; grading of building pad areas; utility hookups; construction of buildings, parking lots, driveways, storage areas, recreation areas, or private streets; and any other construction or land disturbing activity within the subject property or site.
11. "Structural control elevation (SCE)" means the elevation of the outlet structure, pump controls or surface overflow for a water body at which water will initially discharge from the water body. This elevation would correspond to the elevation of the water surface at the time of initial discharge.
12. "Ordinary high water level (OHWL)" has the meaning as defined under the Minnesota Water Laws as set forth in the Minnesota Statutes.
13. "Project manager" means the applicant or the applicant's duly authorized representative who has been conferred the duties by the applicant to implement complete and manage the project to which the approved land disturbance and erosion control plan applies under this section.
14. "Tree canopy" means the horizontal extension of a tree's branches in all directions from its trunk.
15. "Water body (or bodies)" means any natural or man-made wetland, drainage or stormwater area, stream, or lake.

16. “Wetland boundary” means the line delineating the outer edge of a wetland, which is established according to the United States Army Corp of Engineers Wetland Delineation Manual (January, 1987).

**6.50.02 Land Disturbance Permit and erosion control plan requirements.**

1. Permit required. A land disturbance permit (LDP) shall be required before any land disturbing activity occurs in connection with any of the following:

- a. New development in any zoning district;
- b. New building construction in any zoning district;
- c. Any project which will result in the expansion of any existing building or impervious surface; or
- d. Any land disturbing activity or project, including excavations that directly or indirectly affects natural resources, such as slopes, trees or water bodies.

2. Permit application. The application for the permit shall be made in writing to the city on such form as the city may designate and shall include such information as the city shall require.

3. When a land disturbance and erosion control plan (LDECP) is required. A LDECP shall accompany all LDP permit applications that meet the following requirements for land disturbing activity:

- a. Greater than 500 square feet within a shoreland zoning district;
- b. More than one (1) acre outside the shoreland zoning districts;
- c. Greater than 500 square feet in any zoning district that could potentially affect a natural resource as determined by the zoning administrator using the following criteria:
  - i. Drainage from the project site flows to a waterbody located within 100 feet; or

ii. The direction of project site drainage is unclear and the project is located within 50 feet of a waterbody; or

iii. Project site drainage is deemed by the city likely to cause erosion, silting, or other damage to neighboring property.

4. Review and approval of permit application.

a. Plans for projects of five or more acres, and all subdivisions, shall be submitted for approval by the city engineer. Projects on platted lots of record of less than five acres shall be approved administratively by city staff, unless city staff presents it to the city engineer for review and approval.

b. Projects disturbing more than one acre shall submit a Storm Water Pollution Prevention Plan to the city in accordance with the Minnesota Pollution Control Agency National Pollutant Discharge Elimination permit.

5. Permit and plan approval An application for a LDP shall be submitted to the city, along with the LDECP, if required, and the required fees, prior to the city's consideration of the application. The following requirements shall be met:

a. The land disturbing activity for which the permit is sought shall be in connection with new development; building or structure construction; or landscaping on an improved individual single-family lot, for which a site plan shall be submitted and approved by the city.

b. The plan shall be consistent with any approved subdivision grading plan.

c. The plan shall be consistent with the city's overall stormwater management plan and water quality management plan.

d. The plan shall not adversely impact neighboring properties.

e. The plan shall minimize any irreparable adverse impacts to natural resources upon the subject property.

f. The plan shall meet the requirements of this section.

g. The plan shall provide for and include any, all, or a combination of the following temporary safety requirements the city determines to be necessary for the protection of public safety, health and welfare:

- i. Properly fence any slope of 3:1 or greater that is adjacent to a project property line and which is deemed hazardous or dangerous by the city;
- ii. Slope the banks, fill, level off any depression or mound or otherwise place in such condition at any time so as not to be dangerous because of sliding or caving banks; and so as to minimize or stop erosion or dust during or after the grading operation; and
- iii. Properly drain, fill, or level off any graded or ungraded area so as to make the same safe and healthful, unless otherwise approved by the city.

6. Approval. Upon finding that the above requirements have been met and after city approval of the land disturbance and erosion control plan, if applicable, the city will issue a permit in accordance with the provisions of this section.

7. Expiration of permit and plan. Any land disturbance permit issued pursuant to the requirements of this section shall expire two years from the date of issuance if significant progress of the work covered by the permit is not satisfactorily accomplished as determined by the city, unless an extension of the permit is requested by the applicant prior to expiration and approved by the city.

8. Revocation of permit. Failure to comply with the approved terms and conditions of a land disturbance and erosion control plan shall be grounds for revocation of the land disturbance permit, or other permit or approval issued in lieu thereof, by the city council, following a public hearing. Written notification of the public hearing shall be mailed at least ten days prior to said hearing to the current holder of the permit. Such notice should outline the violation(s) considered by the city to be grounds for revocation and inform the current holder of the permit of the opportunity to be heard at such public hearing.

9. Other permit or approval in lieu of LDP. When a building or grading permit is issued in connection with project, or a new development project is approved by

the city as required in this Code, the building or grading permit or other new development approval by the city may be in lieu of the land disturbance permit required hereunder, provided the applicant shall comply with all other regulations herein, including but not limited to submission and approval of and compliance with a land disturbance and erosion control plan.

**6.50.03 Land Disturbance and Erosion Control Plan (LDECP) requirements.**

1. All LDECPs shall include the following general information:

- a. Delineation of the subject property and the location of existing and proposed buildings, structures and impervious surfaces on the subject property.
- b. Description of the construction or land disturbing activity to be performed on subject property and proposed project schedule.
- c. Identification of all water bodies located on and within 50 feet of the subject property's boundaries, including the SCE, HWL, and OHWL elevations and if a water body is intended to be used for water quality treatment, identify the dead storage volume and area of the SCE.
- d. Identification of all wetlands.
- e. Topographical data, including existing (dashed) and proposed (solid) contours at vertical intervals of not more than two feet, except that contour lines shall be no more than 100 feet apart.
- f. Temporary benchmarks shall be established within the boundaries of the project area. Descriptions, reference ties and elevations of the benchmarks shall be furnished to the city. All elevations, topography and vertical control data shall be tied to sea level datum, 1929 general adjustments; and
- g. The location and size of all existing sanitary sewer, water or storm sewer, and services on or adjacent to the property.

2. LDECP plans shall also include erosion and sedimentation controls:

- a. Delineation of all areas to be graded or excavated, and the limits of land disturbing activities.
- b. Identification and use of the BMPs for temporary erosion and sedimentation control as recommended by the Minnesota Pollution Control Agency in its publication Protecting Water Quality in Urban Areas (2000, or as amended) including but not limited to:
  - i. Perimeter erosion control devices.
  - ii. Phased grading.
  - iii. Temporary seeding.
  - iv. Storm drain inlet protection devices.
  - v. Rock construction entrance.
  - vi. Tree drip line or critical root zone perimeter protection for trees.
  - vii. Removal of all debris, dirt and soil from impervious ground surfaces, including abutting public or private roadways and sidewalks, in connection with the subject property.
  - viii. Sediment basins and flow diversions.
  - ix. Any other erosion and sedimentation control device as deemed necessary by the city.
- c. Identification of BMPs to be utilized to control erosion and sedimentation within and from the subject property during the project activity as required herein.
- d. Identification of all permanent erosion control BMPs to be utilized and a completion schedule.
- e. Identification of the location of dirt or soil storage or stock pile areas to be utilized on the subject property.

f. Identification of all BMPs to be utilized to protect water bodies and wetland buffers.

3. Drainage and grading requirements for the LDCEP:

a. Identification of proposed contour grading on the site at vertical intervals of not more than two feet.

b. The estimated time required to complete the work and the amount of material to be moved on the site and the amount to be removed from the site.

c. A map showing the stages or limits of grading together with the existing or proposed finished elevations based on sea level readings.

d. Identification of proposed building bench elevations and direction of flow of surface water within each lot.

e. Methods of controlling dust.

f. Submission of preliminary plans or program for water supply, sewage disposal, drainage and flood control.

g. Soil borings, if required by the city engineer.

h. Drainage and grading design requirements shall be as follows:

i. No land shall be developed and no use shall be permitted which results in water run-off causing flooding (drainage in excess of the natural drainage) or erosion on adjacent property. Run-off shall be properly drained via overland drainage ways or channeled into a storm sewer system drain, watercourse, ponding area or other suitable facility approved by the city; and

ii. A drainage plan for all new commercial, industrial, multiple residential and institutional developments shall provide for a no net increase from the pre-developed 100-year, 24 hour rainfall in 24 hours (100 year storm) as calculated in accordance with the modeling SCS TR-20 methodology.

i. In addition to all other plan requirements in this section, the property owner shall submit to the city an approved copy of the temporary and permanent erosion and sedimentation control plan and permit as required for the NPDES construction stormwater permit issued by the MPCA.

**6.50.04 Appeals of decisions.**

The applicant may appeal any requirement, decision or determination by the city in connection with any provision of this section pursuant to the procedures as set forth in the zoning regulations regarding board of appeals and adjustments.

**6.50.05 Exemptions.**

The provisions of this section shall not apply to public utility and right-of-way installation and maintenance projects, which are regulated elsewhere in the City Code.

**6.50.06 Compliance with the LDCEP plan is required.**

1. The applicant shall implement and comply with the land disturbance and erosion control plan (LDECP) prior to and during any construction or land disturbing activity under the land disturbance permit to which this section applies. All erosion and sedimentation control and tree preservation measures required under the plan shall be properly installed and remain in place until all grading and construction activity is completed or until a written request for removal of the protection measures is made to and approved by the city. No construction or land disturbing activity to which this section applies or removal of any significant trees may occur until the LDECP is approved by the city and except in accordance with the approved LDECP. Failure to comply with the approved terms and conditions of an LDECP shall constitute a violation of this Code.
2. The city shall have the right to enter and inspect the subject property in order to determine compliance with the approved LDECP. The city shall have the right

to order the suspension of any grading or construction activity on the subject property until compliance with the LDECP has occurred.

#### **6.50.07 Finding of noncompliance.**

Upon a finding of noncompliance, the city shall use the following procedure with respect to notification and corrective measures:

1. The city shall personally serve upon the project manager, or other responsible person, and by certified U.S. mail upon the property owner, if different than the project manager, a written notification of the violation of the approved LDECP.
2. If remedial work is not completed and compliance with the LDECP has not occurred within 48 hours of service of the violation notification, the city may complete remedial or corrective work and any costs incurred in connection with taking remedial action or installing corrective measures may be recovered from the applicant as allowed by law. In the alternative, the city may revoke any construction-related permit and order the termination of all construction activity on the subject property until the subject site is in compliance with the LDECP or withhold the issuance of a certificate of occupancy.

#### **6.50.08 Emergency corrective actions.**

In the event circumstances exist such that noncompliance poses an immediate danger to the public health, safety and welfare, as determined by the city, the city may take emergency corrective action to prevent any such danger. The city shall take reasonable action to contact and direct the owner of the subject property to take any necessary action. Any costs incurred by the city in connection with any emergency action may be assessed to the property as allowed by Minn. Stat. § 429.101.

#### **6.50.09 Conflict with other laws.**

If the requirements of this section are in conflict with any other federal, state or local law, the stricter requirements shall be enforced.

#### **6.50.10 Stormwater regulations.**

All construction, land disturbing activity and development shall comply with the city's stormwater management plan and water quality and wetland management plan.

**6.50.11 Wetland conservation regulations.**

Except as otherwise provided in this Code, the Minnesota Wetland Conservation Statutes and regulations (commonly referred to collectively as the Minnesota Wetland Conservation Act), as amended through Laws 2001, are hereby incorporated herein and adopted by reference, including the penalty provisions thereof.

**6.50.12 Post Construction Requirements.**

Findings and purpose. The city council finds it is in the best interest of the City of Manhattan Beach to protect, preserve, and enhance the city's natural resources, stormwater and right-of-way systems and public and private land and to encourage a resourceful and prudent approach to the development and alteration of land. In the interest of achieving these objectives, the City of Manhattan Beach has established post construction management regulations herein to promote the furtherance of the following:

1. Protection and preservation of the city's natural resources;
2. Orderly development and redevelopment of land to minimize wetland and land habitat loss;
3. Minimization of the impacts to water bodies, trees and wooded areas resulting from development;
4. Establishment of standards for land disturbing activity to mitigate environmental impacts to water quality of wetland and other water bodies, stormwater and drainage systems, trees, vegetation and wildlife;

5. Creative land use and environmentally compatible site design which preserves and protects natural resources and public utility systems as a result of development or redevelopment; and
6. Enforcement of natural resources management standards to promote and protect the public health, safety and welfare of the community.

#### **6.50.13 Definitions.**

1. “Applicant” means a property owner, or agent of a property owner, who has filed an application for a stormwater management permit, including but not limited to building, grading, or excavation permit.
2. “Best management practices (BMPs)” as defined in Minn. Stat. § 103F.711, Minnesota Clean Water Partnership Act, are practices, techniques, and measures that prevent or reduce water pollution from nonpoint sources by using the most effective and practicable means of achieving water quality goals. BMPs include, but are not limited to, official controls, structural and nonstructural controls, and operation and maintenance procedures.
3. “Clean Water Act” means the primary federal law enacted by the United States Congress to control water pollution and formally referred to as the Federal Water Pollution Control Act of 1972 and subsequent amendments (Public Law 92-500, as amended 33 USC 1251 et seq.).
4. “High water level (HWL)” means the calculated peak pond or stormwater storage elevation for a one percent probability rainfall storm or snowmelt event, as defined by the latest edition of the city stormwater management plan.
5. “Impervious surface” means a hard surface area which does not permit the absorption of fluids. Common impervious surfaces include, but are not limited to, roofs, walkways, patios, driveways, parking lots, storage areas, areas which are paved, graveled, or made of packed or oiled earthen materials or other surfaces which do not allow water to soak into the ground. Impervious surfaces result in runoff from the surface in greater quantities and/or at an increased rate when

compared to natural or vegetated conditions. Open, uncovered flow control or water quality treatment facilities shall not be considered as impervious surfaces.

6. "Infiltration" means the process of water percolating into the subsoil.
7. "Low entry elevation" means the height of the lowest opening of a structure including but not limited to doors, windows, and mechanical venting.
8. "Minnesota Pollution Control Agency (MPCA)" is the state agency charged with overseeing and enforcing the federal Clean Water Act.
9. "National Pollutant Discharge Elimination System (NPDES)" is the program that regulates the discharge of pollutants to waters of the state through issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (Sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Sections 1317, 1328, 1342, and 1345.
10. "Official controls" are ordinances and regulations that control physical development of a local government unit, or that implement the general objectives of the government unit.
11. "Predevelopment" means land condition prior to the creation of any impervious surface on the property.
12. "Redevelopment" means the process of developing land which has been previously developed; or the reconstruction, re-use or change in use of any developed property.
13. "Runoff" means rainfall, snowmelt, or irrigation water flowing over the ground surface.
14. "Stormwater" is defined under Minn. R. 7077.0105, subp. 41(b), and includes precipitation runoff, stormwater runoff, snowmelt runoff, and any other surface runoff and drainage.
15. "Structural control elevation (SCE)" means the elevation of an outlet structure, pump controls or surface overflow for a water body at which water will

initially discharge from the water body. This elevation corresponds to the elevation of the water surface at the time of initial discharge.

#### **6.50.14 Permanent stormwater facilities required.**

Projects requiring a land disturbance permit (LDP) shall be reviewed by city staff to determine if the requirements of this section of the code are applicable. All projects meeting the following requirements shall submit a permanent stormwater facility design for city review and approval:

1. Projects within shoreland zoning districts creating more than 500 square feet of new impervious surfaces.
2. Projects outside of the shoreland zoning districts creating more than one acre of new impervious surface areas.

#### **6.50.15 Design standards for permanent stormwater facilities.**

1. Use of natural topography. The applicant shall reduce the need for stormwater management infrastructure by utilizing natural topography and land cover such as swales and depressions that exist before development to the degree they can accommodate the additional flow of water without compromising the integrity or quality of a receiving water body. Development or redevelopment shall minimize impact to significant natural features. The site shall be reviewed for wetlands as set forth in the wetland protection and management regulations of this code, trees and significant woodlands as set forth in the tree preservation regulations of this Code, rare and endangered species habitat, and areas designated by the county biological survey, or county parks and open space. These areas shall not be developed if development is prohibited by any federal or state regulation. Development, where allowed, shall comply with all applicable federal and state statutes and regulations, as well as this ordinance. In designated shoreland areas, the development shall comply with the shoreland district regulations of this ordinance. The proposed design, suggested location, and phased implementation of effective, practicable stormwater management

measures for shall be designed, engineered, and implemented to achieve the following results:

**6.50.16 Water quality standards.**

All projects requiring a permanent stormwater facility will at a minimum provide onsite retention for runoff from the 2-year, 24 hour storm event or 1” of runoff from all impervious surfaces, whichever is greater.

