

**MUNICIPAL CODE
OF
KIEL, WISCONSIN**



Ordinance Codification

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GENERAL PROVISIONS AS TO OFFICIALS

1.01 FORM OF GOVERNMENT. The City of Kiel, Wisconsin, shall operate under the Mayor-Council form of government under Chapter 62, Wis. Stats.

1.02 ELECTED OFFICIALS.

- (1) **CITY COUNCIL.** [#371 8/13/91] The City Council shall consist of a mayor and six alderpersons, one alderperson to be elected from each of the aldermanic districts herein set forth.
- (2) **MUNICIPAL JUDGE.** The Municipal Judge shall be elected in even numbered years for a term of 2 years.
- (3) **EMPLOYMENT.** An elected official cannot simultaneously hold office and be an employee of the City of Kiel.

1.03 APPOINTED OFFICIALS. The following City officials shall be appointed annually by the Mayor, subject to confirmation of the City Council:

- Administrator [#344 9/8/87]
- Assessor
- Building Inspector
- Chief of Police
- Clerk-Treasurer
- Emergency Management Director
- Emergency Medical Services Chief
- Fire Chief
- General Manager of Utilities
- Librarian
- Medical Director of the Ambulance Service
- Municipal Attorney

1.04 OATHS AND BONDS. Elected and appointed officials shall take and file the official oath within 10 days after notice of their election or appointment as provided in Section 62.09(4)(a), Wis. Stats., and shall execute and file the official bond as required by State Statutes and this Municipal Code.

1.05 REMOVALS.

- (1) ELECTED OFFICIALS. Elected officials may be removed by the City Council as provided in Section 17.12(1)(a) or as provided by Section 17.16, Wis. Stats.
- (2) APPOINTED OFFICIALS. Appointed officials may be removed as provided in Section 17.12(1)(c) and Section 17.16, Wis. Stats.

1.06 VACANCIES.

- (1) HOW OCCURRING. Vacancies in elective and appointive positions are caused as provided in Sections 17.03 and 17.035, Wis. Stats.
- (2) HOW FILLED. Vacancies in elective and appointive offices shall be filled as provided in Section 17.23, Wis. Stats.

1.07 SALARIES. The salaries of all elected and appointed officials, including members of boards and commissions, shall be as determined by the City Council from time to time, provided the salary of the Mayor and members of the Council shall not be increased during their terms of office. (See Section 66.0505, Wis. Stats.)

1.08 WISCONSIN RETIREMENT SYSTEM. The City elects to include all eligible personnel under the Wisconsin Retirement System.

1.09 RECEIPT OF GIFTS AND GRATUITIES.

- (1) RESTRICTED. No City employee or official shall receive or offer to receive, either directly or indirectly, any gift, gratuity or other thing of value which he is not authorized to receive from any person who:
- (a) Has or is seeking to obtain contractual or other business or financial relationships with the City or City Council, or
 - (b) Conducts operations or activities which are regulated by the City or City Council, or
 - (c) Has interests which may be substantially affected by the City or City Council.
- (2) PENALTY. The receipt of any gift, gratuity or other thing of value as denoted above is contrary to the public policy of the City and is punishable as provided in Section 946.12, Wis. Stats. Such conduct shall also be punishable under Section 25.04 of this Municipal Code.

OFFICIALS

1.10 ASSESSOR.

- (1) DUTIES. The Assessor shall perform all of the duties established by the Wisconsin Department of Revenue for the position of Assessor. The Assessor shall obtain State certification before entering upon his duties as City Assessor. The Assessor shall be appointed annually by the Mayor, subject to confirmation of the City Council.
- (2) CONFIDENTIALITY. Whenever the Assessor in the performance of his duties requests or obtains income and expense information pursuant to Section 70.47(7)(af), Wis. Stats., or any successor statute thereto, such income and expense information as is provided to the Assessor shall be held by him on a confidential basis, with the exception that the information may be revealed to and used by persons in the discharge of duties imposed by law; in the discharge of duties imposed by office (including, but not limited to, use by the Assessor in performing official duties of his office and use by the Board of Review in performance of its official duties); or pursuant to the order of a court. Income and expense information provided to the Assessor under Section 70.47(7)(af), Wis. Stats., is not subject to the right of inspection and copying under Section 19.35(1), Wis. Stats., unless a court determines that it is inaccurate.
- (3) SEVERABILITY. If any section or portion of paragraph (2) above is declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in said decision, and shall not affect the validity of any other provisions, sections or portions thereof.

1.11 BUILDING INSPECTOR.

- (1) GENERAL DUTIES. The Building inspector shall:

 - (a) See that all construction within the City conforms with City ordinances and generally with the requirements of the State Building Code, insofar as the same applies to such construction.
 - (b) Inspect all construction periodically as it progresses and, if any violation is indicated, make any and all necessary complaints so that such violation may be penalized and any such construction in violation of the same can be stopped, if the same is not correct.
 - (c) Sign such certificates or permits as may be required of him in such duties.
- (2) OTHER DUTIES. The Building Inspector shall perform such other and further duties in connection with such office as shall be delegated to him from time to time by the City Council.

1.12 MUNICIPAL JUDGE AND MUNICIPAL COURT.

(1) MUNICIPAL JUDGE.

- (a)** Office Created. Pursuant to Section 755.01, Wis. Stats., there is created the office of Municipal Judge for the City.
- (b)** Election; Term. The Municipal Judge shall be elected at large at the spring election in even numbered years for a term of 4 years, or until a successor is elected and qualifies, commencing on May 1 next succeeding his election. Midterm vacancies in the office of Municipal Judge shall be filled by special election to be held not less than 55 nor more than 70 days after the order of the Council therefor.
- (c)** Salary. The Municipal Judge shall receive a salary which shall be in lieu of fees and costs. No salary shall be paid to the Judge for any time during his term for which he has not executed and filed his official bond and oath as required by par. (d) of this subsection.
- (d)** Bond; Oath. The Municipal Judge shall execute and file, with the Clerks of Court for Manitowoc and Calumet Counties, the oath prescribed by Section 757.02, Wis. Stats., and a bond in the penal sum of \$2,000. The Municipal Judge shall not be qualified to act until a certified copy of the bond is filed with the Administrator and a certified copy of the oath is filed with the office of Director of State Courts as required by Section 755.03, Wis. Stats.
- (e)** Jurisdiction. The Municipal Judge shall have jurisdiction as provided by law and Section 755.045, Wis. Stats., and exclusive jurisdiction of violations of City ordinances, resolutions and bylaws.

(2) MUNICIPAL COURT.

- (a)** Court Established. The Municipal Court for the City is established pursuant to Chapter 755, Wis. Stats.
- (b)** Hours. The Municipal Court for the City shall be open as determined by order of the Municipal Judge.
- (c)** Location. The Municipal Judge shall keep his office and hold court in the City Hall.
- (d)** Procedure. The procedure in Municipal Court for the City shall be as provided by this section and State law including, without limitation because of enumeration, Section 23.66 to 23.99, 345.20 to 345.53, and Chapters 755, 778 and 800, Wis. Stats.
- (e)** Collection and Return of Forfeitures. The Municipal Judge shall collect all forfeitures, penalty assessments, fees and taxable costs in any action or proceeding before him and shall pay over such moneys to the City Treasurer within 7 days of collection. At such time the Municipal Judge

shall also report to the City Treasurer the title, nature of offense and total amount of judgments imposed in actions and proceedings in which such moneys were collected.

(f) Contempt of Court. The Municipal Judge, after affording an opportunity to the person accused to be heard in defense, may punish for contempt of Municipal Court persons guilty of either of the following acts and no other:

1. Disorderly, contemptuous and insolent behavior toward the Judge while engaged in any judicial proceeding or other conduct which tends to interrupt the proceedings or to impair the respect due the Judge's authority.

2. Resistance of or disobedience to any lawful order or process made or issued by the Judge.

(g) Penalty for Contempt of Court. The Municipal Judge may, upon finding any person guilty of contempt, order such person to forfeit not more than \$50 plus penalty assessment under Section 757.05, Wis. Stats. Upon nonpayment of the forfeiture and penalty, the person found guilty of contempt may be sentenced to the County Jail for not to exceed 7 days.

(3) STIPULATIONS AND DEPOSITS IN MUNICIPAL COURT.

(a) Deposit Schedule to Be Established. The Municipal Judge shall establish and submit to the City Council for approval in accordance with Section 800.03(3), Wis. Stats., a schedule of deposits for violations of City ordinances, resolutions and bylaws, except traffic regulations which are governed by Section 345.26, Wis. Stats., and boating violations governed by Section 23.67, Wis. Stats. When approved by the Council, such deposit schedule shall be posted in the office of the Municipal Court Clerk and the City Police Department.

(b) Stipulation and Deposit in Lieu of Court Appearance. Persons cited for violations of City ordinances, resolutions or bylaws, for which a deposit has been established under this subsection, shall be permitted to make a stipulation of no contest and a deposit in lieu of court appearance as provided in Sections 800.03, 800.04 and 800.09, Wis. Stats.

(c) Traffic and Boating Deposits. The deposit schedule established by the Wisconsin Judicial Conference and the procedures set forth in Chapters 23 and 345, Wis. Stats., shall apply to stipulations and deposits for violations of traffic regulations enacted in accordance with Section 30.77, Wis. Stats.

(d) When Not Permitted. Stipulations and deposits shall not be permitted in cases of contempt under sub. (2)(f).

BOARDS AND COMMISSIONS

1.19 POLICE AND FIRE COMMITTEE. The City of Kiel does establish a committee of three members, none of whom may be elected or appointed official of the City to be employed by the City, which committee shall act under Section 62.13(5), Wisconsin Statutes in place of the board of police and fire committee. This committee shall be appointed annually at the organizational meeting, subject approval of the City Council. This committee shall act only when it is determined that it is necessary pursuant to Section 62.13, Wisconsin Statutes, concerning disciplinary action.

1.20 BOARD OF REVIEW. The Board of Review shall consist of the Mayor, the Administrator and 3 alderpersons appointed annually by the Mayor, subject to confirmation by the City Council. If the Mayor appoints the City Administrator as Assessor, then the Mayor shall appoint a second clerk to the Board of Review to serve in place of the Administrator on said body. That second clerk shall be properly certified by the Wisconsin Department of Revenue.

1.21 PARK BOARD. The Park Board shall consist of 5 residents appointed by the Mayor, subject to confirmation by the City Council, for 5-year terms, which shall be staggered so that one appointment is made annually.

1.22 PLAN COMMISSION.

(1) COMPOSITION. The Plan Commission shall consist of the Mayor, one alderperson elected by a 2/3 vote of the City Council annually, one member of the Park Board appointed by the Mayor, subject to confirmation by the City Council, for a 3-year term and 4 residents appointed by the Mayor, subject to confirmation by the City Council, for 3-year staggered terms so that no more than 2 resident members shall be appointed in one year.

(2) FUNCTIONS. The Commission shall have all powers and duties specified in the Wisconsin Statutes.

(3) MATTERS REFERRED TO THE CITY PLAN COMMISSION. The City Council, or other public body or officer of the City having final authority thereon, shall refer to the City Plan Commission for its consideration and report the matters listed below before final action is taken. Unless such report is made within 30 days or such longer period as may be stipulated by the City Council, the Council or other public body or officer may take final action without it.