1. Volume control/reduction. The runoff from the 2-year storm event shall be infiltrated or retained on site. At its discretion, the city may modify or waive this requirement, based on consideration of any of the following:
  - a. Soil borings that indicate unsuitability for infiltration;
  - b. The potential of groundwater contamination due to such variables as, but not limited to, the following: geology that exposes aquifer vulnerability; land use that causes high pollutant and sediment levels in stormwater; or other circumstances that may affect feasible and prudent implementation of this infiltration policy.
2. Oil and grease control. For all stormwater plans for commercial or industrial developments and all other uses where the potential exists for pollution by oil or grease, or both, the first one-half inch of runoff shall be treated using the best oil and grease removal technology available as set forth in the Minnesota Stormwater Manual. This requirement may be waived by the city when the applicant can demonstrate that installation of such practices is not necessary.
3. Runoff rate control performance standards. All stormwater facilities shall be designed, installed, and maintained to accomplish the following, unless otherwise specified:
  - a. Maintain predevelopment peak runoff rates for the 2-year, 24-hour storm event.
  - b. Non-shoreland Zoning Districts: Maintain predevelopment peak runoff rates for the 10-year, 24-hour storm event. At a minimum, the storm sewer

system shall be designed for the 10-year, 24-hour storm event. Low areas must have an acceptable overland drainage route with the required transfer capacity when the event is exceeded.

c. Non-shoreland Zoning Districts: Maintain predevelopment peak runoff rates for the 100-year, 24-hour storm event.

d. Where the city's stormwater management plan and its updates show lower rates for the 2, 10, or 100-year events, this lower rate shall supersede the predevelopment rate control criteria.

e. All runoff calculations shall be according to the methodology described in the Natural Resources Conservation Service's Technical Release 55, "Urban Hydrology for Small Watersheds" (commonly referred to as TR-55). Other methodology may be used with prior approval by the city. Curve numbers for each land use shall be chosen based on TR-55, except that under no circumstances shall pre-development conditions exceed a curve number of 72. The city retains the right to review the appropriateness of the curve number applied to a property. These calculations shall be certified by a registered civil engineer and submitted to the city for review and approval.

4. Outlets. Discharges from new construction sites shall have a stable outlet capable of carrying stormwater flow at a non-erosive velocity. The outlet shall be designed considering flow capacity and flow duration. The outlet design requirement applies to both the discharge outlet from the construction site, as well as the discharge outlet into the storm sewer system or water body.

#### **6.50.17 Review and approval of post construction requirements:**

1. Minimize impervious surface area and maximize infiltration and retention. Where directed by the city and based on site feasibility, projects shall use existing natural drainage ways and vegetated soil surfaces to convey, store, filter, and retain stormwater runoff before discharging the stormwater runoff into public waters or a storm sewer system. Permanent pool areas of wet ponds shall not be accepted as an infiltration practice. The applicant shall limit the stormwater runoff of the site or subdivision, to the maximum extent practicable,

by incorporating the following BMPs, consistent with zoning and subdivision code requirements:

- a. Preserved natural vegetation.
- b. Shared parking facilities.
- c. Maximized open space while incorporating small lot sizes.
- d. Landscaping and soils for stormwater infiltration and treatment.
- e. Vegetated swales or equivalent.
- f. Use of existing vegetated areas to filter sheet-flow, remove sediment and other pollutants, and to increase the time of concentration.
- g. Disconnected impervious areas.
- h. Redirected runoff from downspouts, driveways, and other impervious surfaces to pervious surfaces.
- i. Increased vegetative buffers along steep slopes, wetlands, lakes, and storm basins.
- j. Semi-permeable/permeable or porous paving.
- k. Green roof(s).
- l. Cisterns.
- m. Other BMPs as approved by the city engineer.

2. Acceptable complementary stormwater treatments. Complementary stormwater treatments, including but not limited to rain gardens and infiltration basins, may be installed. The city shall review and approve all complementary treatments for stormwater management purpose, and the city may give credit for such treatments toward the 2-year storm event runoff infiltration requirement as described herein. The city shall refer to the most recent version of the following

technical documents to guide application and design of BMPs for all complementary stormwater treatment options:

- a. The Minnesota Stormwater Manual (MnPCA);
- b. Protecting Water Quality in Urban Areas (MnPCA);
- c. Minnesota Urban Small Sites Best Management Practices Manual (Metropolitan Council).

3. Pond requirements. If the BMPs available at the time of development cannot control, prevent, and minimize degradation of surface water, ponding shall be considered acceptable. All pond design specifications shall conform to the current National Urban Runoff Program standards for the land disturbance and erosion and sediment control ordinance, and the current requirements found in the NPDES construction permit. In addition, the following are required:

- a. There shall be a forebay area to provide fine-sand sized particles to settle unless the city determines this requirement is not feasible on a site by site basis.
- b. Side slopes shall not exceed three feet horizontal to one foot vertical (3:1) and there shall exist a ten-foot wide bench starting at the SCE with side slopes no steeper than ten feet horizontal to one foot vertical (10:1) for safety considerations. A ten-foot wide maintenance bench above the SCE, with a slope no steeper than ten feet horizontal to one foot vertical (10:1), shall be provided as directed by the city and shall be sufficient to access all pond inlets and outlets.

4. All publicly and privately owned stormwater management facilities shall provide a minimum of a 15-foot-wide unobstructed access path capable of supporting light truck traffic during normal weather for the purpose of conducting inspections of the facility and maintenance thereof. The city shall not approve any privately owned stormwater facility unless the following provisions are met:

- a. The property owner grants the city an easement providing the city access to the stormwater facility for maintenance and inspection purposes.

b. The property owner enters into a maintenance agreement with the city.

5. Stormwater ponds shall be designed to the specifications of a storm interval for a 100-year, 24-hour storm event. The stormwater ponds shall incorporate correctly sized conveyances for the 100-year, 24-hour storm flows consistent with standards used by local, state, and federal agencies in planning for the flood protection of homes and public facilities. As an additional safety factor, the low entry elevation of a structure in a development shall be no less than three feet or half the difference between the SCE and the HWL above the 100-year, 24-hour elevation of the pond, whichever is greater. The low ground elevation of structures that are adjacent to ponds shall be certified by the builder during basement construction to ensure adequate freeboard. An emergency overflow system shall be established for the health and safety of the area.

6. Final “as-built” grade plan. Upon completion of, under a permit issued under this section, an “as-built” grading plan shall be required. The “as-built” grading plan shall depict the actual field grade conditions of the subject property and depict any changes from the original grading plan submitted to and approved by the city. All “as-built” grading plans shall be certified by a registered civil engineer and submitted to the city in a format as required by the city.

7. Regional ponding. If the city determines the site is not suitable for on-site ponding, off-site stormwater management and associated fees shall be established in accordance with this Code, provided that provisions are made to manage stormwater by an off-site facility, and provided that all of the following conditions for the off-site facility are met:

a. The off-site stormwater facility is in place or the city has knowledge of future regional ponding on site.

b. The off-site stormwater facility is designed and adequately sized to provide a level of stormwater control that meets the minimum standards of this Code.

c. The city is satisfied the off-site stormwater facility has a legally obligated entity responsible for its long-term operation and maintenance.

d. The property owner provides to the city the compensation necessary, as determined by the city, to construct, operate, and maintain the off-site stormwater facility.

8. Maintenance of private stormwater facilities. Property owners shall maintain all private stormwater facilities in proper condition consistent with the performance standards for which they were originally designed.

a. On an annual basis, property owners shall remove and properly dispose of all settled materials, including all settled solids, from sumps, grit chambers, and other devices within all private stormwater facilities, in accordance with federal, state, and local regulations. The city may grant one- to five-year waivers from this requirement after the property owner presents evidence that the facility has the capacity to store settled solids in accordance with the original design capacity.

b. At least once every five years, property owners shall inspect ponds to determine if settled materials should be removed. Property owners shall remove and properly dispose of all settled materials, in accordance with federal, state, and local regulations, when the pond is no longer functioning at the original design capacity.

9. When requested by the city, property owners shall provide a maintenance plan that defines who will conduct the maintenance, the type of maintenance that will be conducted, and the maintenance intervals of a private stormwater facility.

a. All private stormwater facilities shall be designed to minimize the need for maintenance and to provide easy vehicle and personnel access for maintenance purposes, and shall be structurally sound, as determined by the city. Prior to city approval, it shall be the responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the facilities for inspection or maintenance.

b. The city shall have the right to request and review inspection and maintenance records and shall have the right to perform an inspection of

private stormwater facilities at any time if the city has probable cause to believe that the facilities are not being properly maintained or inspected.

#### **6.50.18 Enforcement.**

1. Any person who violates a requirement, subdivision, paragraph or provision of this section when he performs an act thereby prohibited or declared unlawful or fails to act when such failure is thereby prohibited or declared unlawful by a code adopted by reference by this section and, upon conviction thereof, shall be guilty of a misdemeanor and sentenced in accordance therewith except as otherwise stated in specific provisions hereof.
2. Whenever the city finds that a person has violated a prohibition or failed to meet a requirement of this section, the city may order compliance by written notice of violation to the responsible person.
3. If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such abatement and/or restoration must be completed. Said notice shall further advise that, should the violator fail to abate or restore the property within the established deadline, the work will be done by a designated governmental agency or a third party contractor and the expense thereof shall be charged to the violator.
4. If the violator fails to pay for said services within 30 days of the notice of the amount due, the city may draw the amount owed for the services from any financial guarantees the city may hold with regard to the affected property. On or before the first day of September of each year, the city clerk shall list the total unpaid charges for abatement and/or restoration services against each separate lot or parcel to which they are attributable under this article.
5. In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the city may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, pond cleanup, or similar education classes or service.

## **7.0 PLANNED UNIT DEVELOPMENTS (PUDs)**

### **7.01 General Provisions**

#### **7.01.01 Types of PUDs Permissible.**

Planned Unit Developments (PUDs) are only allowed in those land use districts as stated in Section 4.03 – Land Use Provisions including the Rural Residential, residential-Shoreland, and Open District. Refer to Section 7.11 for non-Shoreland PUDs. The design of Planned Unit Developments in shoreland areas shall be controlled to minimize impacts on water quality and to mitigate visual impacts from the lake.

**7.01.02** Where circumstances are favorable, PUDs provide more latitude in land use than normal development to allow for planning, clustering facilities. When densities higher than normal for a tier are allowed, they must be justified by the preservation and consolidation of open space, increased screening and landscaping, increased recreational facilities and other significant improvements and design features beneficial to the residents, the community and the general public. All development must be suitable in its natural state for the proposed use with minimum alterations. In determining the suitability of a parcel for a PUD, the City must consider the criteria in sections 4.01 and 4.02 of this ordinance regarding land uses as well as the following: a.) Existing recreational use of surface waters and likely increases in use associated with planned unit

developments; b.) Physical and aesthetic impacts of increased density; c.) Suitability of lands for the planned unit development approach; d.) Level of current development in the area; and e.) Amounts and types of ownership of undeveloped lands.

## **7.02 Processing of PUDs.**

Planned Unit Developments must be processed as a conditional use, except that an expansion involving six or fewer new dwelling units (cumulative from the date of inception of said PUD) to an existing PUD or site since the date this ordinance was adopted is permissible as a permitted use provided the total project density does not exceed the allowable densities calculated in the project density evaluation procedures in Section 7.06. Approval cannot occur until the environmental review process (an EAW, and if necessary an EIS) is complete.

1. Conditional Use: Planned Unit Developments must be processed as a Conditional Use as provided for in Section 3.08 of this ordinance including pertinent findings of fact.
2. An environmental review may be required for projects that could result in significant environmental impacts. The Minnesota Environmental Policy Act of 1973 and Minnesota Rule Chapter 4410 allow for the preparation of an Environmental Assessment Worksheet (EAW) and Environmental Impact Statement (EIS) for mandatory development thresholds or discretionary environmental reviews. An EAW or EIS can be ordered by the RGU (Responsible Government Unit). The RGU is the designated authority.
  - a. An environmental review must be complete before consideration of application. Once the environmental review process is determined to be necessary, no further processing of a PUD Conditional Use Permit can be performed until the environmental review process has been completed. No conditional use permit is to be issued unless and until all issues identified in the EAW/EIS have been addressed.
  - b. Payment for cost of review. The County or RGU shall prepare, at the developer's expense, any state-mandated EAW or EIS for the project. The RGU

shall prepare, with the developer's input and assistance, any discretionary EAW or EIS.

3. Additional studies or information. In considering a Planned Unit Development application, the Planning Commission may request a report by the City of Manhattan Beach Zoning Administrator or any other consultant; additional information from the applicant; input from any affected public service facility provider; input from contiguous, affected or potentially affected jurisdictions. If so required, the applicant shall bear the full cost of meeting this requirement.

### **7.03 City Review of Application.**

City of Manhattan Beach zoning administrator shall conduct the following reviews prior to submitting an application for a planned unit developed to the Planning Commission.

1. Initial Conference: In order to ensure that all applicants for PUDs are informed of the application process and procedure, as well as the requirements of this ordinance and related ordinances, the applicant is required to consult with the City Zoning Administrator at the initial conference. At the time of this initial conference the applicant shall discuss initial plans.

2. Review of application for completeness. After the initial conference has been conducted, the applicant may submit an application based on Section 7.04 below, The City Zoning Administrator shall review the application and shall determine if the application is complete pursuant to the requirements of this ordinance. If the Zoning Administrator determines that the applicant is not complete, then the application will be returned to the applicant, and the applicant shall be informed as to the reasons for the incompleteness of the application.

3. On-site review by Planning Commission. Within fifteen (15) working days of receipt of a completed application, City will conduct an on-site review of the property to gather information and photographs to aid in review of the application and to ensure there are no violations of City ordinances on property.

Prior to the on-site review by City, the applicant shall locate and identify all proposed lot and exterior boundary corners and the boundaries of the primary access drive with flags or stakes. The applicant shall also flag the location of any water-based recreation and access sites.

#### **7.04 Application Requirements for a Planned Unit Development.**

The applicant for a planned unit development shall submit an application with the City that meets all of the following requirements:

1. Forms: Completed application forms for the proposed PUD provided by the City of Manhattan Beach plus the required supporting information.
2. Fee: A fee in the amount listed in the fee schedule Escrow Funds adopted by the City of Manhattan Beach shall be paid upon determination by the Zoning Administrator that the application is complete.
3. Density Calculation. Calculations showing all information necessary to determine conformance with the density standards in Section 7.06, below shall be included. Applicant exceeding the allowed density calculations shall not be accepted.
4. Site plan: A site plan meeting the requirements of Section 7.05.
5. Plat: A subdivision plat meeting the requirements of the City of Manhattan Beach Subdivision ordinance if any land division is proposed.
6. Owners Association: A Property Owner's Association agreement with mandatory membership, and all in accordance with section 7.09 of this ordinance.
7. Restrictions: Deed restrictions, covenants, permanent easements, requirements of Minn. State. 515B or other instruments that:
  - a. Properly address future vegetative and topographic alterations, construction of additional buildings, beaching and mooring of watercraft, and

b. Ensure the long term preservation and maintenance of open space in accordance with the criteria and analysis in Section 7.09 of this ordinance including the perpetual renewal of the covenants and deed restrictions.

8. Master Plan: A master plan/drawing describing the project.
9. Floor Plans: Floor plans for all structures including height of buildings.
10. Additional Documents. Any additional documents as requested by the Zoning Administrator or Planning Commission necessary to explain how the planned unit development will be designed and will function.

#### **7.05 Site Plan Requirements.**

Certificates of Survey are required with planned unit developments applications and shall include the following information:

1. Name of the Planned Unit Development.
2. Legal description of property involved.
3. Name and address of the owner, applicant, registered land surveyor and/or the designer of the plan.
4. Recommended graphic scale is one (1) inch = thirty (30) feet.
5. North arrow.
6. Date of plan preparation.
7. All current and proposed property boundaries.
8. Boundary, dimensions and area of all shoreland tiers.
9. Total acreage of property involved.

10. Existing soil conditions and topographic contours at ten (10) foot intervals except areas of slopes over twelve (12) percent shall be shown at two (2) foot intervals.
11. A topographic contour shall also be constructed (with same intervals as item j) showing the projected or completed development.
12. All roads, existing and proposed, showing right of way widths.
13. Location and design of all on-site sanitary waste treatment facilities, existing and proposed, and domestic water supply.
14. All structures, recreational and/or accessory facilities, both existing and proposed, including but not limited to: cabins, campsites, housing facilities, lodges, offices, sheds, swimming pools, tennis courts, laundries, stores, boat storage, and fish cleaning houses, etc.
15. All surface water features including, but not limited to, lakes, rivers, streams, floodplains, ponds and wetlands, including location of Ordinary High Water Level. Square footage for these features should be shown.
16. Existing and proposed mooring sites, docking facilities, and other related implements including rafts and buoys, markers delineating swimming facilities and bathing areas, beaches and other facilities.
17. Lake study showing aquatic vegetation in water, water depth in one (1) foot intervals to a depth of six (6) feet, and bottom substrate type conditions.
18. Grading and drainage plans which meet the requirements of Section 7.07 and 7.08.
19. All easements and right-of ways, including document number.
20. All easements and right-of ways within one hundred (100) feet of plat.
21. Existing zoning classification(s) for property and land and abutting property.
22. Percent of impervious surface existing and proposed.

23. At discretion of the City, the entire PUD may have to be in one zoning district.

24. Common interest community number.

### **7.06 Density for Shoreland Planned Unit Developments.**

The following shall apply in the determination of allowed densities for planned unit developments.

1. Site “suitable area” evaluation: Proposed new or expansions to existing Planned Unit Developments must be evaluated using the following procedures and standards to determine the suitable area for the density evaluation in A, below.

a. Determination of tiers: The project parcel must be divided in to three tiers (not to exceed one thousand (1,000) feet within the shoreland zone) by locating one or more lines approximately parallel to a line that identifies the Ordinary High Water Level at the following intervals, proceeding landward:

<u>Shoreline Class</u>	<u>OWHL Structure</u>
	Setback (feet)
A) General Development Lakes	112
B) Recreational Development Lakes	150
C) Natural Environment Lakes	Not Allowed
All River Classes	200

b. Determination of suitable area: For PUD purposes, the suitable area within each tier is calculated by excluding from the tier area all wetlands, bluffs, major road easements and right-of-ways, floodplains, and land below the Ordinary High Water level of public waters. This suitable area and the

proposed project are then subject to the Planned Unit Development density evaluation steps listed below. The suitable area and the proposed project are then subjected to the Planned Unit Development density evaluation steps in the table below, to arrive at an allowable suitable area. In areas with overlapping shoreland classes or areas where more than one standard applies, the more restrictive rules shall be used.

Minimum structure setbacks must be at least:

<u>Shoreline Class</u>	<u>OWHL Structure</u>
	Setback (feet)
A) General Development Lakes	112
B) Recreational Development Lakes	150
C) Natural Environment Lakes	Not Allowed
All River Classes	200

2. Planned Unit Development density calculation: The procedures for determining the density of a PUD are as follows: Allowable densities may be transferred to any other tier to any other tier further from the water body, but must not be transferred to any other tier closer. All numbers calculated are rounded down to the nearest whole number. There are no density increases for

PUDs. The suitable area within each tier is divided by the single residential lot size standard for that zoning district. For rivers, the suitable area within each tier is divided by single residential lot size for that zoning district. Proposed locations and numbers of dwelling units sites for Planned Unit Developments are then compared with the tier density and suitability analyses herein and the design criteria in Section 7.07 and 7.08.

### **7.07 Planned Unit Development Design Criteria.**

Proposed Planned Unit Developments shall meet all of these design criteria:

1. Minimum development area required. The minimum area for consideration of a new planned unit development is three (3) contiguous acres of buildable area and four hundred (400) feet of lot width.
2. To qualify for a Planned Unit Development, a development must contain at least five dwelling sites or units.
3. Access: Any such development, which fronts on a major road, shall be served by a common access road.
4. Open Space Requirements: Planned Unit Developments must contain open space meeting all of the following criteria:
  - a. At least sixty (60) percent of the total project area must be permanently preserved as open space; however, twenty five (25) percent of the open space must be suitable area for recreational use. Creation of stormwater ponds or rain gardens on area originally considered upland shall not be deducted from the suitable area.
  - b. The land area of all dwelling units and accessory structures, common buildings, the space between buildings in a cluster, an area of twenty five (25) feet around each structure, all road right-of-way and all land covered by impervious surfaces, road surfaces, parking areas or structures, are developed areas and shall not be included in the computation of minimum open space;

- c. Open spaces must include area with physical characteristics unsuitable for development in their natural state, areas containing significant historical sites or unplatted cemeteries;
- d. Open space may include outdoor recreational facilities for use by owners of dwelling units or sites.
- e. Open space may include subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems;
- f. Open space shall not include commercial facilities or uses.
- g. The appearance of open area, including topography, vegetation and allowable uses, shall be preserved by use of restrictive deed covenants, permanent easements, public dedication and acceptance or equally and permanent means; and
- h. The shore and bluff impact zones, based on normal structure setbacks shall be included as open space. At least sixty (60) percent of the shore impact zone area must be preserved in its natural state.
- i. A shoreland vegetative buffer plan designed and implemented meeting the standards in Section 8.03.

5. Other criteria:

- a. Of the total length of the shoreline, tiers shall not exceed (for density calculations only) double the width of the shoreline length. Inland tiers can be any width; this calculation is for density calculations only.
- b. If road ROW exists by water, water-ward side of the ROW must be a minimum of 30' from the OHWL.
- c. City / County road ROW shall be excluded from all tier area calculation. That is, said ROW cannot be included in any tier when calculating tier area.

## **7.08 Erosion Control and Stormwater Management for PUD's.**

Erosion control and stormwater management plans must be developed, and the PUD must:

1. Be designed and the construction managed to minimize the likelihood of serious erosion occurring either during or after construction. This must be accomplished by limiting the amount and length of time of bare ground exposure. Temporary ground covers, sediment entrapment facilities, infiltration areas, vegetative buffer strips or other appropriate techniques must be used to minimize erosion impacts on surface water features. Erosion control plans shall be approved by the soil and water conservation district.
2. Be designed and constructed to effectively manage a one hundred (100) year storm event. Impervious surface coverage within any tier must not exceed fifteen (15) percent in either the total project area or the first tier area. (Note: Impervious coverage may be more restrictive in a specific zoning district. Refer to Sections 5.0 or 8.0. )
3. The stormwater management plan must be designed by a licensed public engineer. The hydrologic models and design methodologies used for determining runoff characteristics, and their specifications, assumptions and computations for the plan submitted for review must be signed by a registered professional engineer. The stormwater management plan must include the following:
  - a. Construction shall use best management practices, which achieve to the maximum extent practical, a reduction of eighty (80) percent of the sediment load carried in runoff on an average annual basis until the construction site has undergone final stabilization. The use, storage and disposal of chemicals, cement and other compounds and materials used on the construction site shall be managed during the construction period to prevent their transport in to the lake, river or adjacent wetlands.
  - b. After construction, best management practices shall be designed, installed and maintained to control total suspended solids, peak discharge, and infiltration. To the maximum extent practical, runoff of total suspended solids

shall, based on average annual rainfall. Planned unit developments are required to have best management practices so that the post-development infiltration volume is the same as pre-development infiltration volume. All developments shall contain the one hundred (100) year, twenty-four (24) hour storm event within the development in a manner comparable to the natural, pre-development condition Best management practices include porous pavement, filter strips, swales, infiltration basins, discontinued impervious areas, rain gardens and other conservation designs.

4. Construction activity that results in the disturbance of one or more acres will need a stormwater permit from the Minnesota Pollution Control Agency (MPCA).
5. Centralization and design of facilities and structures must be done according to the following standards:
  - a. Planned Unit Developments shall be connected to both public water supply and sewer systems, if available. On-site water supply and sewage systems must be centralized and designed and installed to meet or exceed applicable standards or rules of Minnesota Department of Health, MPCA and Section 5.0 and Section 8.01 and Section 9.01 of these ordinances. On-site sewage systems must be located on the most suitable areas of the development and sufficient lawn area free of limiting factors must be provided for a replacement soil treatment system for each sewage system:
  - b. Dwelling units or sites must be situated into one or more groups and located on suitable areas of the development. They must be designed and located to meet or exceed the following dimensional standards for the relevant shoreland classification: setback from the Ordinary High Water Level, elevation above the surface water features, and maximum height.
  - c. Shore recreation facilities, including but not limited to swimming areas, docks and watercraft mooring areas must be centralized and located in areas suitable for them. Evaluation of suitability must include consideration of land slope, water depth, aquatic and shoreland vegetation, soils, depth to groundwater and bedrock or other relevant factors. Boating facilities shall be

located adjacent to the deepest water available. The number of spaces provided for continuous beaching, mooring or docking of watercraft shall not exceed one for each authorized dwelling unit or site in the first tier. Individual docks shall not be allowed. Non-moored watercraft shall be stored so they are not visible from the lake.

d. Structures, parking area and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shoreland by vegetation, topography, increased setbacks, color or other means acceptable to the Planning Commission, assuming summer leaf-on conditions. Vegetative and topographic screening must be preserved, if existing, or may be required to be provided; and

e. Roads must be at least sixteen (16) feet in width (driving surface), and the road width is to be engineered to reflect traffic volumes. Cul-de-sacs must be a minimum sixty-six (66) feet in diameter, or as otherwise approved by the local fire authority. The road surface plan is to include runoff design.

f. Accessory structures and facilities must meet the required principal structure setback and must be centralized.

6. Water Supply and Sewer Systems: No system of water supply or system for disposal of sewage, industrial waste, garbage or refuse, shall be installed or extended by any public agency or by any person or corporation until complete specifications for installation, alternation or extension, together with such information as the State Board of Health and MPCA may require, have been submitted in duplicate and approve by the City Council.

### **7.09 Maintenance and Administration Requirements.**

All Planned Unit Developments shall meet all of the following maintenance and administration requirements:

1. Open Space protection: Before final approval of a Planned Unit Development, adequate provisions must be developed for preservation and maintenance in

perpetuity of open spaces and for the continued existence and functioning of the development.

a. Deed restrictions, covenants, permanent easements, public dedication and acceptance or other equally effective and permanent means must be provided to ensure perpetual preservation and maintenance of open space. The instruments must include all of the following protections:

i. Commercial uses shall be prohibited, except for home occupations.

ii. Vegetation and topographic alterations other than to prevent personal injury or property damage and for restoration efforts based on approved shoreland vegetation buffer plan shall be prohibited;

iii. Construction of additional buildings, impervious surfaces, or storage of vehicles and other materials shall be prohibited; and

iv. Uncontrolled beaching of watercraft shall be prohibited.

v. Dumping, storage, processing or landfill of solid or other waste shall be prohibited.

2. Development Organization and Functioning. Unless an equally effective alternative community framework is established, all Planned Unit Developments shall comply with requirements of Minn. Stat. 515B

3. Maintenance of Vegetative Buffers, Screening and Vegetative Restoration Sites:

a. Maintenance shall be performed according to an approved plan.

b. Loss of vegetation as a result of unapproved activities shall be replaced in-kind.

c. Loss of vegetation as a result of natural or catastrophic events shall be replaced so as to restore the “before” conditions within a reasonable period of time, generally assumed to be 10 years.

### 7.10 Conversions.

Other land uses and facilities may be converted to Planned Unit Developments if all of the following standards are met:

1. Proposed conversions must be evaluated using the same procedures and standards presented in this part for developments involving new construction.
2. Inconsistencies between existing features of the development and these standards shall be identified and corrected.
3. Any nonconformity shall be abated.

### 7.11 Residential PUD Density Evaluation.

Planned Unit Developments (PUDs) are only allowed in those land use districts as stated in Section 4.03 – Land Use Provisions. The design of Residential Planned Unit Developments outside of the shoreland is controlled to minimize visual impacts, provide green space and centralize facilities. Procedures for a PUD, non-shoreland in a residential area should proceed as described in Section 7 except references which apply to shoreland areas should not be given consideration.

## 8.0 PROVISIONS FOR MANAGEMENT OF SHORELAND AREAS

### 8.01 Lot Area and Width Standards .

**8.01.01** The lot area (in square feet) and lot width (in feet) standards for single and duplex residential lots created after the date of enactment of this ordinance for the lake and river/stream classifications are the following:

1. Natural Environment Lakes:

	<u>Riparian Lots</u>		<u>Nonriparian Lots</u>	
	Area	Width	Area	Width
<u>Single</u>	80,000	200	80,000	200
<u>Duplex</u>	120,000	300	160,000	400

<u>PUD</u>	435,600	800	435,600	800
<u>Open Zone</u>	217,800	250	653,400	500

2. Recreational Development Lakes:

	<u>Riparian Lots</u>		<u>Nonriparian Lots</u>	
	Area	Width	Area	Width
<u>Single</u>	40,000	150	40,000	150
<u>Duplex</u>	80,000	225	80,000	265
<u>PUD</u>	326,700	600	326,700	600
<u>Open Zone</u>	108,900	200	15 acres	500

3. General Development Lakes:

	<u>Riparian Lots</u>		<u>Nonriparian Lots</u>	
	Area	Width	Area	Width
<u>Single</u>	20,000	100	40,000	150
<u>Duplex</u>	40,000	180	80,000	265
<u>PUD</u>	217,800	400	217,800	400
<u>Open Zone</u>	65,340	150	15 acres	500

4. Tributary Streams:

	<u>Riparian Lots</u>		<u>Nonriparian Lots</u>	
	Area	Width	Area	Width
<u>Single</u>	80,000	200	80,000	200
<u>Duplex</u>	120,000	300	160,000	400
<u>PUD</u>	435,600	800	435,600	800
<u>Open Zone</u>	217,800	250	15 acres	500

5. Impervious surface coverage allowed for lots located in the Open District are as follows:

Natural Environmental Lake	5%
Recreational Development Lakes	8%
General development Lakes	10%
Tributary Streams	5%

**8.01.02** The lot area (in square feet) and lot width (in feet) standards for Commercial Shoreland lots created after the date of enactment of this ordinance for the lake and river/stream classifications are the following:

Riparian and Nonriparian Lots

	<u>Area</u>	<u>Feet</u>
1. Natural Environment Lakes	435,600	800
2. Recreational Development Lakes	326,700	600
3. General Development Lakes	217,800	400
4. Tributary Streams	435,600	800

**8.01.03 Additional Special Provisions.**

1. Residential subdivisions with dwelling unit densities exceeding those in the table in Section 8.01.01 can only be allowed in a Residential District and only if designed and approved as residential planned unit developments under Section 7.0 of this ordinance. Only land above the ordinary high water level of public waters can be used to meet lot area standards, and lot width standards must be met at both the ordinary high water level and at the building footprint.

2. Subdivisions of duplexes on Natural Environment Lakes must also meet the following standards:

- a. Each building must be set back at least 200 feet from the ordinary high water level;
- b. Each building must have common sewage treatment and water systems in one location and serve all dwelling units in the building;
- c. Watercraft docking facilities for each lot must be centralized in one location and serve all dwelling units in the building; and
- d. No more than 25 percent of a lake's shoreline can be in duplex developments.

3. One guest quarters may be allowed on lots meeting or exceeding the duplex lot area and width dimensions presented in Sections 8.01.01 and 8.01.02, provided the following standards are met:

- a. For lots exceeding the minimum lot dimensions of duplex lots, the quest quarters must be located within the smallest duplex-sized lot that could be created including the principal dwelling unit.
- b. Guest quarters must not cover more than 700 square feet of land surface and must not exceed 15 feet in height; and
- c. Guest quarters must be located or designed to reduce its visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions.

4. Lots intended as controlled accesses or easements across riparian lots to public waters or as recreation areas for use by owners of non-riparian lots within subdivisions shall not be allowed.

**8.02 Placement, Design, and Height of Structures.**

**8.02.01** Placement of Structures on Lots. Structures and facilities must be located to meet all setbacks. Structures shall be located as follows:

1. Structure and On-site Sewage System Setbacks (in feet) from Ordinary High Water Level:

Setbacks

Classes of Public Waters	Structures	Sewage Treatment System
<b>Lakes</b>		
• Natural Environment	150	150
Open Zone	200	150
• Recreational Development	100	75
Open Zone	150	75

- General Development 75 50
- Open Zone 100 50

**Rivers/Streams**

- Tributary 100 75
- Open Zone 200 75

**Wetlands**

20 20

2. Additional Structure Setbacks. The following additional structure setbacks apply, regardless of the classification of the water body:

<b>Setback From:</b>	<b>Setback (in feet)</b>
a. Top of bluff	30
b. Unplatted cemetery	50

3. Bluff Impact Zones. Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

4. Uses Without Water-oriented Needs. Uses without water-oriented needs must be located on lots or parcels without public waters frontage.

**8.02.02 Design Criteria for Structures.**

1. High Water Elevations. Structures must be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or flood-proofed must be determined as follows:

- a. For lakes, by placing the lowest floor at a level at least three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher.

b. For streams, by placing the lowest floor at least three feet above the flood of record, if data are available. If data are not available, by placing the lowest floor at least three feet above the ordinary high water level, or by conducting a technical evaluation to determine the effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Under all three approaches, technical evaluations must be done by a qualified engineer or hydrologist (consistent with Parts 6120.5000 to 6120.6200) governing the management of floodplain areas. If more than one approach is used, the highest flood protection elevation determined must be used for placing structures and facilities.

c. Water-oriented accessory structures may have the lowest floor placed lower than the elevation determined in this item if the structure is constructed of flood-resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long-duration flooding is anticipated, the structure is built to withstand ice action and wind-driven waves and debris.

2. Stairways, Lifts, and Landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:

a. Stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties, public open-space, recreational properties, and planned unit developments;

b. Landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties, public open-space recreational properties, and planned unit developments;

c. Canopies or roofs are not allowed on stairways, lifts, or landings;

d. Stairways, lifts, and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion;

e. Stairways, lifts, and landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical; and

f. Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of sub items (1) to (5) are complied with in addition to the requirements of Minnesota Regulations, Chapter 1340.

3. Significant Historic Sites. No structure may be placed on a significant historic site in a manner that affects the values of the site unless adequate information about the site has been removed and documented in a public repository.

4. Steep Slopes. The Zoning Administrator must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters, assuming summer, leaf-on conditions.

#### **8.02.03 Height of Structures.**

All structures in the Residential Shoreland district, except churches, must not exceed 25 feet in height.