(a) The location and architectural design of any public building.

(b) The location of any statue or other memorial.

(c) The location, acceptance, extension, alteration, vacation, abandonment, change of use, sale, acquisition of land for, or leases of land for, any street, alley or other public way, park, playground, airport, area for parking vehicles or other memorial or public grounds, the location, extension, abandonment or authorization for any public utility whether publicly or privately owned.

(d) All plats of land in the City or within the territory over which the City is given platting jurisdiction by Chapter 236, Wis. Stats., the location, character and extent or acquisition, leasing or sale of lands for public or semi-public housing, slum clearance, relief of congestion or vacation camps for children.

(e) The amendment or repeal of any ordinance adopted pursuant to this section.

(4) SPECIAL MATTERS REFERRED TO THE CITY PLAN COMMISSION. The City Council may refer to the Commission the construction or carrying out of any public work not expressly within the province of other boards or Commissions of the City, and may delegate to the Commission all powers which the Council deems necessary to complete such work in all details.

(5) EMPLOYMENT OF EXPERTS. The City Plan Commission may employ experts and a staff and pay for their services and such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made for the Commission by the City Council or placed at its disposal through gift or grant and subject to any ordinance or resolution enacted by the Council.

1.23 LIBRARY BOARD. The Library Board shall consist of 7 persons, each serving for a 3-year term, with the Mayor to name 2 persons to the Library Board the first year, 2 persons the second year and 3 persons the third year. Appointment of members of the Library Board shall be made by the Mayor subject to confirmation by the City Council.

1.24 BOARD OF APPEALS. The Board of Appeals shall consist of 5 persons, each serving a 3-year term, with appointments to be made by the Mayor of 2 persons the first year, 2 persons the second year and one person the third year. The appointments by the Mayor are subject to confirmation by the City Council.

1.25 ECONOMIC DEVELOPMENT COMMITTEE. The Economic Development Committee shall consist of 6 persons appointed annually by the Mayor subject to confirmation by the City Council.

1.251 TOURISM COMMISSION.

(1) CREATED. There is hereby created a City of Kiel Tourism Commission to coordinate tourism promotion and development in the City.

(2) COMPOSITION. The Commission shall consist of five members. At least one Commissioner shall represent the Wisconsin hotel and motel industry. Commissioners shall be appointed by the Mayor and confirmed by the Common Council.

(3) TERM. Commissioners shall serve at the pleasure of the Mayor for a one-year term expiring when appointments are made at the April Organizational Meeting of the Kiel City Council. Commissioners may be reappointed.

(4) OFFICERS. The Commission shall elect a Chairperson, Vice Chairperson and Secretary at the first meeting held after appointments are made.

(5) MEETINGS. The Commission shall meet regularly and conduct its proceedings in accordance with Robert's Rules of Order.

(6) DUTIES. Use the room tax appropriated to the Commission for tourism promotion and tourism development within the City. Submit a report to the Common Council on or before November 1 of each year itemizing its expenditures and proposing a budget for the following year.

ELECTIONS

1.26 POLLS.

(1) HOURS. The polls shall be open for voting on election days from 7 a.m. to 8 p.m.

(2) CENTRAL POLLING PLACE.

(a) Community Center. The place of holding elections within the City for all special, primary and general elections shall be the Community Center.

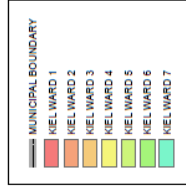
(b) Election Tabulation. The City shall use a system of electronic tabulation approved by the State Elections Board.

(c) Election Officials. One set of election officials as provided in Section 7.30, Wis. Stats., shall perform all of the duties at the centrally located polling place for all of the Aldermanic districts and wards within the City.

1.27 ALDERMANIC DISTRICTS.

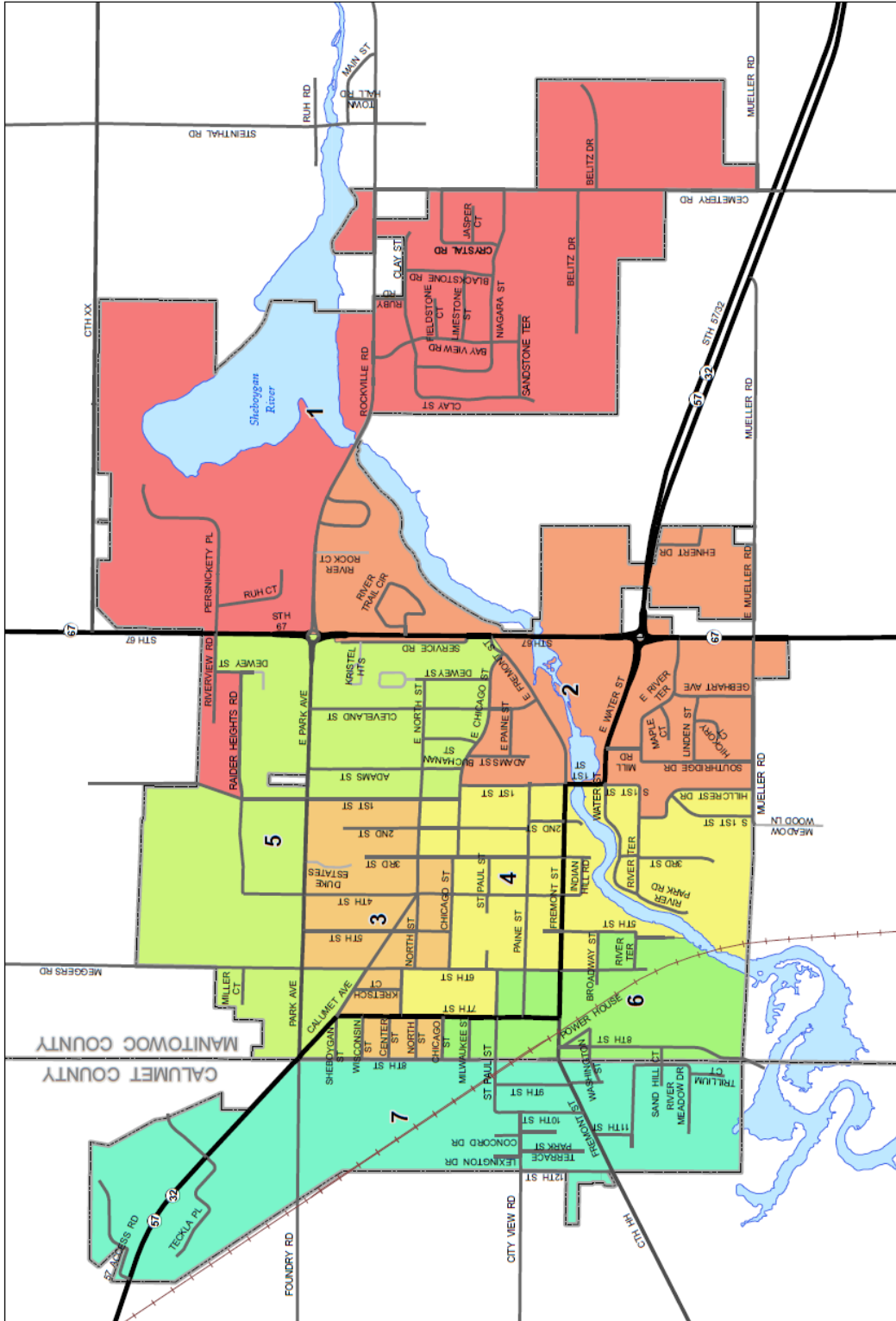
- (1) ELECTION OF ALDERPERSONS.** Alderpersons from the First (1), Third (3), and Fifth (5) Aldermanic Districts shall be elected in the odd numbered years. Alderpersons from the Second (2), Fourth (4), and Sixth (6) Aldermanic Districts shall be elected in the even numbered years.
- (2) DISTRICTS DESCRIBED.** The wards and aldermanic districts of the City are hereby created, numbered and shown on map as follows:
- (a)** Ward 1 - Aldermanic District 1
 - (b)** Ward 2 - Aldermanic District 2
 - (c)** Ward 3 - Aldermanic District 3
 - (d)** Ward 4 - Aldermanic District 4
 - (e)** Ward 5 - Aldermanic District 5
 - (f)** Ward 6 and 7 - Aldermanic District 6

CITY OF KIEL
WISCONSIN
WARDS



1 inch = 0.25 miles

Map prepared by the
Manitowoc County
GIS Office
September 24, 2021



**CHAPTER 2
THE GOVERNING BODY**

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2.01 CITY COUNCIL COMMITTEES.

(1) **ENUMERATED.** The following shall comprise the standing committees of the Council:

- (a) Committee of the Whole
- (b) Police, Fire and Public Health.
- (c) Streets and Sidewalks.
- (d) Recreation, Accounts, Claims and Relief
- (e) Electric, Ordinances and Elections.
- (f) Salary and Budget.
- (g) Water, Assessments, Equalization and Industry.
- (h) Wastewater, Sewers, City Property, Parks and Celebrations.
- (i) Personnel

(2) **NUMBER.** All alderpersons serve on the Committee of the Whole, and two alderpersons serve all other standing committees. The Mayor is an ex officio voting member of each committee.

(3) **APPOINTMENTS.** Appointments to the committees shall be made annually by the Mayor and approved by the Council at the organizational meeting of the City Council.

2.02 CITY COUNCIL RULES OF PROCEDURE.

(1) **PUBLIC NOTICE.** Public notice of every meeting of the City Council and every committee, commission, board or subunit thereof shall be given as required under Subchapter V of Chapter 19, Wis. Stats., the Open Meetings Law.

(2) **REGULAR MEETINGS.** [#1/12/93] The regular meetings of the City Council shall be held on the 2nd and 4th Tuesday of each month at 6:00 p.m.

(3) **SPECIAL MEETING.** Special meetings of the City Council may be called by the Mayor or any 3 alderpersons during the Mayor's absence from the City.

(4) **CALLING MEETING TO ORDER.** The Mayor shall take the chair at the time appointed for the Council to meet and shall immediately call the members to order, and may, at the insistence of any member of the Council, order the attendance of any absentee, lacking good reason. In the absence of the Mayor, the Administrator, or in their absence any alderperson, may call the Council to order and then the Council shall appoint a Mayor pro term to preside at such meeting.

(5) **ORDER OF BUSINESS.** Unless otherwise provided in section (5.1), the City Administrator under the direction of the Mayor lists the order of business for all public meetings.

At all regular meetings of the Council the order of business may be as follows:

- (a) Pledge of Allegiance
- (b) Roll call.
- (c) Minutes of last meeting.
- (d) Public Comment
- (e) Petitions, memorials and communications.
- (f) Reports of standing and special committees.
- (g) Reports of City officers.
- (h) Presentation of ordinances.
- (i) Miscellaneous business.
- (j) Bills, claims and accounts.

(5.1) ORDER OF BUSINESS - REQUIRED ITEMS. An item is required for consideration by the City Council when, at a Committee of the Whole meeting at least three alderpersons request an item to be listed on the next council meeting agenda.

(6) QUESTIONS OF PROCEDURE. The Mayor or presiding officer shall decide all questions of order, but any alderperson may appeal from his ruling to the Council.