### **8.03 Dirt Moving - Shoreland Alterations.**

PURPOSE: Alterations of vegetation and topography will be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat. Such alterations must be conducted consistent with the provisions of "Best Management Practices in Minnesota."

#### **8.03.01 Policy.**

It is the view of the Manhattan Beach City Council and its appointed commissions that the protection of wetlands, protected waters and sensitive slopes and bluff areas is essential to the welfare of the city as a whole. The Wetland Conservation Act of 1991, pursuant to Minnesota State Statutes, Chapter 103G.245 and State Shoreland Regulations have delegated authority to local Units of Government to protect the wetlands and water resources of the State of Minnesota. In as much as the excavation or fill of materials into these protected natural resources is detrimental to the welfare of the State, the City desires to adopt a dirt moving permit review process that recognizes the need for protection while attempting to streamline the application review process. In addition the Crow Wing County Water Plan has prioritized wetlands in the shoreland area for protection due to their intrinsic functions. To this end, the following standards are adopted:

#### **8.03.02 Wetland Conservation Act of 1991.**

The filling, draining or dredging of any protected wetlands as defined by the United States Army Corp of Engineers Wetland Delineation Manual (January 1987) for Delineating Jurisdictional Wetlands shall be reviewed by the LGU or a designated agency pursuant to the State rules and as outlined in the Wetland Conservation Act of 1991. The Local Government Unit (LGU) shall submit copies of the application to any local Watershed management organization, the Minnesota Department of Natural Resources (DNR) and United States Army Corps of Engineers (USACE) prior to issuing a permit.

### **8.03.03 Dirt moving in Shoreland areas.**

The guidelines that direct dirt moving in the Shoreland areas are set up to allow greater quantities of dirt moving as the distance from the receiving water increases. The three zones recognized within the Shoreland area are: shore impact zone (SIZ), construction impact zone (CIZ) and rear-lot zone (RLZ). In the Shoreland management area all dirt moving activities will require a permit from the City of Manhattan Beach Zoning Administrator and the Department of Natural Resources.

#### **1. Dirt moving in the Shore Impact Zone (SIZ):**

- a. The area designated as the SIZ is a distance from the ordinary high water mark (OHW) to half the distance of the conforming building setback.
- b. In upland areas up to 10 cubic yards will be permitted with SWCD inspection. Special conditions and allowances may occur on Outstanding Resource Value Waters as specified by USACE.
- c. In upland areas: 0 to 30 cubic yards will be permitted with an approved SWCD inspection form completed detailing erosion and stabilization controls if needed.
- d. In wetland areas in the SIZ, no filling or dirt moving is allowed.
- e. The movement of any annual ice ridge requires a permit and inspection from Crow Wing Soil and Water Conservation District and/or the DNR.
- f. Retaining walls in the SIZ shall be allowed as an erosion control device; maximum height shall not exceed 4 feet in height, with no length limit. A permit may be required depending on the volume of dirt moved/filled.
- g. There shall be no alteration to a Historic Ice Ridge. The property owner may fill landward of the ice ridge, to within six (6) inch elevation of the crest providing the area landward of the ice ridge is not wetlands.
- h. Ice ridges created annually by ice action may be re-graded to their original shoreline contour after notifying the Zoning Administrator, provided that no

topsoil or vegetative matter is deposited in the lake and the work is completed by July 1 of the year the damage takes place. A silt fence must be properly installed between the project area and the lake before any construction begins, and must remain in place until all permanent erosion control measures are in place. Any dirt moving greater than 10 cubic yards requires a permit.

2. Dirt moving in the Construction Impact Zone (CIZ):

a. The area designated as the CIZ is half the distance from the OHW to the conforming building setback or landward of the Shore Impact Zone to the Structure Setback area.

b. In upland areas: 10 to 50 cubic yards of fill/dirt moving will be permitted with an approved SWCD inspection form completed detailing erosion and stabilization controls if needed.

c. In wetland areas: up to 400 square feet of fill area, one time cumulative, will be permitted with an approved SWCD inspection form completed.

d. Retaining walls in the CIZ shall be allowed as an erosion control device and will be limited to 4 ft in height by 40 feet in length and no more than 30 cubic yards of soil or dirt moving.

3. Dirt moving in the Rear Lot Zone (RLZ):

a. The area designated as the RLZ is from the conforming structure setback to a distance 1000 feet from the OHW on lakes and 300 ft on rivers and streams.

b. In upland areas: 10 to 100 cubic yards of fill/dirt moving will be permitted with an approved SWCD inspection form completed detailing erosion and stabilization controls if needed.

c. In wetland areas: up to 400 square feet of fill, one-time cumulative, will be permitted with an approved SWCD inspection form completed.

d. If not all 400 square feet of fill area is utilized in the CIZ or RLZ, the balance may then be used in either zone. However, only a cumulative maximum of 400 square feet of fill area shall be allowed in the SIZ through RLZ.

#### **8.03.04 Exemptions.**

1. Grading, filling or excavations necessary for construction of structures, septic systems if part of a validly issued construction/ permit shall not require a separate dirt moving permit, unless located within wetlands, steep slopes, a shore or bluff impact zone.
2. Placement of soils for the creation of yard area in upland areas, of 0 to 10 cu. yds., as long as the fill/dirt moving is not located within a bluff or shoreland impact zone. This activity is only to be located in CIZ and RIZ.
3. The creation of Wetland Habitat Improvements, except in the SIZ, by way of excavation/dredging of wetlands, provided approved plans by MNDNR and SWCD prior to

#### **8.03.05 Standards.**

All standards outlined below shall apply to the review of fill/dirt moving permits and exemptions listed in sections 8.03.05-8.03.08.

1. Alterations must be designed to ensure that the smallest amount of bare ground is exposed for the shortest period of time.
2. Excavation or fill shall not take place on steep slopes or bluffs or in a manner that would create unstable slopes (12 % or greater over 50 ft) or in the Bluff Impact Zone.
3. Plans to place fill or excavated materials on steep slopes must be reviewed by SWCD for continued stability and must not create finished slope of 30% or greater or be located in the SIZ or BIZ.
4. The fill or excavation shall not negatively impact public waters, roads, adjacent or affected properties.

- a. Mulches and similar type materials shall be used, where necessary for temporary bare ground coverage.
- b. Permanent vegetative coverage shall be established as soon as possible.
- c. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature shall be utilized. Erosion control methods shall be reviewed by construction and that spoils be deposited in a manner consistent with WCA standards.

- 5. All Dirt moving/filling/excavating Permits shall be for a one (1) time fill/movement or excavation only, including a total of 400 sq. ft cumulative of fill in wetland areas within the CIZ and/or RLZ.
- 6. Lake access across wetlands in the SIZ shall be by a walkway no more than four (4) feet in width and be constructed of materials approved by the Minnesota Pollution Control Agency.
- 7. All storm water is to be managed on site, as provided in this ordinance.

**8.03.06 Wetland management behind the shoreland zone.**

- 1. The updated Crow Wing County Water Plan prioritized wetlands for planning and protection purposes based on wetland function. The three priority wetland functions are:
  - a. Wetlands in the Shoreland zone;
  - b. Wetlands in Wellhead Protection Areas; and,
  - c. Wetlands that function in storm water retention.
- 2. Currently wetland fill amounts are directed by wetland type and not function. The SWCD administers WCA behind the Shoreland zone. The City of Manhattan Beach recognizes these standards and strongly supports the development of a Comprehensive Wetland Plan to direct the future protection and planning efforts relating to wetland management.

### **8.03.07 Vegetation Alterations.**

1. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by Section 8.04 of this ordinance are exempt from the vegetation alteration standards that follow.

2. Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in Sections 5.04 and 5.10, respectively, is allowed subject to the following standards:

a. Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed. Intensive vegetation clearing for forest land conversion to another use outside of the shore and bluff impact zones and on steep slopes may be allowed as a conditional use if an erosion control and sedimentation plan is developed and approved by the soil and water conservation district.

b. In shore and bluff impact zones and on steep slopes, no clearing or cutting of trees and shrubs shall be allowed except to establish a view corridor. In establishing a view corridor the following standards shall be met:

i. The view corridor shall not exceed 50 feet or half the lot width, whichever is less.

ii. Tree/shrub removal within the view corridor shall not exceed 25% of the trees greater than 5" in diameter 4.5 feet above the ground (diameter breast height or DBH), and 25% of the trees/shrubs less than 5" (DBH).

iii. The removal of exotic species such as european buckthorn or purple loosestrife or noxious species such as poison ivy or prickly ash is permitted.

iv. The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced;

- v. The existing shading of water surfaces along the shoreline is preserved during leaf-on periods of the year.
- vi. Trees and shrubs which are located outside of the view corridor, but within the shore impact zone, bluff impact zone, or on steep slopes shall be left undisturbed except for the removal of exotic species such as european buckthorn or purple loosestrife or noxious species such as poison ivy or prickly ash.
- vii. Naturally dead or diseased trees may be removed.
- viii. Application of fertilizer and pesticides in shoreland must be done in such a way as to minimize runoff into the shore impact zone or public water. The use of phosphorus containing fertilizer is prohibited within the shore impact zone.
- ix. Burning of yard waste is prohibited within the shore and bluff impact zones or on steep slopes.

#### **8.03.08 Topographic Alterations/Grading and Filling.**

1. Grading and filling and excavations necessary for the construction of structures sewage treatment systems, and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standards in this Section must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.
2. Public roads and parking areas are regulated by Sections 8.04, 6.03.03, 6.05, 9.09 and 9.10 of this ordinance.
3. Notwithstanding items (a) and (b) above, a conditional use permit for grading and filling will be required for:
  - a. The movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and

b. The movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones.

4. The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling and other conditional use permits, variance and subdivision approvals:

a. Grading and filling in any type 2, 3, 4, 5, 6, 7, or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland (This evaluation must also include a determination of whether the wetland alteration being proposed requires permits, reviews, or approvals by other local, state or federal agencies such as a watershed district, the Minnesota Department of Natural Resources, or the United States Army Corps of Engineers. The applicant will be so advised.):

i. Sediment and pollutant trapping and retention;

ii. Storage of surface runoff to prevent or reduce flood damage;

iii. Fish and wildlife habitat;

ix. Recreational use;

x. Shoreline or bank stabilization; and

xi. Noteworthiness, including special qualities such as historical significance, critical habitat for endangered plants or animals, and others.

b. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible;

c. Mulches or similar material must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible;

d. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used;

- e. Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service;
- f. Fill or excavated material must not be placed in a manner that creates an unstable slope;
- g. Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of 30 percent or greater;
- h. Fill or excavated material must not be placed in bluff impact zones;
- i. Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under Minnesota Statutes, Section 103G.245;
- j. Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties; and
- k. Placement of natural rock rip-rap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the rip-rap is within ten feet of the ordinary high water level, and the height of the rip-rap above the ordinary high water level does not exceed three feet.

## 5. Retaining Walls.

- a. Retaining walls for erosion control may be allowed by permit in the setback area from the OHW. A determination must be made by the Zoning Administrator that the retaining wall is necessary to control erosion. No tier, or combination of tiers of a retaining wall shall exceed four feet in height. A design plan, showing elevations, stormwater drainage patterns, soil erodibility factors, critical area seeding/landscaping recommendations and amount of dirt displaced/moved for existing and proposed conditions must be submitted.

- b. Retaining walls behind the structure setback from the OHW are allowed by permit provided they do not significantly alter the character of the property or do not create a runoff or erosion problem. More than one (1) tier, or combination of tiers of a retaining wall exceeding four feet in height, shall require a conditional use permit.
- c. All retaining walls shall conform to dirt moving restrictions.

#### **8.04 Placement and Design of Roads, Driveways, and Parking Areas.**

**8.04.01** Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a licensed public engineer that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation, or other applicable technical materials.

**8.04.02** Roads, driveways, and parking areas must meet structure setbacks and must not be placed within shore and bluff impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas and must be designed to minimize adverse impacts.

#### **8.05 Stormwater Management.**

The following general and specific standards shall apply:

##### **8.05.01 General Standards.**

1. When possible, existing natural drainage ways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.

2. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.
3. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and man-made materials and facilities.

#### **8.05.02 Specific Standards.**

1. Impervious surface coverage of lots must not exceed 25 percent of the lot area.
2. When constructed facilities are used for stormwater management, documentation must be provided by a licensed public engineer that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts.
3. New constructed stormwater outfalls to public waters must provide for filtering and settling of suspended solids and skimming of surface debris before discharge.

#### **8.06 Special Provisions for Commercial and Public/Semipublic Uses.**

**8.06.01** Surface water-oriented commercial uses and public or semipublic uses with similar needs to have access to and use of public waters may be located on parcels or lots with frontage on public waters. Those with water-oriented needs must meet the following standards:

1. In addition to meeting impervious coverage limits, setbacks, and other zoning standards in this ordinance, the uses must be designed to incorporate topographic and vegetative screening of parking areas and structures.

2. Uses that require short-term watercraft mooring for patrons must centralize these facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need.

3. Uses that depend on patrons arriving by watercraft may use signs and lighting to convey the needed information to the public, subject to the following general standards:

a. No advertising signs or supporting facilities for signs may be placed in or upon public waters. Signs conveying information or safety messages may be placed in or on public waters by a public authority or under a permit issued by the county sheriff;

b. Signs may be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey needed information. They must only convey the location and name of the establishment and the general types of goods or services available. The signs must not contain other detailed information such as product brands and prices, must not be located higher than ten feet above the ground, and must not exceed 32 square feet in size. If illuminated by artificial lights, the lights must be shielded or directed to prevent illumination out across public waters; and

c. Other outside lighting may be located within the shore impact zone or over public waters if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters.

**8.06.02** Uses without water-oriented needs must be located on lots or parcels without public waters frontage.

## **8.07 Conditional Uses.**

Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures and criteria and conditions for review of conditional uses established community-wide. The following additional evaluation criteria and conditions apply within shoreland areas:

### **8.07.01 Evaluation Criteria.**

A thorough evaluation of the water body and the topographic, vegetation, and soils conditions on the site must be made to ensure:

1. The prevention of soil erosion or other possible pollution of public waters, both during and after construction;
2. The visibility of structures and other facilities as viewed from public waters is limited;
3. The site is adequate for water supply and on-site sewage treatment; and
4. The types, uses and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate the watercraft.

### **8.07.02 Conditions attached to Conditional Use Permits.**

The Planning Commission, upon consideration of the criteria listed above and the purposes of this ordinance, shall attach such conditions to the issuance of conditional use permits as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:

1. Increased setbacks from the ordinary high water level;
2. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and

3. Special provisions for the location, design and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

## **9.0 PERFORMANCE STANDARDS**

### **9.01 Water Supply and Sewage Treatment .**

#### **9.01.01 Water Supply.**

Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the Minnesota Department of Health and the Minnesota Pollution Control Agency.

#### **9.01.02 Sewage Treatment.**

Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows:

1. Publicly-owned sewer systems must be used where available.
2. All private sewage treatment systems must meet or exceed the Minnesota Pollution Control Agency's standards for individual sewage treatment systems contained in the document titled, "Individual Sewage Treatment Systems Standards, Chapter 7080, a copy of which is hereby adopted by reference and declared to be a part of this ordinance.
3. On-site sewage treatment systems must be placed in accordance with the setback provisions in this ordinance.
4. The Zoning Administrator, after a site inspection, has the authority to issue a permit without variance for the placement of a septic tank, pump tank, gravity sewer or other sealed, watertight appurtenance to a treatment system at a setback up to 50% less than normally required from a side property line or a structure. Less than normal setbacks from wells, water bodies, wetlands or tributaries are not allowed.

5. All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in sub items (1)-(4). If the determination of site suitability cannot be made with publicly available, existing information, it shall then be the responsibility of the applicant to provide sufficient soil borings and percolation tests from on-site field investigations.

Evaluation criteria:

- a. Depth to the highest known or calculated ground water table or bedrock;
- b. Soil condition, properties, and permeability;
- c. Slope;
- d. The existence of lowlands, local surface depressions, and rock outcrops.

#### **9.01.03 Nonconforming Sewage Treatment Systems.**

1. A sewage treatment system not meeting the requirements of Section 9.01.02 of this ordinance must be upgraded, at a minimum, at any time a permit or variance of any type is required for an improvement on, or use of, the property. For the purposes of this provision, not meeting the required setback from the ordinary high water level does not by itself make a sewage treatment system nonconforming. Sewage systems installed according to all applicable local shoreland management standards adopted under Minnesota Statutes, Section 105.485, in effect at the time of installation may be considered as conforming unless they are determined to be failing, except that systems using cesspools, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above groundwater than required by the Minnesota Pollution Control Agency's Chapter 7080 for design of on-site sewage treatment systems, shall be considered nonconforming.

2. The City Council of Manhattan Beach has by formal resolution notified the commissioner of its program to identify nonconforming sewage treatment systems.

a. Failure by the property owner to install a conforming sewage treatment system by November 10, 1994, will result in action by the City in accordance with Section 2.03 of this ordinance.

3. In areas where adjacent lots of record allow inadequate space for individual sewage treatment systems, individual property owners may by agreement construct conforming cluster type sewage treatment systems to serve two or more lots.

4. On lots where an existing shallow well (less than 50 feet deep) would prevent the installation of a conforming sewage treatment system meeting required setbacks, a deep well (at least 50 feet deep) shall be installed prior to or at the time of installation of the conforming sewage treatment system.

5. Right of Entry: The City, by any authorized employee, agent or Zoning Administrator, shall have the right, after obtaining a search warrant if a warrant is demanded, to enter and be admitted to any lands and property in the City for the purpose of inspection of materials, plumbing work and fixtures of all kinds used by or in connection with the water and sewer system.

#### **9.01.04 Sale without Certificate Prohibited.**

No owner or representative of the owner shall sell by conveyance or contract for conveyance, or a lease of a term of three years or more, any residence, hotel, motel, boarding house, restaurant or commercial premises containing a sewage treatment system without first applying to the Zoning Administrator for a Certificate of Sewage Treatment System Compliance and providing such Certificate to the buyer or lessee, prior to the time of sale.

#### **9.01.05 Sewage Treatment System Installations.**

1. Sewage treatment systems shall be installed in accordance with Minnesota PCA chapter 7080.

2. A proper zoning permit for the project shall be obtained prior to commencement of installation or upgrading of any sewage treatment system.

3. No part of the sewage treatment system shall be covered until it has been inspected and accepted by the authorized, Minnesota-licensed septic inspector for the city. It shall be the responsibility of the applicant and/or the installer to notify the city septic inspector when the job is ready for inspection.

**9.01.06 Disposal of Sewage.**

1. Sewage treatment systems located within the Commercial Shoreland District shall have sewage removed, or be inspected and have sewage removed if deemed necessary by the inspector, at least every two years. A record of the sewage removal / inspection results shall be provided to the City.

2. Sewage removed from sewage treatment systems shall be disposed of in such a manner so as not to create a nuisance or endanger public health. No sewage shall be disposed of at any land disposal site within the City.

3. All trucks or other vehicles used to transport sewage from on-site sewage treatment systems in the City shall have the business name lettered in at least 6-inch high letters on each vehicle. Any tank vehicle or related apparatus used for removing and transporting sewage shall be maintained and operated so as to avoid emission of offensive odors or the loss of any sewage.

4. Any person who engages in cleaning and removing sewage from individual sewage treatment systems or disposing of sewage in the City shall file and be registered with the Zoning Administrator. Such registered persons shall perform these services in accordance with the provisions of local, county and state standards.

## **9.02 Signs.**

The purpose of this provision is to protect the general welfare and safety of the City by providing a policy of aesthetic development to prevent signs from intruding on the character of the City; to provide adequate signs for direction and property identification purposes; and to provide adequate signs for commercial uses.

**9.02.01** All signs are considered structures and require a construction/zoning permit, except as provided in this Ordinance.

### **9.02.02 Signs - General.**

1. No sign shall have blinking, flashing or revolving lights or unshielded lights, except time, temperature and public information by Conditional Use Permit.
2. Unmaintained signs or signs for discontinued business will be removed within 60 days of notification by the Zoning Administrator.
3. Permits for signs shall consider protecting sight distances at intersections, driveways and curves.
4. Temporary real estate signs or contractor's signs not exceeding the maximum size allowed in the zone advertising a property for sale or under construction may be placed in any zone without a permit. Such signs shall be removed immediately after the premises are rented or sold.
5. No signs, other than signs placed by the City, County or State to inform of the laws or Ordinances, or to provide direction to public facilities, shall be allowed in the City legally dedicated public right of way.
6. "No trespassing", "no hunting" and similar signs are allowed without permit.
7. A non-conforming sign may be refaced, removed and replaced for maintenance purposes, however, it shall not be increased in size and the support system shall not be replaced and the sign shall be removed in its entirety upon the determination by the Zoning Administrator that the sign is in disrepair or the support system is failing.

8. Political signs are allowed without permit, provided the property owner gives written permission and signs are removed in accordance with the laws of the State.

9. No sign shall exceed the maximum height of twelve (12) feet, measured from the ground to the top of the sign, except for on-site signs in the Commercial zoning district, which may be permitted through a Conditional Use Permit. In no case shall any sign be permitted that is over 20 feet in height.

### **9.02.03 On-site Signs.**

1. Existing non-conforming on-site signs are considered permissible non-conforming uses. The entire sign shall be eliminated upon sale and transfer of the property.

2. Banner signs shall be allowed for up to fourteen (14) days not to exceed a total of thirty (30) days per calendar year.

3. Portable advertising, such as trailer signs, are not allowed.

4. A sign for large multi-business complex shall be addressed separately in the Conditional Use Permit, for the principal use to allow innovations and may be allowed to have a sign area exceeding the maximums if found compatible to the surrounding area by the City Council.

#### **5. Residential Zones:**

a. Signs shall not be internally or externally lighted but may be of a reflective material.

b. No sign shall be larger than four (4) square feet for a residence or six (6) square feet up to five (5) feet high maximum for a home occupation.

c. Only one sign shall be allowed per property.

#### **6. Commercial Zones:**

- a. Each building shall be allowed to have no more than one (1) wall sign per structure.
- b. Each lot shall also have the choice of one of the following on-site signs in addition to a wall sign:
  - i. A sign protruding from the front of the building not beyond the sidewalk and not interrupting the full use of the sidewalk; or
  - ii. A free-standing sign with a maximum sign height of 20 feet to the top of the sign from the ground, provided that:
  - iii. The total area of all signs does not exceed 32 square feet, unless approved through a conditional use permit issued by the City Council.
- c. Uses that depend on patrons arriving by watercraft may use signs and lighting to convey needed information to the public, subject to the following general standards:
  - i. No advertising signs or supporting facilities for signs may be placed in or upon public waters. Signs conveying information or safety messages may be placed in or on public waters by a public authority or under a permit issued by the County Sheriff.
  - ii. Signs may not be placed within the shore impact zone.
  - iii. Outside lighting may be located within the shore impact zone or over public waters if it is used to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights.

#### **9.02.04 Off-Site Signs.**

Off site signs are not allowed in any zoning district, except for off-site commercial signs existing at the time of adoption of this ordinance. Those signs may, from time to time, have the sign copy changed and may have the wooden sign face and wooden supports replaced in kind and as necessary. In making this exception, it is

the intent of the city to continue to provide a limited opportunity for off-site advertising by local businesses.

(Note: As the date of the adoption of this ordinance two existing off-site commercial signs were in place at the northwest quadrant of the intersection of CSAH 1 and CSAH 66/Goldenstein Road and one was in place in the southwest quadrant of this intersection. The westerly of the first two signs, the "Simonson" sign, is a two-sided wooden sign, with each side a rectangle measuring 8 feet tall by 16 feet wide, or 128 square feet. The sign is supported 7 feet off the ground by three wooden posts. Its total height is 15 feet. The easterly of the two signs, the "Shamp's" sign, is a one sided east facing wooden sign generally rectangular in shape and measuring 10.5 feet tall by 12 feet wide or 126 square feet. The sign is supported 4.5 feet off the ground on two wooden posts braced from the ground with wooden supports. Its total height is 15.5 feet. The sign in the southwest quadrant, the "Immaculate Heart" sign, is a one-sided, east-facing wooden sign generally rectangular in shape and measuring 4 feet tall by 10 feet wide, or 40 square feet in size. The sign is supported 4 feet off the ground on two wooden supports. Its total height is 8 feet).

### **9.03 Screening and Fencing.**

The standards in this Article shall apply to screening and fencing in all zoning districts.

**POLICY:** It shall be policy of the City of Manhattan Beach to encourage the use of screening and fencing practices to aid in the visual and audio separation of one Zoning District from another as well as to aid the separation of one facility from another within a Zoning District; it being recognized that each such concerned premises does thereby obtain, to the degree such screening or fencing is accomplished, the improved opportunity of use without being affected by the uses on adjoining properties. No use shall create, maintain or continue any activity which has a strong negative visual or auditory impact on adjacent property.

## **Fencing Standards**

**9.03.01** Fences may be constructed on a property or on a property line by mutual agreement of all property owners, except none shall be constructed closer than one-half the distance of the required structure setback from: the ordinary high water level of shoreland areas; bluffs; or steep slopes.

**9.03.02** Fences shall not be erected where they create a visual safety hazard.

**9.03.03** Fences may be required as part of a project requiring a conditional use permit.

**9.03.04** Fences shall not exceed eight (8) feet in height in the Residential Shoreland, Rural Residential, and open zoning districts. In all other zones fence heights shall not exceed ten (10) feet in height. Any fence over ten (10) feet requires a Conditional Use Permit.

**9.03.05** No fence shall have any advertising on the side facing adjoining property, nor shall such fence side be otherwise adorned in a manner not compatible to the property it faces.

**9.03.06** Fences in Residential-Shoreland, Commercial, and Commercial-Shoreland shall be designated as structures and require a zoning permit. Fences in other districts do not require a zoning permit.

**9.03.07** Fences may be required as part of a project requiring a Conditional Use Permit.

## **Screening**

**9.03.08** Screening by vegetation and fencing. When screening is required and must be planted and grown to meet the requirements of this standard, five (5) years shall be allowed to meet such requirements if the necessary vegetation is planted within one (1) year of when permit is issued, but if the required screening is Medium, Heavy or Extra Heavy, temporary fencing shall also be used over the five (5) year period of time.

**9.03.09** Vegetative screening. When screening is done by means of trees, bushes, shrubbery, or other planting, the following guide lines as shown in Chart 1 will be used as a minimum. When required by permit. Screening shall be provided on premises

**9.03.10** When required by permit, screening shall be provided on premises where required and to the degree required when made as a condition of the issuance of any permit. The screening shall meet the requirements as shown in Chart 1.

**9.03.11** Screening may be required as a part of a project requiring a Conditional Use Permit or Interim Use Permit.

**9.03.12** Screening may consist of dense planting six feet or more in height, wood walls or fences, or similar aesthetically pleasing structures with no signing. All structural elements shall not exceed the height limit for that zoning district.

Screening	Feet in	Percent	Or	Feet in	Percent	Or	Feet in	Percent	Or	Feet in	Percent
Type	Width	Effective		Width	Effective		Width	Effective		Width	Effective
Minimal	10	20%	Or	25	10%	Or	N/A	N/A	Or	N/A	N/A
Minor	10	40%	Or	25	20%	Or	50	101%	Or	N/A	N/A
Medium	25	75%	Or	50	40%	Or	75	20%	Or	100 feet	10%
Heavy Screening	50	75%	Or	75	40%	Or	100	20%	Or	150 feet	10%

Definitions: When screening is required by provisions of the Ordinance, specific standards will be indicated and shall mean the following: Minimal, Minor, Medium, Heavy Screening or Extra Heavy Screening, refer to the chart above.

**9.04 Exterior Storage.**

**9.04.01** All materials and equipment shall be stored within a building or fully screened so as not to be visible from adjacent properties except for recreational equipment less than 24 feet in length, construction and landscaping materials and equipment currently being used for construction on the premises, woodpiles, agricultural equipment and materials being used or intended for use on the premises, and off-street parking except as otherwise regulated herein. Boats and

recreational vehicles less than 24 feet in length may be stored outside but must meet all structure setbacks.

**9.04.02** No more than two (2)-abandoned motor vehicles shall be stored outside, unless properly screened from public view. Abandoned vehicles must meet all structure setbacks.

**9.04.03** No accumulation of litter, debris, or junk shall be allowed in any zoning district.

### **9.05 Pets and Animals.**

**9.05.01** Pets and animals shall be properly cared for and shall not be allowed to create problems for neighbors or the City or become a nuisance.

**9.05.02** Animals may be kept and raised as provided in Section 5.02.02 with a conditional use permit provided that the standards of each zoning district are not compromised.

### **9.06 Parking, Storage and Usage of Recreational Vehicles.**

**9.06.01** Recreational vehicles 24 feet or more in length shall be stored inside or be fully screened from adjacent properties and public waters.

#### **9.06.02 Temporary Placement for Use.**

1. Temporary placement for use of recreational vehicles other than in a campground shall be allowed with a zoning permit for one (1) calendar year (June through May). The zoning permit may be renewed for three (3) consecutive years. Any use of a recreational vehicle greater than three (3) years requires an interim use permit.

2. Any owner or tenant on a lot may permit to be placed on that lot a recreational vehicle to be used for guests to that property for a period of up to twenty-one (21) consecutive days per year without a permit.

3. Temporary placement for use of recreational vehicles shall be allowed only on lots having conforming water supply and sewage treatment systems.

## **9.07 Parking and Loading.**

**9.07.01** Size of parking space: every required off-street parking space shall be at least ten (10) feet wide, and at least eighteen (18) feet in length, exclusive of access drives and drive aisles.

**9.07.02** Storage: any required off-street parking space shall not be utilized for open storage of goods or for the storage of vehicles which are inoperable, for sale, or for rent.

**9.07.03** Location: All off-street parking facilities required herein shall be located with respect to the following:

1. Parking spaces accessory to one-family, two-family and multiple dwellings shall be placed on the same lot as the principal use.
2. Parking spaces accessory to businesses and industries must be on the same lot as the principal use, except as may be allowed by conditional use permit.
3. All off-street parking spaces must meet the structural setbacks established for the zoning district where they are located. Driveways that provide street access to parking spaces may cross through the right-of-way setback.

**9.07.04** Landscaping interior of parking lots: Parking lots with 40 or more off-street parking spaces shall have live landscaping, including trees, of at least four percent of the interior of the parking lot.

**9.07.05** The design and maintenance of parking areas shall follow the "Parking Design and Maintenance" requirements provided in the Appendix to this ordinance.

**9.07.06** Off-street parking space requirements are established by the city for specific land uses, as listed in the "Parking Tables" in the Appendix to this ordinance. When there is a reasonable showing that fewer parking spaces may be needed for a specific user of a property, the city may consider allowing designation of a "Proof of Parking" area where future parking spaces shall be built, if deemed necessary by the city due to actual parking needs.

**9.07.07** Handicap accessibility requirements for parking areas shall be as provided in the Minnesota Accessibility Code, as it may be amended from time to time. Variances from the Code are not permitted.

**9.07.08** Loading area design requirements shall be as listed in the “Loading Area Design” section of the Appendix to this ordinance.

### **9.08 Use and Construction of Roads and Driveways.**

**9.08.01** Parking vehicles on city streets is not allowed. No snowmobiles or all-terrain vehicles may be operated on the surfaced part of city roads.

**9.08.02** Load limit restrictions shall be in force on City roads at the time such restrictions are imposed on county roads by Crow Wing County. The load limit during the time such restrictions are in force shall be 5 tons axle weight. The City may impose other load restrictions when deemed necessary.

**9.08.03** The speed limit on all City roads shall be 30 miles per hour.

**9.08.04** Installation of an impervious surface (e.g., blacktop, concrete, etc.) requires a building permit. Driveway access to a city street is subject to the requirements listed below. Further, any work done within a city street right-of-way, other than a residential driveway, requires authorization by the city council. An illustration of a driveway connection is included in the Appendix for reference. Access to a county road requires a permit from Crow Wing County.

1. A driveway shall intersect the adjoining street at ninety (90) degrees.
2. A residential driveway shall be a minimum width of twenty (20) feet wide and not more than twenty-four (24) wide, and no more than 24 feet wide where it abuts the city street measured at right angles to the centerline of the driveway.
3. Driveways and private streets must meet the structure setbacks for the zoning district in which they are located, and minimum spacing between driveway centerlines, as measured at the road shoulder, is one hundred (100) feet, unless a variance is granted by the city for either provision.

4. One driveway per parcel is allowed. More than one driveway per parcel may be allowed by the city if the parcel frontage is greater than one thousand three hundred and twenty (1320) feet, or if more accesses are needed due to fence-line locations, geographical features, or other circumstances.
5. All culverts shall be galvanized steel or other suitable approved material, have a minimum diameter of twelve (12) inches, length sufficient for the width of the driveway, and flared ends.
6. No driveway entrance shall cross a wetland unless a wetland permit has been obtained in advance.
7. Modifications to the existing ditch/ drainage system may not be done without prior approval by the City. No obstructions shall be constructed or planted in the City right-of-way. Obstructions include but are not limited to the following: retaining structures, posts, trees, shrubs, and other such items.
8. Driveway fill slopes shall be fine graded and seeded when completed to restore vegetation as soon as possible. Fill slopes shall be 6:1 (Horizontal: Vertical ) or flatter.
9. An application for a driveway entrance permit, along with the permit fee and construction deposit shall be delivered to the City prior to commencement of construction of a driveway entrance onto a City street. The permit shall include a fee for the permit and a driveway construction deposit to assure satisfactory completion of the construction.
10. In the event that the construction has not been completed within six (6) months from the date the permit was issued, the permit will become null and void. If no construction is commenced within six (6) months, the deposit shall be refunded. If construction has commenced and then stopped due to weather, a six (6) month permit extension may be granted.
11. Upon receipt of application, the driveway entrance location will be inspected to determine culvert requirements. The approved permit will indicate the culvert requirements.

12. Upon completion of the driveway approach and/or culvert installation, including turf establishment, the approach shall receive a final inspection by the City. Refund of the driveway construction deposit shall be made only after final inspection and approval. If the driveway approach does not pass final inspection, the driveway construction deposit may be used by the City to complete the installation or to remove an unacceptable driveway approach.