(7) ADDRESSING THE CHAIR. An alderperson about to speak to a question or make a motion shall address the Mayor or presiding officer, who shall recognize such person by name. If the Mayor desires to speak to a pending motion, he may name an alderperson to assume the chairmanship of the meeting temporarily and then be recognized by the presiding officer for purposes of speaking to the pending motion. Speakers shall speak to the issues raised by the question under consideration and shall conduct themselves in a professional and appropriate manner. The Mayor may determine the length that any speaker may speak or the number of times he may speak on any question. The same rules shall be observed in the Committee of the Whole.

(8) MOTIONS. When a motion has been made and the question called before the Council, no motion shall be received except for a motion to adjourn, to lay on the table, to refer to a committee or to amend, which several questions shall have precedence in the order in which they are offered. A motion to adjourn shall always be in order, unless the Council shall be engaged in voting, and it shall be determined without debate.

(9) AYES AND NOES. The ayes and noes shall be taken and recorded on any question before the Council upon the call of any member.

(10) PURCHASES. The Administrator will have the authority to authorize the purchase of any item or service that is required for the routine maintenance and operation of any City department. Any

item that is not considered part of the routine operation or maintenance of a department over \$1,000 in value must be authorized by the City Council.

(a) Purchases over \$100 in value must be completed with a purchase requisition signed by the department head and Administrator. The purchase requisition shall include a minimum of two quotes if practicable for the item. Following approval of the purchase requisition, the Administrator will prepare a purchase order.

(b) All purchases on behalf of the City shall be reviewed by a Council member prior to the approval of the monthly bills at the regular Council meeting the second Tuesday of each month.

(11) SPECIAL COMMITTEES. All special committees shall be appointed by the Mayor or presiding officer, unless otherwise directed by the Council.

(12) APPOINTMENT OF OFFICERS. The appointment of all officers by the Council shall be by roll call vote.

(13) RECONSIDERATION. Any person who voted in the majority on any question, or any person who voted in the negative when the Council was equally divided, may move a reconsideration of such vote at the same or next succeeding meeting of the Council. A motion to reconsider having been put and lost shall not again be in order.

(14) SUSPENSION OF RULES. No standing rule shall be rescinded, changed or suspended except by a vote of at least 2/3 of the members present.

CHAPTER 3
FINANCE AND TAXATION

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3.01 PREPARATION OF TAX ROLL AND TAX RECEIPTS. AGGREGATE TAX STATED ON ROLL. Pursuant to Section 70.65(2), Wis. Stats., the Administrator shall, in computing the tax roll, insert only the aggregate amount of State, County, school and local taxes in a single column in the roll opposite the parcel or tract of land against which the tax is levied or in the case of personal property, in a single column opposite the name of the person against whom the tax is levied.

3.02 DUPLICATE TREASURER'S BOND ELIMINATED.

- (1) BOND ELIMINATED. The City elects not to give the bond on the Treasurer provided for by Section 70.67(1), Wis. Stats.
- (2) CITY LIABLE FOR DEFAULT OF TREASURER. Pursuant to Section 70.67(2), Wis. Stats., the City shall be obligated to pay, in case the Treasurer shall fail to do so, all State and County taxes required by law to be paid by such Treasurer to the County Treasurer.

3.03 CLAIMS AGAINST CITY.

- (1) CLAIMS TO BE CERTIFIED. Prior to payment of any account, demand or claim, the City Council shall examine such account, demand or claim and shall approve such account, demand or claim if the following conditions have been complied with:
- (a) Funds are available therefor pursuant to the budget.
 - (b) The item or service was duly authorized by the proper official or agency and has been received or rendered in accordance with the purchasing agreement.
 - (c) The claim is accurate in amount and a proper charge against the treasury.
- (2) PAYMENT OF REGULAR WAGES OR SALARIES. Regular wages or salaries of City officers and employees shall be verified by the proper City official, department head or committee chairman and filed with the Administrator in time for payment on the regular pay day.

3.04 FISCAL YEAR. The calendar year shall be the fiscal year.

3.05 BUDGET.

- (1) DEPARTMENTAL ESTIMATES. On or before October 1 of each year, each officer, department and committee shall file with the Administrator an itemized statement of disbursements made to carry out the powers and duties of such officer, department or committee during the preceding fiscal year, and a detailed statement of the receipts and disbursements on account of any special fund

under the supervision of such officers, departments or committees during such year, and of the conditions and management of such fund and detailed estimates of the same matters for the current fiscal year and for the ensuing fiscal year. Such statements shall be presented in the form prescribed by the Administrator and shall be designated as "departmental estimates," and shall be as nearly uniform as possible for the main divisions of all departments.

- (2) BUDGET COMMITTEE TO PREPARE. On or before October 28 of each year, the Budget Committee of the City Council shall prepare and submit to the Council a proposed budget presenting a financial plan for conducting the affairs of the City for the ensuing calendar year. The budget shall include the following information:
- (a) The expense of conducting each department and activity of the City for the ensuing fiscal year and corresponding items for the current year and last preceding fiscal year, with reasons for increase and decrease recommended as compared with appropriations for the current year.
 - (b) An itemization of all anticipated income of the City from sources other than general property taxes and bonds issued, with a comparative statement of the amounts received by the City from each of the same or similar sources for the last preceding and current fiscal year.
 - (c) An estimate of the amount of money to be raised from general property taxes which, with income from other sources, will be necessary to meet the proposed expenditures.
 - (d) Such other information as may be required by the Council and by State law.
- (3) COPIES TO BE MADE. The City shall provide a reasonable number of copies of the budget thus prepared for distribution to citizens.
- (4) HEARING. The Budget Committee shall submit to the Council, at the time the annual budget is submitted, the draft of an appropriation ordinance providing for the expenditures proposed for the ensuing fiscal year. Upon the submission of the proposed appropriation ordinance to the Council, it shall be deemed to have been regularly introduced therein. The Council shall hold a public hearing on the budget and the proposed appropriation ordinance as required by law. Following the public hearing, the proposed appropriation ordinance may be changed or amended and shall take the same course in the Council as other ordinances.

3.06 TRANSFER OF APPROPRIATIONS. Upon written recommendation of the Budget Committee, the Council may, at any time by at least a 2/3 vote of the entire membership, transfer any portion of an unencumbered balance of an appropriation to any other purpose or object. Notice of such transfer shall be given by publication within 15 days thereafter in the official City newspaper.

3.07 CITY FUNDS TO BE SPENT IN ACCORDANCE WITH APPROPRIATION. No money shall be drawn from the treasury of the City, nor shall any obligation for the expenditure of money be incurred except in pursuance of the annual appropriation in the adopted budget or when changed as authorized by Section 3.06 of this chapter. At the close of each fiscal year, any unencumbered balance of an appropriation shall revert to the general fund and shall be subject to reappropriation; but appropriations may be made by the Council, to be paid out of the income of the current year, in furtherance of improvements or other objects or works which will not be completed within such year, and any such appropriation shall continue in force until the purpose for which it was made shall have been accomplished or abandoned.

3.08 FACSIMILE SIGNATURES. The Mayor, Administrator and Treasurer may affix their facsimile signatures in lieu of their personal signatures on all orders, checks, drafts and order checks and receipts of the City pursuant to Section 66.0607(3), Wis. Stats.

3.09 SPECIAL ASSESSMENT PROCEDURES.

- (1) In addition to other methods provided by law, special assessments for any public work or improvement or any current service may be levied in accordance with the provisions of this ordinance.
- (a) Whenever the governing body shall determine that any public work or improvement or any current service shall be financed in whole or in part by special assessments levied under this ordinance, it shall adopt a resolution specifying this intention and the time, either before or after completion of the work or improvement, when the amount of the assessments will be determined and levied, the number of annual installments, if any, in which assessments may be paid, the rate of interest to be charged on the unpaid balance and the terms on which any of the assessments may be deferred while no use of the improvement is made in connection with the property.
- (b) The provisions of §66.0703, Stats., shall apply to special assessments levied under this ordinance except that, when the governing body determines by resolution that the hearing on the assessments be held subsequent to the completion of the work or improvement or the rendering of the service, the report required by §66.0703(4), Stats., shall contain a statement of the final cost of the work, service, or improvement in lieu of an estimate of the cost.

- (c) Notice of the time and place of the public hearing on any special assessment proposed to be levied and notice of the final assessment and terms of payment thereof shall be given in the manner prescribed by §66.0703(7) and (8)(d), Stats.
- (d) Any special assessment levied under this ordinance shall be a lien against the property assessed from the date of the final resolution of the governing body determining the amount of the levy.
- (e) Any person against whose property a special assessment is levied under this ordinance may appeal therefrom in the manner prescribed by §66.0703(12), Stats., within 40 days of the date of the final determination of the governing body.

3.10 ROOM TAX.

- (1) IMPOSITION OF ROOM TAX. Pursuant to Section 66.75, Wisconsin Statutes, a tax is imposed on the privilege and service of furnishing, at retail, rooms or lodging to transients by hotel keepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for the use of the accommodations. Such tax shall be at the rate of eight percent of the gross receipts from such retail furnishing of rooms or lodgings. Pursuant to the provisions of Section 66.75(1m)(d)2, Wisconsin Statutes, seventy percent of any room tax imposed in excess of two percent of the gross receipts shall be designated and utilized solely for tourism or promotional activities. Such tax shall not be subject to the selective sales tax imposed by Section 77.52(2)(a)1, Wisconsin Statutes, and may not be imposed on sales to the federal government and persons listed under Section 77.54(9a), Wisconsin Statutes.
- (2) DEFINITIONS. For the purpose of this chapter, the following terms shall have the meaning given herein:
 - (a) "Hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, summer camps, apartment hotels, resort lodges, campgrounds, cabins and any other building or group of buildings in which the accommodations are available to the public, except accommodations rented for a continuous period of more than one month and accommodations furnished by any hospital, sanitoriums or nursing homes, rooming houses, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes, provided that no part

of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual.

- (b) "Gross receipts" has the meaning as defined in Section 77.51(4), Wisconsin Statutes, insofar as applicable. Any federal and state tax exempt transactions shall not be included in the definition of gross receipts.
- (c) "Person" shall include corporations, partnerships or other business entities.
- (d) "Transient" means any individual residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public.

(3) COLLECTION OF TAX.

(a) The room tax imposed by Section 3.10 (1) for each calendar quarter is due and payable and must be received in the office of the City Clerk-Treasurer at City Hall on or before the last business day of the month next succeeding the calendar quarter for which it is imposed. The business entity collecting the tax shall be entitled to retain two percent of the amount collected as reimbursement for its costs and efforts in the collection of the tax and the report requirements of this chapter.

(b) Quarterly Room Tax Returns. A return shall be filed with the clerk/treasurer on or before the same date on which such tax is due and payable. Such return shall be on a form provided by the city and shall show the gross receipts of the preceding calendar quarter from such retail furnishing of rooms or lodging, the amount of taxes imposed for such period, and such other information as the clerk treasurer deems necessary, provided it is directly related to the tax.

(4) LIABILITY FOR UNPAID TAX. The room tax imposed hereunder shall be a continuing liability upon the business entity or person upon whom it is imposed until paid in full. Business successors shall be liable for the preceding calendar quarter for which a return has not been filed and payment not received.

(5) INTEREST ON UNPAID TAXES. All unpaid taxes under this chapter shall bear interest at the rate of twelve (12) percent per annum from the due date of the return until the first day of the month following the month in which the tax was paid.