**9.09 Exterior Lighting shall meet the following standards.**

1. Exterior lighting shall be designed and arranged to limit direct illumination and glare upon or into any contiguous parcel. Reflected glare or spill light shall not exceed five-tenths foot-candle as measured at the property line when abutting any residential parcel, and one foot-candle on any abutting commercial parcel. Street lights installed in the public right-of-way shall be exempt from these standards.
2. Mitigative measures shall be employed to limit glare or spill light to protect neighboring parcels and to maintain traffic safety on public roads. These measures shall include lenses, shields, louvers, prismatic control devices, and limitations on the height and type of fixtures. The city may also limit the hours of operation of outdoor lighting if it is deemed necessary to reduce impacts on the surrounding neighborhood.
3. No flickering or flashing lights shall be permitted except for holiday lights.
4. Direct, off-site views of the light source shall not be permitted except for globe and/or ornamental light fixtures approved in connection with a building plan or conditional use permit. Globe and ornamental fixtures shall only be approved where the property owner can demonstrate that off-site impacts stemming from direct views of the bulb are mitigated by future design and/or location.
5. The city may require submission of a light distribution plan if deemed necessary to ensure compliance with the intent of this ordinance.

### **9.10 Dust, Smoke and Odor.**

A person must not make or assist in making, permit or allow the making of any disturbing, unreasonable or excessive dust, smoke or odor. Any dust, smoke or odor that is disturbing, unnecessary or excessive to a reasonable person of ordinary sensitivity is hereby prohibited. The factors that should be considered in determining whether dust, smoke, or odor is disturbing, unnecessary, or excessive include the following:

1. The time of day or night when the dust, smoke or odor occurs;
2. The duration of the condition and whether it is recurrent, intermittent, or constant;
3. The proximity of the dust, smoke, or odor to a sleeping facility or residential area;
4. The land use, nature and zoning of the area from which the dust, smoke or odor emanates and the area where the condition is perceived; and
5. The number of people and their activities that are affected or are likely to be affected by the dust, smoke and odor.
6. Further, the emission of dust, smoke, or odor shall in all cases be in compliance with any regulated by the Minnesota Pollution Control Agency Standards and as they may be subsequently expanded, modified or amended.

### **9.11 Noise.**

A person must not make, or assist in making, permit or allow the making of a noise that is prohibited by this section. The factors that should be considered in determining whether a noise is loud, disturbing, unnecessary, or unreasonable for the purposes of this section include the following:

1. The time of day or night when the noise occurs;
2. The duration of the noise and whether the noise is recurrent, intermittent, or constant;

3. The proximity of the noise to a sleeping facility or residential area;
4. The land use, nature and zoning of the area from which the noise emanates and the area where the noise is perceived;
5. The number of people and their activities that are affected or are likely to be affected by the noise; and
6. The sound peak pressure level of the noise, if known, in comparison to the level of ambient noise.

#### **9.11.01 Prohibited Noises.**

The following acts are loud, disturbing, and unnecessary noises that are prohibited:

1. The continual sounding of a horn, siren, or other signaling device on a motor vehicle for a period of at least 15 seconds even though interrupted by short gaps in sound, except in cases of imminent danger or emergency; or the amplification of sound emitted by a signaling device beyond that of its design. Burglar alarms, sirens or similar devices installed and operated for the use specified by the manufacturer, are exempt from the provisions of this section if they sound no longer than 15 minutes.
2. A radio receiving set, musical instrument, or musical instruments, phonograph, stereo, or other machine or device used for reproduction of sound used or operated in a manner to unreasonably disturb the peace, quiet, or comfort of a reasonable person of ordinary sensitivity in its vicinity.

The operation of a receiving set, instrument, phonograph, stereo machine or device between 10:00 p.m. and 7:00 a.m. is prima facie evidence of a violation of this section if done in a manner to be plainly audible:

- a. At the real property boundary of the building, structure, residence, or other area in which it is located; or
- b. At a distance of 50 feet from any motor vehicle in which it is located.

3. Attracting the attention of the public to a business, building, structure, vehicle, or other area by creating a noise that is unreasonably disturbing to a reasonable person of ordinary sensitivity including, but not limited to crying out, sounding a horn, ringing a bell, or issuing music or sound broadcasts through any radio receiving set, musical instrument, phonograph, stereo, loud speaker, sound amplifier, or other machine or device for the production or reproduction of sound. In addition, a person must not create noise that is unreasonably loud or disturbing to a reasonable person of ordinary sensitivity through the use of a sound production or reproduction device in activities or proceedings of a business including, but not limited to, the use of loud speakers for communications. If speaker or sound systems are required by law for safety reasons, businesses are exempt from the provisions of this section.

4. Any noise that is unreasonably disturbing to a reasonable person of ordinary sensitivity standard found in 9.10 MPCA Standards in any multi-family residential building audible beyond the boundaries of the area or premise owned, rented, leased, or used by the person;

5. The loading or unloading of a motor vehicle or handling of bales, boxes, crates, or containers in a manner to cause loud or disturbing noise that is unreasonable to a reasonable person of ordinary sensitivity;

6. The operation of a motor vehicle, a motorbike or other similar vehicle or device in a way which results in the squealing of tires or the creation of other noise on a highway, private road, public or private parking lot, driveway, or other property in the city if the noise unreasonably disturbs a reasonable person of ordinary sensitivity, except when there is reason to do so for the safe operation of the vehicle;

7. The use of a compression release engine braking system, commonly known as a "jake brake", except in an emergency;

8. The operation of an internal combustion engine or the repairing, rebuilding, building or testing of vehicles or equipment in a manner to create noise that is unreasonably disturbing to a reasonable person of ordinary sensitivity;

9. Operation of earthmoving or related construction equipment on residential property during more than 5 days within a 30 day period, except during construction or remodeling activity for which a building or grading permit has been obtained;

10. Participation in a party or gathering that creates noise that is unreasonably loud or disturbing to a reasonable person of ordinary sensitivity as determined at the property line or boundary of the building, structure, rental unit, yard, or other portion of the property where the party or gathering occurs. When a party or gathering creates unreasonably loud or disturbing noises, all persons except the owner, renter, lessee or other occupants must promptly leave the premises in an orderly manner; and

11. The outdoor operation of a public address or sound amplification on public or private property, unless a permit has been received from the City at least two weeks before the event or unless it is necessary for the safe operation of the facility. Permits will only be issued for special events such as musical or theatrical performances, or in other circumstances determined to be appropriate by the city. In granting such permits, the city shall consider the potential impacts to neighboring properties.

#### **9.11.02 Operational Limits for Various Sound Sources.**

1. A person must not engage in, permit, or allow construction or grading activities involving the use of power equipment, or other activities resulting in unreasonably loud or disturbing noise for a person of ordinary sensitivity at any time other than between 7:00 a.m. and 10:00 p.m.

2. A person must not operate outdoor power implements including, but not limited to, power lawn mowers, power hedge clippers, power saws, or other such implements at any time other than between 7:00 a.m. and 10:00 p.m. Operation of equipment for snow removal is exempt from the provisions of this section when initiated within 12 hours of completion of a recent snowfall.

3. A person must not drive or operate a motorbike, snowmobile, ATV, or other similar recreational vehicle not licensed for travel on public streets at any time other than between 7:00 a.m. and 10:00 p.m. on any day of the week.

#### **9.11.03 Exceptions to Regulations.**

The foregoing regulations do not apply to:

1. Noise necessary for the protection or preservation of property or the health, safety, or life of a human being;
2. The operation of motor vehicles on public streets and highways in compliance with state and local laws;
3. The operation of locomotives and railroad cars;
4. Sirens, warning devices or other equipment used by public safety personnel in emergency situations; and
5. Emergency work such as utility maintenance and snow removal necessary to restore public service or to eliminate a hazard, or maintenance activities conducted or contracted for by the City of Manhattan Beach.

#### **9.11.04 Noise Variances.**

The Board of Adjustment may permit variances from the strict compliance with the provisions of this chapter if there are special circumstances or conditions that exist and the granting of a variance will not materially affect the health, safety or general welfare of the public. The Board of Adjustment, at its discretion, may require notification of nearby property owners if a variance to the provisions of this ordinance is to be considered.

#### **9.12 Solid Waste Management.**

For matters concerning solid waste management the city hereby incorporates as if set out in full, the Solid Waste Management Ordinance for Crow Wing County.

## **9.13 Adult Use.**

### **9.13.01 Statutory Authorization.**

1. Statutory Authorization. This Adult Use Ordinance is adopted pursuant to the authority delegated to City of Manhattan Beach by Minnesota Statutes, Chapter 394, commonly known as the Minnesota City's Planning and Zoning Enabling Legislation.

2. Findings and Purpose. This section is intended to regulate "adult uses," those premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas" which are capable of being seen by members of the public.

a. The nature of adult uses is such that they are recognized as having adverse secondary impacts, based upon studies of the impacts that adult establishments have on their surrounding communities. The Minnesota Attorney General, the American Planning Association, and cities such as St. Paul, Minnesota; Indianapolis, Indiana; Hopkins, Minnesota; Ramsey, Minnesota; Phoenix, Arizona; Los Angeles, California; and Seattle, Washington have conducted these studies.

b. The adverse secondary impacts found in the studies include increased crime rates, decreased property values, increased transience, neighborhood blight, and potential health risks. These impacts are particularly apparent when they are accessible to minors and located near residential properties or residential uses such as schools, day care centers, libraries or parks. The nature of the adult uses requires that they not be allowed within certain zoning districts, or set back a minimum distance from each other, or other residential uses. Special regulation of these uses is necessary to ensure that the adverse secondary effects would not contribute or enhance criminal activity in the area of such uses, nor will it contribute to the blighting or downgrading of the surrounding property and lessening of its value.

c. It is therefore in the best interest of the public health, safety, and welfare of the citizens of the City of Manhattan Beach that certain types of activities, as set forth in this ordinance, are prohibited upon the premises of licensed liquor, wine, and beer establishments so as to best protect and assist the owners and operators and employees of these premises, as well as patrons and the public in general. Further, the City intends, that the standards in this ordinance reflect the prevailing community standards in the City of Manhattan Beach. This Ordinance is intended to prevent harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Board of Commissioners also desires to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various acts of criminal conduct such as prostitution, sexual assault, and disorderly conduct.

#### **9.13.02 Title and Short Title.**

1. Title. Pursuant to Minnesota Statutes, Chapter 394, the Planning and Zoning Enabling Legislation, the City of Manhattan Beach City Council ordains this document the City of Manhattan Beach Adult Use Ordinance.
2. Short Title. This Ordinance shall be known, and may be referred to, as the Adult Use Ordinance. When referred to herein, it shall be known as “this Ordinance”.

#### **9.13.03 Implementation.**

1. Jurisdiction. The provisions of this Ordinance shall apply to all adult uses located in un-incorporated areas within the boundaries of City of Manhattan Beach.
2. Compliance. All adult uses shall be in full compliance with requirements of this Ordinance; the City of Manhattan Beach Land Use Ordinance, other applicable provisions of City, State, or Federal laws, and applicable fire, health, and/or safety codes.

3. Non-conforming adult uses. Non-conforming adult uses shall be subject to the provisions contained in the City of Manhattan Beach Land Use Ordinance, Non-conformities.

4. Enforcement. The City of Manhattan Beach Council, the City of Manhattan Beach Planning Commission, and the Zoning Administrator are responsible for the enforcement of this Ordinance.

5. Penalty. Any person, firm or corporation who shall violate any of the provisions hereof, or who shall fail to comply with any of the provisions hereof, or who shall make any false statement in any document required to be submitted under the provision hereof, shall be guilty of a misdemeanor. Each day that a violation continues shall constitute a separate offense. In addition, City of Manhattan Beach may sue for injunctive relief on any violation, or to prevent a violation, or may suspend and/or revoke any permits or licenses issued by the Board with cause.

a. Suspension or Revocation of Adult Use License.

Any violation of this Ordinance shall be a basis for suspension or revocation of any permit or license granted hereunder. In the event the Planning Commission proposes to suspend or revoke the Adult Use License, the Planning Commission shall hold a hearing. The Zoning Administrator will provide 10 days written notice to the permit and license holder before such a hearing.

i. Interpretation. In the interpretation and application, the provisions of this Ordinance shall be interpreted to protect the public health, safety and welfare of the citizens of City of Manhattan Beach by providing for the regulation of adult uses. This Ordinance is not intended to limit or repeal any other powers granted to City of Manhattan Beach by the State of Minnesota.

ii. Severability. If a court of competent jurisdiction adjudges any section, clause, provision, or portion of this Ordinance unconstitutional or invalid, the remainder of the Ordinance shall not be affected thereby.

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

iv. Referral to other laws If any section of this Ordinance references another Ordinance, Statue, Rule, or other provision of law, the reference shall be for that other provision of law as currently enacted and as it may be amended or re-codified in the future.

#### **9.13.04 Definitions**

1. Word Usage. Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Ordinance its most reasonable application. For the purpose of this Ordinance, the words “must” and “shall” are mandatory and not permissive. All distances, unless otherwise specified, shall be measured horizontally.

2. Permitted Uses. Permitted uses of land or buildings as hereinafter listed shall be permitted only in the districts indicated, and under the conditions specified.

3. Definitions:

a. Adult Uses. Adult uses include, but are not limited to, adult bookstores, adult motion picture theaters, adult picture rental, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of “specified

sexual activities” or “specified anatomical areas” which are capable of being seen by members of the public.

b. Adult Uses-Accessory. An adult use, business, or establishment having no more than ten percent (10%) of the floor area of the establishment in which it is located; or having no more than twenty percent (20%) of the gross receipts of the entire business operation; and not involving or including any activity except the sale or rental of merchandise.

c. Adult Uses-Principal. An adult use, business, or establishment having more than ten percent (10%) of the floor area of the establishment in which it is located; or having more than twenty percent (20%) of the gross receipts of the entire business operation derived from any adult use.

d. Adult Use-Body Painting Studio. A business or establishment that provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a person when such body is wholly or partially nude in terms of “specified anatomical area.”

e. Adult Use-Bookstore. A building or portion of a building used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film if such building or portion of a building is not open to the public generally but only to one or more classes of the public excluding any minor by reason of age or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the presentation, display, depiction, or description of “specified sexual activities” or “specified anatomical areas.”

f. Adult Use-Cabaret. A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age or if such dancing or live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction, or description of “specified sexual activities” or “specified anatomical areas.”

g. Adult Use-Companionship Establishment. A companionship establishment which excludes minors by reason of age or which provides the service of listening to or engaging in conversation, talk, or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

h. Adult Use-Conversation/Rap Parlor. A conversation/Rap Parlor that excludes minors by reason of age or which provides the service of listening to or engaging in conversation, talk, or discussion, if such service is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

i. Adult Use-Health/Sport Club. A health/sports club that excludes minors by reason of age, or if such club is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

j. Adult Use-Goods or Materials. Adult Use goods or materials include, but are not limited to goods, materials, items, articles, clothing, services or the like as described in Subparts 4 through 19 of this Section of which there is an emphasis on the presentation, display, depiction or descriptions of “specified sexual activities” or “specified anatomical areas”.

k. Adult Use-Hotel/Motel. A hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, or describing or relating to “specified sexual activities” or “specified anatomical areas.”

l. Adult Use-Massage Parlor, Health Club. A massage parlor or health club that restricts minors by reason of age and which provides the service of massage if such service is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

m. Adult Use-Mini Motion Picture Theater. A building or portion of a building with a capacity of less than fifty (50) persons used for presenting material if

such building or portion of a building as a prevailing practice excludes minors by reason of age or if such material is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas” for observation by patrons therein.

n. Adult Use-Modeling Studios. An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in “specified sexual activities” or “specified anatomical areas” while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

o. Adult Use-Motion Picture Arcade. Any place to which the public is permitted or invited wherein coin operated or slug operated, or electronically, electrically, or mechanically controlled or operated still or motor picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing “specified sexual activities” or “specified anatomical areas.”

p. Adult Use-Motion Picture Theater. A building or portion of a building with a capacity of fifty (50) or more persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by reason of age or if such material is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas” for observation by patrons therein.

q. Adult Use-Novelty Business. A business that has as a principal activity the sale of devices which stimulate human genitals or devices that are designed for sexual stimulation.

r. Adult Use-Sauna. A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing, or

reducing agent, if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.

s. Adult Use-Steam Room/Bathhouse Facility. A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing, or reducing agent, if such building or portion of a building restricts minors by reason of age or if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

t. Applicant. A person submitting an application for an adult use. For the purposes of this Ordinance, an applicant is a corporation, company, association, society, firm, partnership, or joint stock company, as well as an individual, a state, and all political subdivision of a state or any agency or instrumentally thereof.

u. Liquor License. Any of the following licenses issued or approved by the City of Manhattan Beach pursuant to Minnesota Statute, Chapter 340A:

i. Any On Sale; or

ii. Any Off Sale.

v. Minor. Any person under eighteen (18) years of age.

w. Police Related Service Calls. Requests for assistance made to any public law enforcement agency from a neighboring resident, a victim of crime, a patron of the establishment, or the management of the Adult Use. Such calls may include but are not limited to: assaults, disorderly conduct, indecent exposure, prostitution, and trespassing.

x. Specified Anatomical Areas:

- i. Human genitals, pubic region, buttock, anus, or female breast(s), below a point immediately above the top of the areola, unless completely and opaquely covered.
  - ii. Erect penis, even if completely and opaquely covered.
- y. Specified Sexual Activities:
  - i. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexual-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty;
  - ii. Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence.
  - iii. Use of human or animal ejaculation or ejaculate, sodomy, oral copulation, coitus, or masturbation.
  - iv. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast(s).
  - v. Situations involving a person or persons, any of whom are nude, clad in undergarments, or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical constraint of any such persons.
  - vi. Erotic or lewd touching, fondling or other sexually oriented contact with an animal by a human being.
  - vii. Human erection, urination, menstruation, vaginal or anal irrigation.