(6) DELINQUENT TAX RETURNS. Tax returns required hereunder and not timely filed shall be deemed delinquent and shall be subject to a late filing fee of twenty-five (25) percent of the room tax due or five thousand dollars (\$5,000.00) whichever is less.

(7) ADMINISTRATION OF TAX COLLECTION. The City Clerk-Treasurer or the Deputy Treasurer shall be responsible for the administration and collection of the room tax. The Clerk-Treasurer may, by field

audit, determine the tax required to be paid to the city or the refund due to any person under this section. The determination shall be made upon the basis of the facts contained in the return being audited and upon any other information available to the Clerk-Treasurer. The Clerk-Treasurer is authorized to examine and inspect the books, records, memoranda and property of any person which are directly related to the tax or which have a direct bearing upon the gross receipts upon which the tax due is determined in order to verify the tax liability of that person or of another person. Nothing herein shall prevent the Clerk-Treasurer from making a determination of tax at any time.

- (8) PENALTY ASSESSMENT. If any person fails to timely file a return, as required by this chapter, the clerk/treasurer shall make an estimate of the amount of the gross receipts upon which the tax is determined. Such estimate shall be made for the period for which such person failed to make a return and shall be based upon any information which is in the clerk/treasurer's possession or may come into his or her possession or such other information as may have a bearing upon the determination of gross receipts. On the basis of this estimate the clerk/treasurer shall compute and determine the amount required to be paid to the city, adding to the sum thus arrived at interest under Section 3.10(5) and the late filing fee under Section 3.10(6). Such determinations may be made for each quarterly period for which no return is filed. Such penalty shall be due upon written notice to the business entity or person owing the tax and shall not be in lieu of the tax due hereunder.
- (9) FRAUDULENT TAX RETURNS. If a person files a false or fraudulent return with the intent in either case to defect or evade the tax imposed by this chapter, a penalty of fifty (50) percent shall be added to the tax required to be paid, exclusive of interest and other penalties.
- (10) RECORDS MAINTENANCE. Every person liable for the tax imposed by this chapter shall keep or cause to be kept such records, receipts, invoices and other pertinent papers in such form so as to enable the clerk/treasurer to determine the tax due hereunder.
- (11) RECORDS CONFIDENTIALITY. Pursuant to the provisions of Section 66.75(3), Wisconsin Statutes, all information obtained under this chapter and filed with the clerk shall be confidential except for persons using the information in the discharge of duties imposed by law or of the duties of their office or by order of a court. Any person violating this subsection shall be subject to a forfeiture of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).
- (12) PENALTY. Penalties for violating the provisions of this chapter shall be as set forth in Section 25.04 of the City of Kiel Municipal Code.

CHAPTER 4
POLICE DEPARTMENT

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4.01 ORGANIZATION OF THE POLICE DEPARTMENT.

- (1) OFFICERS. The Police Department shall consist of a Chief of Police and such other officers and number of patrolmen as shall be determined and prescribed from time to time by the City Council.
- (2) APPOINTMENT. The Chief of Police shall be appointed by the Mayor and approved by the City Council. Subordinates shall be appointed by the Chief subject to the approval of the Council.

4.02 CHIEF OF POLICE.

- (1) GENERAL DUTIES. The Chief of Police shall have command of the Police Department of the City under the direction of the Mayor and City Council. He shall have general administration and control of the Department and shall be responsible for the Department's government, efficiency and general good conduct. He shall perform all duties prescribed to him by the laws of the State and ordinances of the City and shall obey all lawful written orders of the Mayor or City Council.
- (2) TO KEEP THE PEACE. The Chief of Police shall cause the public peace to be preserved and shall arrest with or without process and, with reasonable diligence, take before the proper court every person found in the City engaged in any disturbance of the peace or violating any law of the State or ordinance of the City. The Chief shall cooperate with other law enforcement officers in the arrest or apprehension of persons charged with crime.
- (3) RECORDS AND REPORTS.
 - (a) The Chief of Police shall make and file in the office of the Police Department a daily report of all arrests made, the dates thereof, names of the persons arrested, the action taken under each arrest and the results. He also shall file a monthly report with the Council of the hours he served on active duty during the preceding month, and shall keep such additional records and give such other information as the Mayor or Council may direct from time to time.
 - (b) The Chief of Police, or any police officer while on duty, shall investigate all motor vehicle accidents occurring within the City and promptly make and file accident reports of each accident setting forth therein the names and addresses of the persons involved, the names and addresses of witnesses and all other pertinent data as to the nature, cause and circumstances of the accident.
- (4) EQUIPMENT AND COMPENSATION.
 - (a) The procurement and use of equipment and supplies required by the Chief of Police in the operation of the Police Department including uniforms, automobiles for police work, weapons, etc., shall be as prescribed by the Mayor or City Council from time to time.

(b) The compensation to be paid the Chief and police officers for their services, the hours of active duty, rest days, vacation periods and other emoluments of employment, shall be such as may be determined by the City Council from time to time.

(5) DISCIPLINARY ACTIONS. Disciplinary actions against the Chief of Police shall be taken by the City Council, and against subordinates shall be taken by the Chief, subject to appeal to the City Council. Sections 62.13(5) and (5m), Wis. Stats., which establish procedures for disciplinary actions against subordinates and for dismissals and reemployment of subordinates, are hereby adopted by reference.

4.03 DUTIES OF CITIZENS.

(1) TO ASSIST POLICE. No person, without reasonable excuse, shall refuse or fail to aid the Chief of Police or any police officer in the performance of his duties when called upon to do so by such officer.

(2) RESISTANCE TO POLICE. No person shall resist or in any way interfere with or obstruct the Chief of Police or any police officer in the discharge of his duty, or shall hinder or prevent him from discharging his duty as such officer; and no person shall, in any manner, assist any person in custody of the Chief of Police to escape or to attempt to escape from such custody, or shall rescue or attempt to rescue any such person.

4.05 PENALTY. Except as otherwise provided, any person who shall violate any provision of this chapter, or any order, rule or regulation made hereunder, upon conviction, shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

CHAPTER 5
FIRE PROTECTION

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5.01 FIRE PREVENTION CODES ADOPTED. The City hereby adopts for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion:

- (1) All laws and lawful orders of the State now or hereafter in effect relating to fire prevention hereinafter referred to as the "State Code".
- (2) The Fire Prevention Code recommended by the American Insurance Association, latest edition, and any subsequent amendments, additions, revisions or recodifications, except the provisions thereof in conflict with the provisions of the State Code. Where the requirements of the State Code and the American Insurance Association conflict, the State Code shall apply.

5.02 ESTABLISHMENT AND DUTIES OF FIRE DEPARTMENT.

- (1) The Fire Prevention Code shall be enforced by the Fire Department of the City which is hereby established and which shall be operated under the supervision of the Fire Chief.
- (2) The Fire Chief shall be appointed by the Mayor on the basis of examination to determine his qualifications. His appointment shall continue during good behavior and satisfactory service, and he shall not be removed from office except for cause after public hearing.
- (3) The Chief may detail such members of the Fire Department as inspectors as shall, from time to time, be necessary. The Chief shall recommend to the Mayor the employment of technical inspectors who, when such authorization is made, shall be selected through an examination to determine their fitness for the position. The examination shall be open to members and nonmembers of the Fire Department, and appointments made after examination shall be for an indefinite time with removal only for cause.
- (4) A report of the Fire Department shall be made annually and transmitted to the Mayor; it shall contain all proceedings under this chapter, with such statistics as the Fire Chief may wish to include therein; the Chief shall also recommend any amendments to this chapter which, in his judgment, shall be desirable.

5.03 DEFINITIONS. When used in the Fire Prevention Code, the following terms shall mean:

CORPORATION COUNSEL. The City Attorney.

MUNICIPALITY. The City of Kiel.

5.04 STORAGE OF FLAMMABLE LIQUIDS.

- (1) The limits referred to in Section 16.22(a) of the Fire Prevention Code in which storage of flammable liquids in outside aboveground tanks is prohibited, are hereby established as provided in the Zoning Code.
- (2) The limits referred to in Section 16.51 of the Fire Prevention Code, in which new bulk plants for flammable liquids are prohibited, are established as provided in the Zoning Code.

5.05 BULK STORAGE OF PETROLEUM GASES. The limits referred to in Section 21.6a of the Fire Prevention Code, in which bulk storage of liquefied petroleum gas is restricted, are hereby established as provided in the Zoning Code.

5.06 STORAGE OF EXPLOSIVES AND BLASTING AGENTS. The limits referred to in Section 12.6b of the Fire Prevention Code, in which storage of explosives and blasting agents is prohibited, are hereby established as provided in the Zoning Code.

5.07 MODIFICATIONS. The Fire Chief may modify any of the provisions of the Fire Prevention Code upon application in writing by the owner or lessee, or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of such code, provided that the spirit of the code shall be observed, public safety secured and substantial justice done. The particulars of such modification, when granted or allowed, and the decision of the Chief thereon, shall be entered upon the records of the Department and a signed copy shall be furnished the applicant.

5.08 APPEALS. Whenever the Fire Chief shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the Fire Prevention Code do not apply or that the true intent and meaning of such code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision to the City Council within 30 days from the date of the decision appealed from. The City Council shall consider such appeal within 30 days.

5.09 NEW MATERIALS, PROCESSES OR OCCUPANCIES WHICH MAY REQUIRE PERMITS. The Mayor, Fire Chief and Building Inspector shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies which shall require

permits, in addition to those now enumerated in such Fire Prevention Code. The Fire Chief shall post such list in a conspicuous place in his office and distribute copies thereof to interested persons.

5.15 PENALTY. Any person who shall violate any provision of this chapter, or any order, rule or regulation made hereunder, shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

CHAPTER 6
EMERGENCY GOVERNMENT

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6.01 POLICY AND PURPOSE.

- (1) Emergency Government shall mean the preparation for and carrying out of all emergency functions, other than for which the military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters caused by enemy action, sabotage or hostile action, or from fire, flood or other natural causes.
- (2) By reason of the increasing possibility of disaster of unprecedented size and destruction, the frequent occurrence of natural disasters, and to ensure that plans and organizations shall be adequate to cope with such disasters and to provide for the common defense, to protect the public peace, health, safety, general welfare and economic stability, and to preserve the lives and property of the people of the City, it is hereby declared necessary:
- (a) To establish a City emergency government ordinance as provided by Section 166.03(4), Wis. Stats.
 - (b) To provide for the exercise of necessary powers during emergencies.
 - (c) To provide for appropriate coordination of City emergency government efforts and organizations with that of the 2 counties in which the City is located, Calumet and Manitowoc Counties.
 - (d) To provide for joint emergency government activities by the Emergency Government Director for the City, in cooperation and coordination with representatives of other political subdivisions, among them Calumet and Manitowoc Counties.

6.02 EMERGENCY GOVERNMENT DIRECTOR.

- (1) APPOINTMENT. An Emergency Government Director shall be appointed by the Mayor, subject to confirmation by the Council, for the purpose of being the head of emergency government services in the City. The Emergency Government Director shall be responsible, in coordination with the emergency government directors of Calumet and Manitowoc Counties, for compliance with all the provisions established by Ch. 166, Wis. Stats., for development and implementation of an emergency government plan for the City. The Emergency Government Director may be paid a salary as set by the City Council and shall, on appointment, take and file an oath of office as required by law. The term of appointment shall be one year, renewable for additional one year periods, so long as the Emergency Government Director observes good and proper conduct in the discharge of his duties and responsibilities.

(2) DUTIES AND RESPONSIBILITIES. The Emergency Government Director shall have the following duties and responsibilities:

- (a)** To develop standard operating procedures for the City, consistent with the emergency government plans for Calumet and Manitowoc Counties, State emergency government plans and Section 166.03, Wis. Stats.
- (b)** To direct local emergency government training programs and exercises, participation in emergency government programs and exercises ordered by the heads of emergency government services in Calumet and Manitowoc Counties and by the Secretary of the State Department of Administration.
- (c)** To advise the heads of emergency government services for Calumet and Manitowoc Counties on local emergency government programs and to submit to the County heads of emergency government services such reports as they may require.
- (d)** To contract on behalf of the City with any person to provide equipment and services on a cost basis to be used in disaster relief, during the continuance of a state of emergency proclaimed by the Governor.
- (e)** To coordinate an emergency government plan and program pursuant to the duties and responsibilities set forth in the Calumet and Manitowoc Counties' plans and such other duties as may be assigned to the Emergency Government Director by the Calumet or Manitowoc Counties' Emergency Government Directors.

6.03 UTILIZATION OF EXISTING SERVICES AND FACILITIES. In preparing and executing the emergency government plan, the Emergency Government Director shall utilize the services, equipment, supplies and facilities of the City to the extent practicable, and the officers and personnel of the departments and agencies of the City are directed to provide services, facilities and equipment as may be required.

6.04 FINANCES.

(1) OFFICE AND STAFF. The City shall provide offices, office furniture, stenographic help and such office supplies as may be necessary to carry out the functions of the Emergency Government Director and the cost thereof shall be defrayed by the City, with the help of any matching funds which may be available through Calumet and Manitowoc Counties, the State or federal government.

(2) MAJOR EQUIPMENT AND SERVICES. Cost of equipment and services shall be borne 100% by the City requiring procurement of such equipment and services, with federal matching funds procured by the Joint Action Emergency Government when applicable. Federal matching reimbursements are to be returned to the City Treasurer where the City has procured the equipment or services.

6.05 EMERGENCY REGULATIONS. Whenever necessary to meet a duly proclaimed emergency, the Emergency Government Director, in cooperation with the Calumet and/or Manitowoc Counties' Emergency Government Directors, as authorized by the Mayor, may cause to be enforced such orders, rules and regulations as shall be deemed necessary to protect the public peace, health and safety, preservation of lives and property, and to preserve the economic stability, insure cooperation and regulate the conduct of the public. Such rules, regulations and orders shall be posted in 3 public places and may be changed, rescinded or amended at any time by the City Council or by order of the Mayor.

6.06 WORKER'S COMPENSATION COVERAGE. All emergency government personnel within the City shall be enrolled members of the Calumet and/or Manitowoc Counties' Office of Emergency Government and shall be considered to be employees of such County offices of emergency government within the meaning of Section 166.03(8), Wis. Stats.

6.07 DECLARATION OF EMERGENCY. Upon receipt in the City of an attack warning, or upon declaration by the President, Governor, Chairman of the County Board of Calumet County or Manitowoc County or the Mayor, of an emergency, the Emergency Government Director shall see that all proclamations have been issued and disseminated with reference to the state of emergency and shall cause such emergency plans and operations to be placed into effect as are deemed necessary to cope with the situation. No such declaration of emergency issued by the Mayor shall extend beyond a 60-day period unless so approved by the Council.

6.08 INTERFERENCE WITH EMERGENCY GOVERNMENT PROHIBITED. No person shall willfully obstruct, hinder or delay any member of the emergency government organization in the enforcement of any order, rule, regulation or plan issued pursuant to the authority contained in this chapter.

6.15 PENALTY. Any person who shall violate any provision of this chapter, or any order, rule or regulation made hereunder, shall be subject to a penalty as provided in Section 25.04 of the Municipal Code.

CHAPTER 7**TRAFFIC CODE**

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7.01 STATE TRAFFIC LAWS ADOPTED. [#368 12/11/90] Except as otherwise specifically provided in this chapter, the statutory provisions in Section 23.33, Chapters 340 to 348, 350 and Section 941.01 Wis. Stats., as well as Wisconsin Administrative Code Chapters Trans. 101, 305, 325, 326, 327 and 330, describing and defining regulations with respect to vehicles and traffic, inclusive of any provisions therein relating to penalties to be imposed and exclusive of any regulations for which the statutory penalty is a fine or term of imprisonment, are adopted and by reference made a part of this chapter as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this chapter. Any future amendments, revisions or modifications of the statutes incorporated herein are intended to be made part of this chapter in order to secure uniform Statewide regulation of traffic on the highways, streets and alleys of the State.

(1) Pursuant to Wis. Stat. Sec 349.21(1) and Wis. Stat Sec. 346.48(2)(b)(2), school bus operators shall use flashing red warning lights in residential or business districts when pupils or other authorized passengers are being loaded or unloaded.

7.02 SPEED LIMITS. The provisions of Sections 346.57, 346.58 and 346.59, Wis. Stats., relating to the maximum and minimum speed of vehicles, are hereby adopted as part of this section as if fully set forth herein, except:

(1) The speed limit in Hingiss Park shall be 15 mph.

(2) The speed limit on Park Avenue shall be 35 mph from its intersection with STH 57, easterly to its intersection with STH 67.

(3) The speed limit on Seventh Street between Fremont Street and Calumet Avenue shall be 25 mph.

(4) The speed limit on W. Fremont Street to the west City limits shall be 25 mph.

(5) The speed limit on STH 67 shall be 45 mph from the north City limits south to its intersection with STH 57.

(6) [#402 7/23/96] The speed limit on Rockville Road east of STH 67 shall be 35 mph.

(7) The speed limit on Cemetery Road between Rockville Road and Mueller Road shall be 35 mph.

7.03 DISORDERLY CONDUCT WITH A MOTOR VEHICLE. No person may operate a motor vehicle in a reckless or dangerous manner in the City of Kiel which causes a disturbance including the intentional operation of a motor vehicle in a swerving, swaying or bouncing manner, to operate a vehicle involved as a display of power, as actions intended as horseplay, or to cause a motor vehicle's tires to squeal, scrape, drag or project or spray any material thrown up by the tires of such a vehicle from any surface

unnecessarily, due to over acceleration or deceleration, while on public or private property within the city.

7.04 PARKING LIMITATIONS.

- (1) **PARKING LIMITS.** When signs are erected in any block giving notice thereof, no person shall park a vehicle for longer than 2 hours at any time between 8 a.m. and 5 p.m., except Sundays and New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, upon the following streets or portions of streets:
- (a) North side of Fremont Street from First Street to the Calumet-Manitowoc County line.
 - (b) South side of Fremont Street from First Street to the railroad tracks.
 - (c) Seventh Street from Fremont Street north to Paine Street
 - (d) North and south sides of Paine Street between Sixth and Seventh Streets.
 - (e) Parking restrictions at the Kiel Middle School, north side of Paine Street between the signs.
 - (f) 2 Hour Parking on the west side of 8th Street from 8:00 A.M. to 5:00P.M. Monday thru Friday, located at 927 8th Street for 8 parking stall consistent with this address.
 - (g) Parking restriction – During such times as school is in session at the Kiel Middle School there shall be no parking on the north side of Paine Street between the signs and there shall also be no parking for a length of 20 feet on the north and the south sides of St Paul Street, west of Fourth Street.
- (2) **ALL-NIGHT PARKING PROHIBITED.** No person shall park any vehicle for longer than 30 minutes between 2 a.m. and 6 a.m. of any day on Fremont Street except physicians on emergency calls. Parking is prohibited during the above hours during the months from November 15 through March 15 on all streets and alleys. Parking is prohibited for trucks with a registration weight rating over 10,000 lbs. on all streets and alleys between 1 a.m. and 6 a.m., except in special instances a police officer on duty may grant 12 hours' permission.
- (3) **PARKING PROHIBITED.** Parking shall be prohibited in the following locations:
- (a) On the west side of Fifth Street south of Fremont Street from the first alley south of Fremont Street
 - (b) On the west side of Seventh Street
 - (c) On the east side of Eighth Street beginning at a point approximately 100' south of Fremont Street and running southerly 85' along the east side of Eighth Street

- (d) No vehicle shall be parked in the same place continuously for more than 72 hours on any street, alley or City property, except in City parking lots under permit obtained pursuant to sub. (6).
- (e) [#346 11/18/87] On the north side of Fremont Street beginning at a point approximately 220' east of First Street and running easterly along the north side of Fremont Street to STH 67.
- (f) On the north side of Raider Heights for a distance of 40' directly to the east of the exit from the rear parking lot of Kiel High School.
- (g) Parking of Semi-Trailers and Trucks. No person shall park a semi-trailer or tractor truck as defined in 340.01(57) and 340.01(73), Wis. Stats., on any street or alley not designated as a heavy truck route or upon any residential property within the City except during the process of loading or unloading such vehicle or except in such cases when the police department has given permission due to extenuating circumstances.
- (h) In the front yards of residences in residential districts
- (i) Within 8 feet of the public street right of way
- (j) On the south side of North Street from a point 100 feet east of Adams Street to Buchanan Street on school days between 7:00 AM to 8 AM to 2:30 PM to 3:30 PM
- (k) On the north side of Riverview Road between State Highway 67 and Dewey Street
- (l) On the south side of Fremont Street beginning from the southeast corner of Fifth Street and running easterly for a distance of 130 feet on school days between 2:30 PM to 3:00 PM.
- (m) On the north side of Persnickety Place beginning approximately 2,025 feet of road east of the intersection of Ruh Court and proceeding northeasterly and southernly for a distance of 180 feet.
- (n) Beginning on the southwest corner of the intersection of Fremont Street and Eighth Street and running west along Fremont Street approximately 130 feet.
- (o) In city parks between the hours of 10:00 p.m. and 5:00 a.m.
- (p) Between November 15 and March 15, parking is prohibited on the 700 block of Chicago Street between the hours of 6:00 a.m. and 2:00 a.m. without a valid City-issued parking permit.
- (4) ANGLE PARKING. Angle parking is permitted on Broadway.
- (5) BOAT, TRAILER, RV PARKING RESTRICTED. No boat, camping, snowmobile, ATV, UTV, construction or any other type of trailer whether attached or unattached to a motor vehicle, truck camper, fifth-wheel, mobile home, recreational vehicle, or motor home shall be parked or left standing on public streets within the corporate limits of the City between the hours of 2 a.m. and 6 a.m., except with

the express permission of the Police Department. Unattached semi-trailers, in no case, will be allowed to be parked on a public street.

(a) Police permission shall be freely given to accommodate out-of-town visitors for the duration of their stay. Permission shall also be given in those circumstances where an emergency or other situations exist, making it impossible for the vehicle or trailer to be parked on the owner's property due to construction or other good cause, as may be determined by the Chief of Police. Any permission to so park on public streets, however, shall in no case extend beyond the duration of the circumstances necessitating the on-street parking.

(b) Definitions contained in Section 340.01, Wis. Stats., shall apply to this section.

(6) PARKING LOT RENTAL.