### **9.13.05 Administration**

1. Adult Use License Required. No person shall own or operate an adult use establishment without first having secured an Adult Use License from City of Manhattan Beach.

a. Application. The application for an Adult Use License shall be submitted on a form provided by the City and shall include:

i. If the application is an individual: the name, residence, phone number, and birth date of the applicant shall be provided. If the applicant is a partnership: the names, residence, phone number, and birth date of each general and limited partner shall be provided. If the applicant is a corporation: the name, residence, phone numbers, and birth dates of all persons holding more than five (5) percent of the issued outstanding stock of the corporation.

ii. The name, address, phone number, and birth date of the operator and manager of such operation, if different from the owner(s).

iii. The address and legal description of the parcel where the adult establishment is to be located.

iv. A statement detailing any misdemeanor, gross misdemeanor or felony convictions relating to sex offenses, obscenity, or the operation of an adult establishment of adult business by the applicant, operator, and manager, and whether or not the applicant has ever applied for or held a license to operate a similar type business in any other community(s). In the case of a corporation, a statement detailing any misdemeanor, gross misdemeanor or felony convictions by the owners of more than five percent (5%) of the issued and outstanding stock of the corporation, and whether or not those property owners have ever applied for or held a license to operate a similar type of business in other community(s).

v. The activities and types of business to be conducted.

vii. The hours of operation.

viii. Provisions to be utilized to restrict access by minors.

ix. A building plan of the premises detailing all internal operations and activities.

b. Responsibility to Obtain Other Permits/Licenses. The granting of any permit or license pursuant to requirements of this Ordinance, or other applicable City of Manhattan Beach Ordinances, shall not relieve applicants of their responsibility to obtain any required state or federal permits.

## 2. Adult Use License Fee

a. Submittal of Fees. Each application for an Adult Use License shall be submitted to the Zoning Administrator and shall be accompanied by payment in full of the required fee for the Adult Use License. If rejection should occur of any application for an adult use license, the City shall refund the license fee.

b. Expiration of Adult Use License. Each license shall be issued for a period of one (1) calendar year. All licenses shall expire on the last day of December of each year. Any portion of a year less than 12 months shall be counted as a full year for the purpose of calculation of fees.

c. Annual Fee. The City of Manhattan Beach Council by resolution shall establish the annual fee for an Adult Use License. The fee may be adjusted from time to time.

## 3. Granting of Adult Use License

a. The Zoning Administrator shall investigate all facts set out in the application. Each owner of the establishment, be it individual, partner, limited partner, shall be subjected to a criminal history background check by the Sheriff or their designee. Costs of the criminal history investigations shall be borne by the applicant according to a fee schedule established by the Sheriff. The applicant shall not consider the application for the adult use license complete until all required information has been furnished, the Sheriff has completed the investigation, and a report provided to the Zoning Administrator.

b. A Conditional Use Permit, public hearing process, shall apply as regulated by the City of Manhattan Beach Zoning Ordinance. Application for an Adult Use License shall only be considered after the City of Manhattan Beach Council has granted a Conditional Use Permit. The Adult Use License shall be issued only to the applicant and shall not be transferable to another holder. Each license shall be issued only for the premises described in the application. No license may be transferred to another parcel and/or premises or person without the written permission of the City Council. If the licensee is a partnership or corporation, a change in the identity of any of the principals of the partnership or corporation shall be deemed to be a transfer of the license.

4. Persons Ineligible for Adult Use License. No license shall be issued to any person:

- a. Under eighteen (18) years of age.
- b. Who is overdue in payments to a city, state, or federal government of taxes, fees, fines or penalties, or charges for municipal services and utilities assessed against them or imposed upon them.
- c. Who has been convicted of a misdemeanor, gross misdemeanor or felony, or of violating any law of this state or local Ordinance relating to sex offenses, obscenity offenses, or adult uses.
- d. Who is not the individual owner of the establishment for which the license is issued.
- e. Who has not paid the required investigation/licensing fees required by this Ordinance or by Board Resolution.
- f. Who is acting as an agent for an individual who would be disqualified pursuant to the above criteria.

5. Places Ineligible for Issuance of Adult Use License:

- a. No license shall be granted for adult establishments on any premises where a licensee has been convicted of a violation of this Ordinance, or where any

license hereunder has been revoked for cause, until one (1) year has elapsed after such conviction or revocation.

b. No license shall be granted for any adult use that is not in compliance with the City's Land Use Ordinance, or other such Rules, Codes or Regulations, such as, but not limited to, individual sewage treatment system, fire, health, handicap accessibility and safety codes and all provisions of federal and state law.

6. Conditions of Adult Use License:

a. All licensed premises shall have the license posted in a conspicuous place at all times.

b. No Minor shall be permitted on the premises.

c. Any designated inspection officer of the City shall have the right to enter, inspect, and search and request records of the premises of a licensee during business hours.

d. No adult use goods or materials shall be offered, sold, transferred, conveyed, given, displayed, or bartered to any minor.

e. In granting a license for an adult use, the City may impose additional conditions to protect the best interest of the surrounding area or the City as a whole.

f. The licensee must keep itemized written records of all transactions involving the sale or rental of all items or merchandise for at least one year after the transaction. At a minimum, those records must describe the date of the transaction, a description of the transaction, the purchase or rental price, and a detailed description of the item or merchandise that is being purchased or rented. These written records must be provided to the City or City's enforcement designee(s) upon request.

g. The licensee must cover or otherwise arrange all windows, doors, and apertures to prevent any person outside the licensed premises from viewing

any items or merchandise inside the premises depicting specified sexual activities or specified anatomical areas.

### **9.13.06 Adult Use Operational Restrictions.**

#### **1. Adult Uses-Principal**

a. General Provisions. Adult uses as defined in Section 403 of this Ordinance shall be subject to the following general provisions:

i. No person(s) under eighteen (18) years of age shall be permitted in any adult use-principal premises, enterprise, establishment, business or place.

ii. No liquor license, as defined, shall be issued to any adult use related premises, enterprise, establishment, business, or place open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction, description of, or participation in “specified sexual activities” or “specified anatomical areas.”

iii. No adult use related premises, enterprise, establishment, business or place shall allow or permit the sale or service of set ups to mix alcoholic drinks. No alcoholic beverages shall be consumed on the premises of such premises, enterprise, establishment, business, or place.

iv. Activities classified as obscene are not permitted and are prohibited. In no instance shall the application or interpretation of this Ordinance be construed to allow an activity otherwise prohibited by law.

v. Adult uses, either principal or accessory, shall be prohibited from locating in any building that is also utilized for residential purposes.

vi. An adult use that does not qualify as an accessory use pursuant to Section 603 below shall be classified as an adult-use principal.

vii. The owner/operator shall hire and employ their own security personnel who shall provide crowd control to maintain orderly conduct at such establishment. These employees are not required to be law enforcement personnel.

viii. Off-street parking shall be provided.

2. Permitted Locations for Adult Use-Principal.

a. Adult use-principal, shall only be allowed in Industrial or Commercial as defined by City of Manhattan Beach Zoning Ordinance and/or official Zoning Map.

b. Access, parking, screening, lighting, and other relevant site related criteria for all Adult uses shall be as set forth in the City of Manhattan Beach Land Use Ordinance.

c. Adult-use principal, shall be located at least one thousand (1,000) lineal feet, as measured in a straight line from the closest point of the main entrance of the building within which the adult use-principal is located, to the property line of:

i. Any residentially used or zoned property.

ii. Any licensed day-care center or facility.

iii. Any public or private educational facility classified as an elementary, junior high, or senior high school.

iv. Any hotel or motel.

v. Any public park or trails system.

vi. Any nursing home.

vii. Any youth establishment.

viii. Any church or church related organization.

ix. Another adult establishment. No adult use-principal shall be located in the same building or upon the same property as another adult use-principal.

x. Any government building.

d. Another adult establishment. No adult use-principal shall be located in the same building or upon the same property as another adult use-principal.

3. Hours of Operation. Hours of operation for Adult-uses principal shall be from 9:00 a.m. to 12:30 a.m. The Planning Commission may approve a differing time schedule if it can be satisfactorily demonstrated to the Commission that all of the following apply:

a. The use does not adversely impact or affect uses or activities within 1,000 feet.

b. The use will not result in increased policing and related service calls.

c. Is critical to the operation of the business.

4. Sign Regulations. Adult use-principal shall adhere to the following sign regulations in addition to those set forth in the City of Manhattan Beach Land Use Ordinance, 02-01.

a. Sign message shall be generic in nature and shall only identify the name and type of business. Signs shall not be pictorial.

b. Signs shall be limited to the size and number of signs permitted in the district in which the use is located.

5. Adult Cabaret Regulations

a. The following additional restrictions apply to Adult Cabarets:

i. No person, firm, partnership, corporation, or other entity shall advertise, or cause to be advertised, an adult cabaret without a valid Adult Use License.

ii. An Adult Use Licensee shall maintain and retain for a period of two (2) years the names, addresses, and ages of all persons engaged, hired, or employed as dancers or performers by the licensee. These written records must be provided to the City or City's enforcement designee(s) upon request.

- iii. An adult cabaret shall be prohibited in establishments where alcoholic beverages are served.
- iv. No owner, operator, or manager of an adult cabaret shall permit or allow any dancer or other live entertainer to perform nude unless as provided in subparts vii & viii below.
- v. No patron or any person other than a dancer or live entertainer shall be wholly or partially nude in terms of “specified anatomical area” in an adult cabaret.
- vi. No dancer, live entertainer, performer shall be under eighteen (18) years of age.
- vii. All dancing shall occur on a platform intended for that purpose which is raised at least two (2) feet above the level of the floor.
- viii. No dancer or performer shall perform or dance closer than ten (10) feet from any patron unless such dancer or performer is enclosed behind a floor to ceiling glass partition.
- ix. No dancer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.
- x. No person under eighteen (18) years of age shall be admitted to an adult cabaret.

## 6. Viewing Booth Regulations

- a. The following additional regulations apply to viewing booths:
  - i. Individual Motion Picture viewing booths must be without doors and the occupant must be visible at all times.
  - ii. Only one person may be in a viewing booth at a time.
  - iii. Walls separating booths must be such that the occupants cannot engage in sexual activity.

- iv. Each booth must be kept clean and sanitary.
- v. Minimum lighting requirements must be maintained. Minimum lighting shall be construed to be that of which a book of general print could be easily read by any given individual.

## 7. Adult Use, Accessory

a. Permitted Locations for Accessory Adult Uses. Adult use-accessory shall be permitted in Commercial District as defined by City of Manhattan Beach City Zoning Ordinance, provided the accessory use conforms to the provisions of this subdivision. Adult Use-Accessory shall:

- i. Comprise no more than ten percent (10%) of the floor area of the establishment in which it is located; and,
- ii. Comprise no more than twenty percent (20%) of the gross receipts of the entire business operation; and,
- iii. Not involve or include any activity except the sale or rental of merchandise.

b. Separation of Areas. Adult use-accessory shall be restricted from, and prohibit access to minors, by physically separating the following and similar items from areas of general public access:

- i. Movie Rental display areas shall be restricted from general view and shall be located within a separate room, the access of which is in clear view of, and under the control of, the persons responsible for the operation.
- ii. Magazines or publications classified as adult uses shall not be physically accessible to minors and shall be covered with a wrapper or other means to prevent display of any material other than the publication title.
- iii. Other adult uses not specifically cited shall comply with the intent of this Ordinance.

c. Advertising. Adult Use-Accessory shall be prohibited from both internal and external advertising and signing of any adult materials and products.

## **10.0 TELECOMMUNICATION TOWERS, ANTENNAS AND RELATED FACILITIES**

### **10.01 Purpose.**

**10.01.01** This ordinance establishes comprehensive regulations for the construction, use and removal of telecommunications towers, antennas and related facilities for the City of Manhattan Beach, Minnesota in order to promote the health, safety, convenience and general welfare of the inhabitants by regulating the uses of land and the placement of all structures and to manage the shoreland areas and the flood plain areas within the city.

**10.01.02** The Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996 (“the Act”) governs the construction, placement, construction, and modification of telecommunication towers, antennas and related facilities in order to protect the health, safety and welfare of the public, while not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City.

**10.01.03** The unique and diverse landscapes of Manhattan Beach are among its most valuable assets. Damaging these assets risks undermining the very characteristics responsible for the city’s vitality and future potential. Protecting these assets requires that location and design of tower facilities be sensitive to, and in scale and harmony with, the aesthetics of Manhattan Beach. This ordinance provides standards for the proper placement and design of tower facilities in order to ensure their compatibility with surrounding aesthetics and development.

1. The broad purpose of this ordinance is to provide predictable and balanced standards for the siting and screening of tower facilities on property within the jurisdiction of the City of Manhattan Beach. These standards will protect the

health, safety and general welfare of persons in the area surrounding such tower facilities from possible adverse aesthetics related to the placement, construction, or modification of such tower facilities.

**10.01.04** To further the goals of the City and within the framework of the Act and state law, the City will give due consideration to the City's comprehensive plan, zoning districts, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas. Specifically, the purposes of this section are:

1. To regulate the location of telecommunication towers and facilities;
2. To protect residential areas and land uses from potential adverse impacts of telecommunication towers and facilities;
3. To minimize adverse visual impacts of telecommunication towers and facilities through design, siting, landscaping, and innovative camouflaging techniques;
4. To promote and encourage shared use and collocation of telecommunication towers and antenna support structures;
5. To avoid damage to adjacent and nearby properties caused by telecommunication towers and facilities by ensuring that those structures are soundly and carefully designed, constructed, modified, maintained and promptly removed when no longer used or when determined to be structurally unsound;
6. To ensure that telecommunication towers and facilities are compatible with surrounding land uses; and
7. To facilitate the provision of wireless telecommunications services to the resident and businesses of the city in an orderly fashion.

#### **10.02 Findings.**

The comprehensive plan of the City of Manhattan Beach refers to a city which is primarily residential in nature, and the interests of the citizens included protecting the scenic beauty and visual impact of the area, conservative growth,

preserving the natural woodlands, and slow commercial growth of a service and tourism nature. In researching potential tower sites, other issues raised included the small geographical size of the City, the lack of agricultural zones, minimal commercial acreage, substantial float-plane traffic on Big Trout Lake, the potential visual impact of towers in neighboring communities, and a perception of negative impact on real estate values as expressed at Crow Wing County public hearings.

The Planning Commission reviewed Ordinances from Breezy Point, East Gull Lake, Nisswa, Crosslake, Crow Wing County, and an outline prepared by the League of Minnesota Cities. The makeup and population of each of these entities was taken into account when reviewing their findings and resulting ordinances.

Based on the community findings and a review of other pertinent ordinances, the commission found that towers would be inappropriate in Shoreland and Residential Zones and would therefore only be allowed in the General Commercial District. Since all structures in the City's Commercial Districts require a conditional use permit, towers would be a conditional use in the General Commercial District.

### **10.03 Definitions.**

For purposes of this section the following terms have the meanings given them, except where the context clearly indicates a different meaning:

**10.03.01** "Antenna" means any device, which by use of any means, is designed to transmit or receive any electromagnetic, microwave, radio, television, or other frequency energy waves, of any type, for any purpose.

**10.03.02** "Antenna support structure" means a building, water tower, or other structure, other than a telecommunications tower, which can be used for location of telecommunications facilities.

**10.03.03** "Applicant" means a person who applies for a permit to develop, construct, build modify or erect a tower or antenna under this section.

**10.03.04** “Application” means the process by which the owner of a plot of land within the city or other person submits a request to develop, construct, build, modify or erect a tower or antenna upon that land.

**10.03.05** “Engineer” means an engineer licensed by the State of Minnesota.

**10.03.06** “Person” means any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

**10.03.07** “Stealth” means designed to blend into the surrounding environment; examples of stealth facilities include, without limitation, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and telecommunications towers designed to appear other than as a tower, such as light poles, power poles, and trees.

**10.03.08** “Telecommunications facilities” means cables, wires, lines, wave guides, antennas or any other equipment or facilities associated with the transmission or reception of telecommunications located or installed on or near a tower or antenna support structure. The term does not include:

1. A satellite earth station antenna four (4) feet in diameter or less located in an industrial or commercial district;
2. A satellite earth station antenna three (3) feet or less in diameter, wherever located; or
3. A tower.

**10.03.09** “Telecommunications tower” or “tower” means a self-supporting guyed, or monopole structure constructed from grade that supports telecommunications facilities; the term does not include amateur radio operations equipment licensed by the Federal Communications Commission.