(a) Parking in excess of 72 hours continuously and between the hours of 2 a.m. and 6 a.m. nightly from November 15 through March 15 shall be permitted in the City parking lot known as the South Lot, which abuts the alley 1/2 block south of Fremont Street in the 600 block of Fremont Street, for those persons who have obtained a permit therefore from the City. The parking area shall be located in the east 1/2 of the north 1/2 of the South Lot. The following steps shall be followed in obtaining a permit, which shall be granted or not in the City's discretion:

1. An application form shall be filled in and submitted to the City Police Department by the owner of the vehicle wishing to obtain a permit for parking that vehicle in a reserved area in the South Lot.
2. The owner of the vehicle shall supply the Police Department with the license number of the vehicle for parking which the permit is being sought.
3. The applicant shall pay the sum of \$5 per month for parking a car, van or small truck in reserved parking area in the South Lot.

(b) Failure of a vehicle owner to follow the above steps in obtaining a permit and parking in the South Lot between the hours of 2 a.m. and 6 a.m. from November 15 through March 15 or in excess of 72 hours continuously shall be a parking violation, the forfeiture for which shall be determined in accordance with Section 25.04.

(7) SEMI-TRACTOR TRAILERS AND LARGE VEHICLES – The owner/operator of a semi-tractor trailer or other vehicle more than 6 feet wide and more than 18 feet long wishing to park in the municipal lot identified under this section is required to obtain a parking permit year-round. Applicants shall report in person to the Kiel Police Department and shall pay a sum of \$10 per month for parking these types of vehicles in the municipal lot.

(b). These permits will be issued under the following conditions and are subject to review and approval by the Chief of Police or his/her designee:

1. At time of application, the owner/operator shall provide the following information:
 - a. Description of the vehicle and/or trailer
 - b. Complete license and registration information for the vehicle and/or trailer
 - c. Contact information including telephone number where the owner/operator can be reached in cases of an emergency or for any other law enforcement reasons when contact is necessary.
2. Restrictions - Permits will not be granted for vehicles and/or trailers that contain any materials deemed hazardous and/or any vehicle or trailer that require the use of a power generator to be operating during the time the vehicle or trailer parked within the municipal lot. The City Administrator may restrict the time or duration that a vehicle or accessory unit may be permitted to idle or be parked with the engine engaged.

(8) NO PARKING DURING SCHOOL HOURS. [#392 10/25/94] There shall be no parking during school hours on the west side of Third Street from Fremont Street north to the alley between Fremont Street and Paine Street. No parking during school hours from 7:30 A.M. to 3:00 P.M. on Raider Heights between First Street and Fourth Street.

(9) PARKING RESTRICTIONS AT KIEL HIGH SCHOOL. There shall be no parking along the north side of Raider Heights within (12) feet on either side and between the main entrance and exit of the Kiel High School. In addition, there shall be no parking from 7:30 AM to 4:30 PM during school hours on the south side of Raider Heights Street in the area between a point directly across from the eastern and western edge of said no parking area.

(10) PARKING RESTRICTIONS AT ZIELANIS ELEMENTARY SCHOOL. There shall be no parking during school hours on the east side of Adams Street between North Street and exit driveways to Zielanis Elementary School.

7.05 VEHICULAR WEIGHT LIMITATIONS.

(1) CLASS "B" HIGHWAYS DESIGNATED. All streets and alleys within the City, except the following enumerated streets and alleys, are hereby designated Class "B" highways and shall be subject to the weight limitations imposed by Section 348.16, Wis. Stats.:

- (a) Fremont Street from the east to west City limits.
- (b) First Street from Fremont Street south to E. Water Street

- (c) E. Water Street from First Street to east City limits
- (d) Seventh Street north of Fremont Street
- (e) Calumet Avenue from Seventh Street to the north City limits.

(2) HEAVY TRAFFIC ROUTES.

- (a) Heavy Traffic Routes Designated. The following streets and parts of streets within the City are hereby designated heavy traffic routes:
1. Sixth Street south of St. Paul Street.
 2. Milwaukee Street between Seventh and Eighth Streets.
 3. Eighth Street north from Milwaukee Street to Park Avenue.
 4. Eighth Street south of Fremont Street.
 5. Paine Street west of Seventh Street.
 6. First Street north of Fremont Street to Paine Street.
 7. Park Avenue between west City limits and STH 67.
 8. Alleys parallel to Fremont Street and just adjacent thereto on the north and south.
 9. Alley west of Seventh Street between Paine and St. Paul Streets.
 10. Alley south of Fremont Street parallel to the railroad tracks and west thereof (Alley to the City Garage).
 11. St. Paul Street west of Seventh Street [#352 12/22/88].
 12. Tenth Street north of Paine Street [#352 12/22/88, #405 10/1/96].
 13. Paine Street between Tenth Street and Twelfth Street [#405 10/1/96].
 14. Twelfth Street from Fremont Street to Paine Street [#405 10/1/96].
 15. Persnickety Place from STH 67 east to its end point.
 16. Ruh Court from Persnickety Place south to its end point.
 17. Rockville Road from STH 67 east to Cemetery Road.
 18. STH 32 and STH 57 from Park Avenue north to the City limits.
- (b) Restriction on Use of Other Streets by Heavy Traffic. No vehicle, except a motor bus, which is not equipped with pneumatic tires or has a combined vehicle load weight exceeding 10,000 LBS., shall be operated or moved on any street or alley not part of the heavy traffic route designated in par. (a), except for the purpose of obtaining orders for, moving or delivering supplies or commodities to or from a place of business or residence facing thereon, provided that in no event shall the weight of vehicle and load on such other streets exceed the limitations

of Section 348.15 or 348.16(3), Wis. Stats., pertaining to Class "A" highways or deliveries on Class 'B" highways. No vehicle which has a combined vehicle load weight exceeding 10,000 LBS. shall make deliveries to businesses or residences fronting on Eighth Street by traveling upon any of the following streets between Seventh Street and Eighth Street: Chicago Street, North Street, Center Street, Wisconsin Street, and Sheboygan Street.

7.06 ERECTION OF OFFICIAL TRAFFIC SIGNS AND SIGNALS. The Street Department shall procure, erect and maintain appropriate standard traffic signs, signals and markings conforming to the rules of the State Department of Transportation giving notice of the provisions of this chapter. Signs shall be erected in such locations and manner as authorized by the City Council as to give adequate warning to users of the street, alley or highway in question.

7.07 U-TURNS PROHIBITED. U-turns shall be prohibited at all intersections on Fremont Street.

7.075 RIGHT TURN. During such times as school is in session at the Kiel Middle School and specifically between 7:00 A.M. and 8:00 A.M., vehicular traffic traveling east on St Paul Street may turn right only.

7.08 ACCIDENT REPORTS. All operators of vehicles involved in accidents within the City where there is property damage or personal injury, regardless of the amount, shall file a report of such accident with the Police Department.

7.085 ALL-TERRAIN VEHICLES (ATVs) AND UTILITY TERRAIN VEHICLES (UTVs)

(1) DEFINITIONS:

- (a)** All definitions set forth in Wisconsin Statute sec. 23.33(1) and any amendments or modifications thereto are hereby incorporated herein and adopted by reference and made part of the Kiel Code of Ordinances in their entirety.
- (b)** "ATV" shall mean all-terrain vehicle.
- (c)** "UTV" shall mean utility terrain vehicle.
- (d)** "Highway" shall have the meaning as set forth in Wisconsin Statute sec. 340.01(22) and any amendments or modifications thereto and said Wisconsin Statute sec. 340.01(22) is hereby incorporated herein and adopted by reference and made part of the Kiel Ordinance in its entirety.

(2) OPERATION OF ATVs/UTVs ALLOWED AND EXCEPTIONS:

- (a)** Allowed. The operation of ATVs/UTVs on Highways that have a posted speed limit of 35 miles or less within the City in compliance with the provisions of this chapter are permitted, however, it is unlawful to operate any ATV/UTV on any Highways within the city or in any manner not authorized herein. All ATVs/UTVs operating on a Highway under this Chapter shall meet the registration requirements under Wisconsin Statute sec. 23.33(2).
- (b)** Exceptions. The operation of ATVs/UTVs is not subject to the provisions of this chapter under the following circumstances:
 - 1.** The use of an ATV/UTV in connection with a parade, a festival, or other special events, provided the consent of the sponsor and the City of Kiel is obtained and provided such a vehicle is only used during such an event.
 - 2.** Snow removal. ATVs/UTVs may be operated on sidewalks, walkways or on any property owned by the City of Kiel for snow removal only. ATVs/UTVs with a snow removal device attached may be operated for snow removal purposes under the following situation:
 - a.** on a public sidewalk, speed may not exceed 5 MPH

(3) RESTRICTIONS ON OPERATORS OF ATVs/UTVs

- (a)** Operators of ATVs/UTVs on Highways are required to have a valid probationary or regular driver's license and to be at least 16 years of age.
 - (b)** Any operator or passenger of an ATV/UTV on a Highway under 18 years of age is required to wear a helmet unless the machine is registered as an implement of husbandry and is being used for a legitimate agricultural purpose.
 - (c)** All ATVs/UTVs being operated on a Highway must be insured with liability insurance with the same minimum requirements as motor vehicle insurance mandated by Chapter 344 of the Wisconsin Statutes including, but not limited, to secs. 344.33(2) and 344.62 of said Chapter 344 of the Wisconsin Statutes and any amendments or modifications thereto to said Chapter 344 of the Wisconsin Statutes and secs. 344.33(2) and 344.62.
 - (d)** If so equipped, all UTV passengers must have their seatbelts fastened at all times.
- (4) MANNER OF OPERATION:** ATVs/UTVs will not be operated on the Highways of the City, except in full compliance with the provisions of this Chapter:

(a) Highways:

- 1.** ATVs/UTVs will not be operated on any Highway where such operation is prohibited by a posted sign.

2. ATVs/UTVs will reduce their speed to 10 miles per hour or less when riding within 150 feet of a home or dwelling, unless the ATV/UTV is operating on a Highway that allows for travel of ATVs/UTVs under Section 7.085.
- (b)** Motor vehicle laws: All laws regarding the use of motor vehicles in the State of Wisconsin and all ordinances regarding the use of motor vehicles in the City, not inconsistent therewith, shall be observed.
1. ATVs/UTVs must be operated on the extreme right side of the Highway and travel with the flow of traffic.
 2. ATVs/UTVs must be operated in single file with headlights and taillights in operation at all times, day or night. If a trailer is towed behind an ATV, the trailer must conform to all lighting requirements for ATVs.
 3. ATV/UTV operators will yield the right-of-way to all other vehicular traffic and pedestrians.
 4. ATVs/UTVs violating any of the above conditions will be subject to the penalties outlined in Wis. Stats. and city ordinances.
 5. Speed. ATVs/UTVs operated on any portion of any Highway pursuant to this section will observe the posted speed limit for that Highway.
 6. Any ATV/UTV unable to reach a maximum speed of 25 MPH, must display a slow-moving vehicle (SMV) triangle, visible on the rear of such a vehicle according to Wis. Stats. governing the SMV emblems at all times while in operation on any Highway.
- (c)** City property and sidewalks. Except as otherwise provided in Section 7.085(2)(b)(ii). ATVs/UTVs will not be operated on any sidewalk, pedestrian walkway, jogging path, greenway, park, trail except for official police business or by City personnel while on City business. Notwithstanding anything herein to the contrary, ATVs/UTVs will not be operated on property owned or leased by the City except with the express written consent of the Public Works Foreman or the Chief of Police and upon the terms and conditions as may be set forth in such written permission.
- (d)** Commercial purposes. ATVs/UTVs may not be used as a taxicab or bus or the commercial carrying of passengers or the hauling of freight.
- (e)** Parking. ATVs/UTVs may only be parked in the same manner and at the same places designated for the parking of motor vehicles. The stopping, standing, or parking of ATVs/UTVs in areas where parking is not allowed or in any place that impedes the flow of traffic, pedestrian walkways or a passageway is prohibited.

(f) Towing. ATVs/UTVs may not be used for the purpose of towing another cart, or vehicle of any kind including a person on roller skates, in-line skates, skateboard, bicycle, or any other non-motorized equipment with wheels, except as otherwise set forth in Section 7.085(4)(b)(ii) above.

- (5) STATE ALL-TERRAIN VEHICLE (ATV) AND UTILITY TERRAIN VEHICLE (UTV) LAWS ADOPTED: Except as otherwise specifically provided in this section, the statutory provisions found in Wisconsin Statute sec. 23.33 as previously adopted by City of Kiel Ordinance 7.01 and the Administrative Code provisions set forth in Wisconsin Administrative Code NR 64 describing and defining regulations with respect to ATVs and UTVs and any amendments or modifications thereto are hereby incorporated herein and adopted by reference and made part of the Kiel Code of Ordinances in their entirety.
- (6) VIOLATIONS AND PENALTIES: Any person who violates this section are subject to penalty as set forth in Section 7.16.

7.086 GOLF CARTS

(1) DEFINITIONS:

- (a) "Golf cart" shall have the meaning set forth in Wisconsin Statute sec. 23.33(1)(fm) and any amendments or modifications thereto and said Wisconsin Statute sec. 23.33(1)(fm) is hereby incorporated herein and adopted by reference and made part of the Kiel Ordinance in its entirety.
- (b) "Highway" shall have the meaning as set forth in Wisconsin Statute sec. 340.01(22) and any amendments or modifications thereto and said Wisconsin Statute sec. 340.01(22) is hereby incorporated herein and adopted by reference and made part of the Kiel Ordinance in its entirety.

(2) OPERATION OF GOLF CARTS ALLOWED and EXCEPTIONS:

- (a) Allowed. The operation of Golf carts on the Highways within the City of Kiel in compliance with the provisions of this chapter are permitted, however, it is unlawful to operate any Golf cart at any place or in any manner not authorized herein.
- (b) Exceptions. The operation of Golf carts is not subject to the provisions of this chapter under the following circumstances:
1. The use of Golf cart in connection with a parade, a festival, or other special events, provided the consent of the sponsor and the City of Kiel is obtained and provided such a vehicle is only used during such an event.

- (c) Golf carts are allowed on a Highway that has a speed limit of 25 miles per hour or less except as otherwise provided in this Chapter. Golf carts, however, are not allowed on State Highway 67/32/57, except as provided in 7.086(4)(b). Golf carts are not allowed on any Highway that has a speed limit of greater than 25 miles per hour.

(3) LICENSE/INSURANCE REQUIRED.

- (a) Operators of Golf carts on Highways are required to have a valid probationary or regular driver's license and to be at least 16 years of age.
- (b) All Golf carts being operated on a Highway must be insured with liability insurance with the same minimum requirements as motor vehicle insurance mandated by Chapter 344 of the Wisconsin Statutes including, but not limited, to secs. 344.33(2) and 344.62 of said Chapter 344 of the Wisconsin Statutes and any amendments or modifications thereto to said Chapter 344 of the Wisconsin Statutes and secs. 344.33(2) and 344.62.

(4) MANNER OF OPERATION

- (a) Hours of operation. Golf carts may be driven on Highways and approved areas of crossing from sunrise until sunset, except that Golf carts equipped with at least one operating headlight, having at least a fifty-five-watt halogen, or equal, bulb on the front of the Golf cart, and two operating taillights on either side of the rear of the Golf cart, all of which are visible for a distance of not less than 250 feet, may be operated from one-half hour before sunrise until one-half hour after sunset. Golf carts may not be operated when fog, smog, smoke, snow, or other conditions reduce visibility so that the Golf cart is not visible for a distance of 250 feet.
- (b) Public Streets, Highways, and crossings. Golf carts are only allowed to cross the State Highway 67/32/57 system at these designated locations:
 1. 1st Street
 2. 2nd Street
 3. 3rd Street
 4. 4th Street
 5. 5th Street
 6. 6th Street
 7. St. Paul Street

- (c) Motor vehicle laws. All laws regarding the use of motor vehicles in the State of Wisconsin and all ordinances regarding the use of motor vehicles in the City, not inconsistent therewith, shall be observed by the Golf cart operator.
 - (d) Right-of-way. The operator of a Golf cart will yield the right-of-way to overtaking motor vehicles.
 - (e) City property and sidewalks. Golf carts will not be operated on any sidewalk, pedestrian walkway, jogging path, greenway, park, trail except for official police business or by City personnel while on City business. Notwithstanding anything herein to the contrary, Golf carts will not be operated on property owned or leased by the City except with the express written consent of the Public Works Foreman or Chief of Police and upon the terms and conditions as may be set forth in such written permission.
 - (f) Golf cart capacity. The seating capacity (normally no more than four passengers) will not be exceeded nor the operator or any passenger be permitted to stand while the Golf cart is in operation.
 - (g) Commercial purposes. Golf carts may not be used as a taxicab or bus or the commercial carrying of passengers or the hauling of freight.
 - (h) Parking. Golf carts may only be parked in the same manner and at the same places designated for the parking of motor vehicles. The stopping, standing, or parking of Golf carts in areas where parking is not allowed or in any place that impedes the flow of traffic, pedestrian walkways, or a passageway is prohibited.
 - (i) Towing. Golf carts may not be used for the purpose of towing another cart, trailer or vehicle of any kind including a person on roller skates, in-line skates, skateboard, bicycle or any other non-motorized equipment with wheels.
- (5) VIOLATIONS AND PENALTIES. Violations and penalties. Any person who violates this section are subject to penalties set forth in Section 7.16.

7.09 SNOWMOBILES.

- (1) STATE SNOWMOBILE LAWS ADOPTED. Except as otherwise specifically provided in this chapter, the statutory provisions describing and defining regulations with respect to snowmobiles in Chapter 350, Wis. Stats., are hereby adopted by reference and made part of this section as if fully set forth herein. Acts required to be performed or prohibited by such statutes are required or prohibited by this section.

- (2) APPLICABILITY OF RULES OF THE ROAD TO SNOWMOBILES. The operator of a snowmobile upon a roadway shall, in addition to the provisions of Chapter 350, be subject to the applicable provisions of Chapter 346, Wis. Stats.
- (3) PERMITTING OPERATION BY IMPROPER PERSONS PROHIBITED. No owner or person having charge or control of a snowmobile shall authorize or permit any person to operate such snowmobile who is not permitted to do so under State law or who is under the influence of an intoxicant or a dangerous or narcotic drug.
- (4) OPERATION WHILE UNDER INFLUENCE PROHIBITED. Section 350.101 Wis. Stats., shall apply to the operation of a snowmobile any place within the City.
- (5) WRITTEN CONSENT OF OWNER REQUIRED. The consent required under Section 350.10(1)(f), (k), (l) and (m), Wis. Stats., shall be written consent dated and limited to the year in which the consent is given. If the property is owned or leased by more than one person, the consent of each must be obtained.
- (6) SPEED LIMIT ON SHEBOYGAN RIVER. The speed limit for snowmobiles, all terrain vehicles (ATV's), or any other motor vehicle on the Sheboygan River between the railroad trestle and the dam shall be 10 mph.

7.10 BICYCLES.

- (1) DEFINITION. "Bicycle" is hereby defined as set forth in Section 340.01(5), Wis. Stats.
- (2) REGISTRATION REQUIRED. No bicycle shall be operated upon any of the streets of the City without having a registration tag therefore, properly registered and displayed thereon.
- (3) APPLICATION FOR REGISTRATION. Application for registration shall be made by the owner on forms provided by the Police Department. Such application shall contain the name, age, and address of the owner and a description of the bicycle, including the serial number thereof. If the bicycle has no serial number, the Police Department shall assign one to it. Applications shall contain such other information as may be deemed pertinent by the Police Department.
- (4) TERM OF REGISTRATION TAG. Upon such application, and the payment of the registration fee in Section 12.01 to the Police Department, the Department shall issue to the applicant a registration tag for the bicycle which shall be effective for 2 years, ending on May 1 each second year, and shall permit such bicycle to be operated upon the streets of the City as herein provided. The Police Department shall keep a record of the date of issuance of such registration tag, to whom issued

and the number thereof. A copy of the application shall be kept on record and filed in the office of the Police Department.

- (5) USE OF REGISTRATION TAG. No bicycle shall be considered registered until a registration tag shall be affixed to the frame of such bicycle which shall remain so affixed until reregistration or until removed by the Police Department for cause. No person shall willfully remove, deface or destroy any such identification tag.
- (6) TRANSFER OF BICYCLE. Any person who transfers the title to any bicycle of which he is the owner, shall endorse upon the registration tag the name and address of the buyer, the date of the transfer and the name of the seller. The new owner of such bicycle shall apply for a transfer of the registration thereof within 10 days of such transfer. There shall be no fee charged for the transfer of the title of any bicycle.
- (7) PENALTIES. Any person who shall violate any of the provisions of this Section shall be punished according to the provisions of Chapter 346, Wis. Stats.
- (8) BICYCLE SAFETY EQUIPMENT.
- (a) Lights and reflectors. No person shall operate a bicycle in the city during hours of darkness unless such bicycle is equipped with a lamp on the front emitting a white light visible from a distance of at least 500 feet to the front and with a red reflector at least two inches in surface area on the rear so mounted and maintained as to be visible from all distances from 50 to 300 feet to the rear when directly in front of lawful lower beams of headlamps on a motor vehicle.
 - (b) Brakes. No person shall operate a bicycle in the city unless it is equipped with a brake that operates effectively.
 - (c) Operating condition. No person shall operate a bicycle in the city unless the bicycle is in safe operating condition including, but not limited to:
 - 1. All tires inflated with a minimum of 1/16 of an inch tread depth.
 - 2. All fasteners on the bicycle are attached properly.
 - 3. The bicycle is equipped with a seat.
 - 4. The steering mechanism is in alignment and properly fastened.
 - 5. All chains are attached and in proper working order.
- (9) RULES FOR BICYCLE OPERATION: Whenever a bicycle is operated in the city the following rules shall apply:
- (a) In accordance with Wisconsin Statue Ch. 346, the City of Kiel hereby permits operation of bicycles on all city sidewalks unless otherwise specifically prohibited within this ordinance. All

rules of the road according to Wisconsin Statute Ch 346 apply to bicycles being operated in the city.