**10.03.10** “Tower Facility” means structures thirty-five (35) feet or more in height and that may include a tower, antennas, equipment building, anchor points and other related equipment used in telecommunication services.

## **10.04 Development of Towers; Approvals Required**

### **10.04.01 General Construction Prohibition.**

A tower may not be constructed in any zoning district unless such tower is a conditional use in the zoning district in which construction will take place.

### **10.04.02 Conditional Use Permits Required.**

A tower may not be constructed in any zoning district unless a conditional use permit has been issued by the Planning Commission, if the tower is a conditional use in the zoning district in which construction will take place.

### **10.04.03 Zoning Permit Required.**

A tower may not be constructed in any zoning district unless a zoning permit has been issued by the Zoning Administrator.

### **10.04.04 City Property.**

The City may authorize the use of city property for towers in accordance with the procedures of this Ordinance. The City has no obligation to allow the use of city property for this purpose.

### **10.04.05 Zoning Districts.**

A tower is an excluded use in all zoning districts, except that a tower may be a conditional use in the General Commercial District.

## **10.05 Application Process.**

**10.05.01** A person desiring to construct a tower must submit applications for a zoning permit and a conditional use permit to the Zoning Administrator.

**10.05.02** An application to develop a tower must include:

1. Name, address, and telephone numbers of the owners of the property on which the tower is proposed to be located;
2. Written consent of the property owner(s) to the application;
3. Written evidence from an engineer that the proposed structure meets the structural requirements of this ordinance;
4. Legal description of the owned or leased parcel;
5. A scaled site plan indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and other structures, topography, parking and other information deemed by the Zoning Administrator to be necessary to be in compliance with applicable ordinance provisions;
6. A landscape plan showing specific landscape materials;
7. Method of fencing, and finished color and, if applicable, the method of camouflage and lighting;
8. Written information demonstrating the need for the tower at the proposed site in light of the existing and proposed wireless telecommunications network(s) to be operated by persons intending to place telecommunications facilities on the tower;
9. An inventory of all existing towers and antennas, approved sites or pending applications for towers or antennas, that are either within the city or within six miles of city boundaries, including specific information about the location, height and design of each tower. Subject to proprietary rights of the applicant, the Zoning Administrator may share such information with other applicants applying for conditional use permits under this ordinance or with other entities seeking to locate antennas within the city, provided however, that the Zoning Administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable;

10. Separation distance from the other towers described in the inventory of existing sites submitted by the applicant;
11. A map showing the search radius and proposed broadcast coverages prepared by a radio frequency engineer;
12. If applicable, maps showing analysis of wireless service coverage at the requested height and at 20 and 40 feet lower than the requested height;
13. A description of the suitability of the use of existing towers, other structures or alternative technology including, but not limited to, cable microcell network attached to existing wireless systems or similar technology that does not require the use of towers;
14. A description of the potential locations of future towers or antennas within the city or within six (6) miles of any city boundary, based on existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected;
15. A statement by the applicant regarding planned accommodations for the co-location of additional antennas for future users;
16. A structural engineering report certifying the ability of the tower to accommodate the co-location of a total of at least three wireless service provider facilities;
17. The setback distance between the proposed tower and the nearest residential unit, platted residentially properties, and unplatted residentially zoned properties;
18. A description of, or proof of compliance with, all applicable federal, state or other local laws and evidence that necessary consents or approvals have been received;
19. A copy of relevant portions of a lease signed by the applicant and property owner(s), requiring the applicant to remove the tower and associated telecommunications facilities upon cessation of operations on the leased site, or,

if a lease does not yet exist, a written agreement to include such a provision in the lease to be signed;

20. An application fee, as established from time to time by resolution of the City Council, and an escrow account shall be established by the applicant to reimburse the City for legal and radio frequency engineering consultation and other related costs;

20. A description of the stealth technology to be employed in the construction of the facility;

21. Multiple photographs of the affected horizon and its immediate vicinity, photographed from not less than east, west, north and south directions and toward the proposed tower site, with a superimposed image of the to be constructed tower and any related tower facilities, to approximate scale; and,

22. A bond in an amount equal to one-and-one-half (1-1/2) times the cost to remove the tower facility and restore the site. This amount shall be determined by the Manhattan Beach Planning Commission based on input from an independent technical expert.

## **10.06 Performance Standards**

### **10.06.01 Co-location Capability.**

Unless the applicant presents clear and convincing evidence to the Planning Commission that co-location is not feasible, a new tower may not be built, constructed or erected in the City unless the tower is capable of supporting a total of at least three telecommunications facilities comparable in weight, size, and surface area to each other.

### **10.06.02 Setback Requirements.**

A tower must comply with the following setback requirements, with all setbacks for towers being measured from the base of the tower to the property line of the parcel on which it is located.

1. A tower must be located on a single parcel having a dimension at least equal to the height of the tower, as measured between the base of the tower located nearest the property line and the actual property line, unless an engineer specifies in writing that the collapse of the tower will occur within a lesser distance under reasonably foreseeable circumstances.
2. Towers shall have a minimum setback from any property line equal to the height of the tower plus 10 feet, unless otherwise provided in this ordinance.
3. The minimum spacing allowed between tower locations is one mile.
4. Towers shall not be located within 2,640 feet of the Ordinary High Water Mark of any lake within the city.

#### **10.07 Engineer Certification.**

Towers must be designed and certified by an engineer to be structurally sound and in conformance with the Uniform Building Code, and any other standards set forth in this code.

#### **10.08 Height Restriction.**

A tower may not exceed the lesser of 195 feet in height or the minimum height necessary to provide adequate coverage by the provider of wireless service. Measurement of tower height must include the tower structure itself, the base pad, and any telecommunications facilities attached thereto. Tower height is measured from grade.

#### **10.09 Lighting.**

Towers may not be artificially lighted except as required by the Federal Aviation Administration. At the time of construction of a tower, in cases where there are residential uses or potential residential uses located within a distance of 2,640 feet from the tower, dual mode lighting must be requested from the Federal Aviation Administration. Notwithstanding this provision, the city may approve the placement of an antennae on an existing or proposed lighting standard, provided that the antennae is integrated with the lighting standard.

### **10.10 Exterior Finish.**

Towers not requiring Federal Aviation Administration painting or marking must have an exterior finish as approved in the site plan.

### **10.11 Fencing.**

Suitable protective anti-climbing fencing from six (6) to eight (8) feet in height shall be constructed around or upon parcels containing towers, antenna support structures, or telecommunication facilities.

### **10.12 Landscaping.**

Landscaping on parcels containing towers, antenna support structures or telecommunications facilities must be in accordance with landscaping requirements as approved in the site plan. Utility buildings and structures accessory to a tower must be architecturally designed to blend in with the surrounding environment and to meet such setback requirements as are compatible with the actual placement of the tower. Ground mounted equipment must be screened from view by trees and large shrubs of at least 25% coniferous content, with at least a 50% effective screen during leaf-off conditions. These trees and large shrubs shall be a minimum height of 6 feet by the end of the second growing season and must be maintained for the life of the tower facility.

### **10.13 Accessory Buildings and Equipment.**

No more than one accessory building is permitted per tower, and all transmitting, receiving and switching equipment shall be housed within the building. Accessory buildings may be no more than 200 square feet in size. Telecommunications facilities not located on a tower or in an accessory building must be of stealth design, and all support structures shall be reasonably protected against climbing.

### **10.14 Security.**

Towers must be reasonably posted and secured to protect against trespass. All signs must comply with applicable sign regulations. The light source for any necessary security lighting shall feature down-directional, sharp cut-off luminaries

that ensure there is no spillage of illumination off the parcel or easement boundary.

#### **10.15 Signs and Advertising.**

The owner's name, telephone number and site ID number shall be posted on the gate of a perimeter fence. No other advertising or identification sign of any kind is permitted on the tower facility, except applicable warning and equipment information as required by the manufacturer or by Federal, State, or local authorities.

#### **10.16 Types of Towers.**

Types of towers may include but are not limited to monopoles, stealth, lattice, and guyed towers.

#### **10.17 Base of Tower.**

The base of any tower shall occupy no more than 500 square feet and the top of the towers shall be no larger than the base.

#### **10.18 Tower Materials.**

All metal towers shall be constructed of, or treated with, corrosion-resistant material. Towers, and all telecommunications facilities not located on a tower or in an accessory building, must be of stealth design.

#### **10.19 Non-Tower Facilities.**

Telecommunications facilities are permitted only as a conditional use in the general Commercial district, provided that the owner of such a telecommunications facility, by written certification to the Zoning Administrator, establishes the following at the time plans are submitted to the Zoning Administrator for a zoning permit:

**10.19.01** That the height from grade of the telecommunications facilities attached to the antennae support structure does not exceed the maximum height from grade of the antenna support structure itself by more than 20 feet;

**10.19.02** That the antenna support structure and telecommunications facilities comply with the Uniform Building Code; and,

**10.19.03** That telecommunications facilities located above the primary roof of an antenna support structure are set back one foot from the edge of the primary roof for each one foot in height above the primary roof of the telecommunications facilities. This setback requirement does not apply to antennas that are mounted to the exterior of antenna support structures below the primary roof; such antennas may protrude more than six inches from the side of the antenna support structure.

### **10.20 Removal of Towers or Telecommunication Facilities.**

Abandoned or unused towers and associated facilities shall be removed within one hundred-eighty (180) days of the cessation of operations of the telecommunications facility at the site unless an extension is approved by the City Council. Any tower and associated telecommunications facilities that are not removed within one hundred-eighty (180) days of the cessation of operations at a site are declared to be public nuisances and may be removed by the City and the costs of removal assessed against the property pursuant to state law and City ordinances. The conditional use permit shall establish an amount to be posted by bond, letter of credit, cash or equivalent by the applicant that will cover the projected cost of removal of towers or telecommunications facilities in the event of abandonment.

### **10.21 Additional Requirements**

#### **10.21.01 Structural Inspections.**

The City may require or conduct expert inspections, at any time, upon thirty (30) day notice to the property owner and the tower owner, to inspect the tower for the purpose of determining if it complies with the Uniform Building Code and other construction standards provided by City ordinance, federal and state law. The expense related to such inspections will be borne by the tower owner, or responsible lessee, at the discretion of the City. Based upon the results of an

inspection, the Zoning Administrator may require repair, modification or removal of a tower.

#### **10.21.02 Radiation Emission Inspections.**

The owner of a telecommunications facility shall provide the City with current, technical evidence of compliance with FCC radiation emission requirements annually, or more frequently at the City's reasonable request. If the owner does not promptly provide the City with satisfactory technical evidence of FCC compliance, the City may carry out tests to ensure FCC radiation compliance using a qualified engineer. The owner or responsible lessee at the direction of the City, of a telecommunications tower, antenna or related facility shall reimburse the City for its reasonable costs in carrying out such compliance testing as a condition of a conditional use permit.

#### **10.21.03 Maintenance.**

Towers and telecommunication facilities must be maintained in accordance with the following provisions:

1. All tower facilities shall be maintained in a safe and clean manner. The tower facility owner shall be responsible for maintaining a graffiti, debris, and litter free site. The landscape plan shall be maintained for the life of the tower facility.

Trimming the tops of trees on site shall be allowed, only to maintain the average height of the canopy used to establish tower facility height.

2. Tower owners must install and maintain towers, telecommunications facilities, wires, cables, fixtures and other equipment in compliance with the requirements of the National Electric Code and all Federal Communications Commission, state, and local regulations, and in such a manner that they will not interfere with the use of other property.

3. Maintenance or construction on a tower, telecommunications facilities or antenna support structure must be performed by qualified maintenance and construction personnel.

4. All tenants on towers must comply with radio frequency emissions standards of the Federal Communications Commission.
5. If the use of a tower is discontinued by the tower owner, then the tower owner shall provide not less than ninety (90) days written notice to the City of its intent to discontinue use and the date when the use will be discontinued.

**10.21.04 Assignment of Rights.**

Any assignment of right, e.g., of ownership or of lease, shall be submitted to the City not less than thirty (30) days in advance thereof. Such notice shall include, but not be limited to, name, address and phone number of the proposed assignee, nature of the assignment, date of proposed assignment and purpose of assignment.

**10.21.05 Use of Towers.**

In the event any changes are made involving entities or uses not described in the initial application, then the City shall be notified of any new uses or tenants in the form of an application to amend a granted conditional use permit, and shall be subject to that permitting process discussed herein.

**10.21.06 Notice of Uses and tenancies.**

Two years after the grant of a conditional use permit hereunder, and every two years thereafter, an applicant or its assignee shall give written notice to the City of the names, addresses and telephone numbers of entities using a tower, together with a brief description of what the use is.

**10.22 Failure to Comply; Permit Revocation.**

**10.22.01** If the permittee fails to comply with any provision of the City ordinances, federal or state law or the conditional use permit requirements, then the City may impose penalties for noncompliance, or it may revoke the permit in accordance with the following provisions.

**10.22.02** Except as provided in Subd. 3, below, a permit revocation shall be preceded by written notice to the permittee of the alleged violation (s), the

opportunity to cure the violation (s) during a period not to exceed forty-five (45) days following receipt of the written notice and a hearing before the city council at least (30) days after receiving written notice of the hearing. The hearing shall provide the permittee with an opportunity to show cause why the permit should not be revoked.

**10.22.03** If the City finds that exigent circumstances exist requiring immediate permit revocation, then the City may revoke the permit and shall provide a post-revocation hearing at least thirty (30) days after permittee's receipt of written notice of the hearing.

**10.22.04** Any decision to revoke shall be in writing and supported by substantial evidence contained in a written record.

### **10.23 No Permits Required.**

No permits are required for the following:

1. Household television antennas extending less than fifteen (15) feet above the highest point of a commercial or residential structure.
2. Satellite dish receiving antennas four (4) feet or less in diameter.
3. Adjustment, repair or replacement of the elements of an antenna, provided that such work does not constitute a clear safety hazard.
4. Antennas and antenna support structures used by the city for city purposes.
5. Emergency or routine repairs, reconstruction, or routine maintenance of previously approved facilities, or replacement of transmitters, antennas, or other components or previously approved facilities which do not create a significant change in visual impact or an increase in radio frequency emission levels, and provided that such work does not constitute a clear safety hazard.
6. Two-way communication transmitters used on a temporary basis by a "911" emergency services, including fire, police and emergency aid or ambulance service.

7. Radio transceivers normally hand-held or installed in moving vehicles, such as automobiles, watercraft, or aircraft. This includes cellular phones.

8. Short-wave radio antennas extending less than fifteen (15) feet above the highest point of a residential structure.

#### **10.24 Right-of-Way.**

Except as approved by the city as to public utilities, no part of any telecommunications tower or telecommunications facilities, nor any lines, cable, equipment, wires or braces shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk or property line. A provider of wireless telecommunications services within the meaning of the Act is not a public utility.

#### **10.25 Insurance.**

The applicant shall provide evidence satisfactory to the City that its tower and telecommunication facilities thereon are adequately insured for injury and property damage. No later than January 10 of each year, the holder of a conditional use permit issued under this Ordinance shall submit to the city clerk a photocopy of a certificate of insurance demonstrating that the tower or antenna facility is insured for that calendar year.

### **11.0 AMENDMENT, REPEAL, EFFECTIVE DATE**

#### **11.01 Amendment.**

This ordinance or the official map may be amended to reflect changes in the goals or conditions of the City or whenever the public health, safety and general welfare require it.

**11.01.01** An amendment may be initiated by the City Council or by any property owner in the city.

**11.01.02** When an amendment is initiated, the Zoning Administrator shall:

1. Review the application for amendment and make a recommendation to the City Council;
2. Notify by regular mail all property owners within 600 feet of the property affected by the proposed amendment, or the nearest five (5) property owners, and further if necessary for a minimum of five (5) owners;
3. Publish a hearing notice for the amendment in the official newspaper and, if the premises affected are in a shoreland area, provide notice to the Commissioner of the Department of Natural Resources at least 10 days prior to the public hearing.

**11.01.03** The Planning Commission shall hold the hearing and make a report of its findings and recommendations on the proposed amendment.

**11.01.04** The City Council shall review the recommendations and make a decision on the proposed amendment. City Council approval requires a 4/5 affirmative vote.

**11.01.05** If the amendment is adopted, the Zoning Administrator shall publish a summary of the text or a description of the boundary change or new official map in the official newspaper and, if the premises affected are in a shoreland area, shall send a copy to the Commissioner of the Department of Natural Resources.

**11.01.06** The Zoning Administrator shall make the necessary changes in the official map.

**11.01.07** If an amendment is initiated by a property owner, an application fee shall be paid by the property owner according to the schedule of fees adopted by the City Council.

**11.02 Repeal.**

Ordinances previously adopted by the City regarding the matters of planning and zoning covered herein are hereby repealed, and are replaced instead with the provisions of this ordinance.

**11.03 Effective Date.**

This ordinance shall take effect and be in force upon the date of its publication after its adoption by the City Council.

Effectuation of this Zoning Ordinance:

Adopted by the Manhattan Beach City Council \_\_\_\_\_ , 2013

Mayor : \_\_\_\_\_

City Clerk: \_\_\_\_\_

Amendments:

Amended in May 2017, April 2021, February 2023