- (b)** The rider of a bicycle shall ride as near as practicable to the right-hand curb or edge of the roadway, exercising due care when passing a standing vehicle or one proceeding in the same direction, or when making a left-hand turn at an intersection.
- (c)** No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped for, nor shall a bicycle be used to tow any person or object that is not specifically designed for towing by bicycles.
- (d)** No person operating a bicycle shall cling or attach themselves or their bicycle to any moving vehicle.
- (e)** Persons riding bicycles in the city shall ride single file on all roadways, sidewalks and in other areas where other motor vehicles or pedestrian traffic is present.
- (f)** A person propelling a bicycle shall not ride in any other manner than upon or astride a permanent and regular seat attached thereto, facing forward, with both feet on the pedals.
- (g)** No person operating a bicycle shall participate in any race, speed or endurance contest with any other moving vehicle in the city.
- (h)** No rider of a bicycle shall practice any fancy or acrobatic riding or stunts while operating such bicycle, nor operate such bicycle without keeping at least one hand on its steering apparatus.
- (i)** Every person operating a bicycle upon a sidewalk shall yield the right-of-way to any pedestrian and shall exercise due care and give an audible signal when passing a bicycle or electric personal mobility device rider or a pedestrian proceeding in the same direction.
- (j)** Bicycles which are not mechanically safe shall not be operated on the public ways of the city.
- (k)** Persons riding bicycles when permitted on sidewalks in the city shall yield the right of way to all persons walking on the sidewalk. When passing pedestrians on the sidewalk, bicycle riders shall do so in a safe manner and at whatever speed is necessary to maintain control of the bicycle.
- (l)** Bicycles are not permitted to be operated or parked upon any city sidewalks from 1 hour before the start until 1 hour after the finish of any officially recognized parade occurring within the city.

7.11 BOATING RESTRICTIONS.

- (1) **SPEED TO BE REASONABLE AND PRUDENT.** No person shall operate a motorboat at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. The speed of a motorboat shall be so controlled as to avoid colliding with any object lawfully in or on the water or with any person, boat or other conveyance in or on the water in compliance with legal requirements and exercising due care.
- (2) **FIXED LIMITS.** In addition to complying with sub. (1), no person may operate a motorboat at a speed in excess of the posted notice as established by regulatory markers.
- (3) **PROHIBITED OPERATION.** No person may operate a personal water craft at a speed in excess of slow-no-wake within 100 feet of any other boat.
- (4) **OPERATION OF BOAT WHILE INTOXICATED PROHIBITED.** No person may engage in the operation of a motorboat while under the influence of an intoxicant to a degree which renders him or her incapable of safe motorboat operation. In addition, no person may engage in the operation of a motorboat while the person has an alcohol concentration of .1% or more. This subdivision does not apply to commercial motorboats.

7.12 TRAINS NOT TO OBSTRUCT CROSSINGS. No person in charge of operation of a railroad train or car shall permit the same to obstruct a street crossing within the City for more than 10 minutes.

7.13 ABANDONED VEHICLES.

- (1) **VEHICLE ABANDONMENT PROHIBITED.** No person shall leave unattended any motor vehicle, trailer, semi trailer or mobile home on any public street or highway or public or private property for such time and under such circumstances as to cause the vehicle to reasonably appear to have been abandoned. When any such vehicle has been left unattended on any City street or highway or on any public or private property within the City without the permission of the property owner for more than 48 hours., the vehicle is deemed abandoned and constitutes a public nuisance.
- (2) **REMOVAL AND IMPOUNDMENT OF ABANDONED VEHICLES.** Any vehicle in violation of this subsection shall be impounded until lawfully claimed or disposed of under sub. (3); except if the Chief of Police or his authorized representative determines that the cost of towing and storage charges for the impoundment would exceed the value of the vehicle, the vehicle may be junked by the City prior to expiration of the impoundment period upon determination by the Chief of Police or his authorized representative that the vehicle is not wanted for evidence or any other reason.

- (3) DISPOSAL OF ABANDONED VEHICLES. The City may dispose of abandoned vehicles by proceeding as authorized by Section 342.40, Wis. Stats.
- (4) OWNER RESPONSIBLE FOR IMPOUNDMENT AND SALE COSTS. The owner of any abandoned vehicle, except a stolen vehicle, is responsible for the abandonment and all costs of impounding and disposing of the vehicle, provided no such costs shall be imposed without notice thereof to the owner and an opportunity for the owner to be heard thereon. Costs not recovered by the sale of the vehicle may be recovered in a civil action by the City against the owner.
- (5) NOTICE OF SALE OR DISPOSITION. Within 5 days after the sale or disposal of a vehicle as provided in sub. (3), the Chief of Police or his authorized representative shall advise the State Department of Transportation, Division of Motor Vehicles, of such sale or disposition on a form supplied by the Division. A copy of such form shall be given to the purchaser of the vehicle and a copy shall be retained on file in the City.

7.14 TRAFFIC AND PARKING REGULATIONS ON KIEL SCHOOL DISTRICT GROUNDS. [#409 8/26/97]

Pursuant to the provisions of Section 118.105, Wis. Stats., the following regulations shall apply to the grounds of the Kiel Area School District located within the City:

- (1) PARKING. All parking on any grounds of the Kiel Area School District shall be restricted to areas designated for parking by the School Board. When signs are erected by the School Board giving notice of such restrictions, all persons shall park only in areas designated and signed for parking.
- (2) SPEED LIMITS. No person shall at any time operate a motor vehicle upon any Kiel Area School District grounds at a speed in excess of ten (10) miles per hour.
- (3) VEHICLES PROHIBITED AT SPECIFIED TIMES. No person shall at any time operate a motor vehicle, other than a school bus and emergency vehicle, in or upon any drive designated for buses only by sign on any weekday during the months school is in session.
- (4) AUTHORITY. The City police shall supervise and enforce all of the traffic control laws and ordinances, both State and local, set forth in this Chapter relating to driving and parking on all public school grounds in the City, and the penalties for violation of said laws shall be as provided for in the State statutes and ordinances, as elsewhere adopted in this Municipal Code.

7.15 BRAKING BY COMPRESSION OF ENGINE PROHIBITED.

- (1) No person shall brake a motor vehicle within the city limits of the City of Kiel by the compression of the engine of any such motor vehicle or any unit or part thereof, causing noise, unless said operation is reasonably necessary in order to avoid a traffic accident or other emergency.
- (2) The penalty for violation of Section 7.15 shall be as provided in Section 25.04 of the Kiel Municipal Code.
- (3) Currently Section 7.15(Penalty) and 7.16(Enforcement) shall be renumbered as sections 7.16 and 7.17 respectively.

7.16 PENALTY. The penalty for violation of any provision of this chapter shall be forfeiture as hereafter provided together with costs under authorization of Chapter 345, Wis. Stats., unless otherwise specified.

- (1) STATE FORFEITURE STATUTES. Forfeitures for violation of Section 7.01 shall conform to the forfeitures permitted to be imposed for violation of the statutes adopted by reference, as set forth in the Uniform Deposit and Misdemeanor Bail Schedule of the Wisconsin Judicial Conference, including any variations or increases for subsequent offenses, and where consistent therewith, the Municipal Court Bond Schedule established pursuant to Section 1.12(3) of this Code.
- (2) STATE FINE STATUTES. The forfeiture for violation of any statute adopted by reference hereunder for which the penalty is a fine shall not exceed the maximum fine permitted under such statute.
- (3) LOCAL REGULATIONS. Except as otherwise provided, the penalty for violation of this chapter shall be as provided in Section 25.04 of this Municipal Code.

7.17 ENFORCEMENT.

- (1) ENFORCEMENT PROCEDURE. This chapter shall be enforced according to Sections 66.0113, 66.0114, 345.53 and Chapter 800, Wis. Stats. In addition, Section 25.04 of this Municipal Code shall be available for enforcement of traffic laws by forfeitures.
- (2) DEPOSIT.
 - (a) Any person arrested for a violation of this chapter may sign a personal recognizance bond or may make a deposit of money, as directed by the arresting officer when the person is cited for such violation. The arresting officer or the person receiving the recognizance bond shall comply with Section 346.26, Wis. Stats., or if the deposit is mailed, the signed statement required under Section 345.26 shall be mailed with the deposit. The arresting officer or the person receiving

the deposit or the signed recognizance bond shall notify the arrested person, orally or in writing, that:

1. If he fails to appear in court at the time fixed in the citation, he will be deemed to have tendered a plea of no contest and submitted to a forfeiture plus costs not to exceed the amount of the deposit or the amount indicated on the personal recognizance bond; or
 2. If he fails to appear in court at the time fixed in the citation, and if he has submitted a deposit as forfeiture and the court does not accept the deposit as forfeiture, he will be summoned into court to answer the complaint.
- (b)** The amount of the deposit or the amount to be placed in the personal recognizance bond shall be determined in accordance with the deposit schedule established by the Wisconsin Judicial Conference. The amount shall include court costs, penalty assessment, jail assessment and crime lab fee.
- (c)** If a deposit is submitted by the arrested person, the arresting officer or the person receiving the deposit shall issue the arrested person a receipt therefore, as required by Section 345.26(3)(b), Wis. Stats.
- (d)** If a deposit schedule has not been established, the arresting officer shall require the alleged offender either to deposit not less than the maximum forfeiture permitted under this chapter or to sign a personal recognizance bond in an amount not less than the maximum forfeiture permitted under this chapter.
- (e)** If the offender who is convicted of the offense charged fails to pay the amount of the forfeiture established for said offense within sixty (60) days after the date of judgment, his operator's permit shall be suspended for five (5) years or until the said forfeiture is paid.
- (3) STIPULATION OF NO CONTEST.** Except as otherwise provided, any person charged with a violation of this chapter may make a stipulation of no contest pursuant to applicable sections of Chapter 345 of the Wisconsin Statutes. Said stipulation must be received at the office of the Police Department or Administrator within 10 days of the time of the alleged violation. Such person shall, at the time of entering into the stipulation, make the deposit required under sub. (2), if he has not already done so. A person who has mailed or filed a stipulation under this subsection may, however, appear in court on the appearance date and may be relieved from the stipulation for cause shown as indicated in Section 345.37(2), Wis. Stats.
- (4) PARKING VIOLATIONS.** Notwithstanding any other provision of this section, the person to whom a ticket or citation has been issued for any parking violation may settle the City's claim by paying a

fine of \$25 for each violation to the City of Kiel Police Department within 72 hours of the day of issuance. If the fine is not paid within 72 hours but within 10 days of the date of violation the fine amount is \$50; after 10 days but within 28 days of the date of violation, the fine amount is \$75.00. If the fine amount is not paid within 28 days of the date of violation, the City of Kiel Police Department will proceed with the suspension of the offending vehicle's registration.

**CHAPTER 8
PUBLIC WORKS**

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8.01 STREET AND SIDEWALK GRADES.

- (1) **ESTABLISHMENT.** The grade of all streets, alleys and sidewalks shall be established by the City Council and recorded by the Administrator in their office. No street, alley or sidewalk shall be worked until the grade is established.
- (2) **ALTERATION OF GRADE PROHIBITED.** No person shall alter the grade of any street, alley, sidewalk or public ground, or any part in the City unless authorized or instructed to do so by the City Council or authorized designee. All such alterations of grade shall be recorded in the office of the Administrator by the Administrator or the officer authorizing alteration.

8.02 SIDEWALK CONSTRUCTION AND REPAIR**(1) NEW CONSTRUCTION.**

- (a) **Inspection.** The City Council in conjunction with the authorized designee shall conduct by August 15 of each year, an annual inspection of the City to determine where sidewalks should be constructed. The authorized designee shall by October 15 of each year send a notice, indicating the City's determination that sidewalks should be constructed.
- (b) **Construction**
1. **City.** Under authority of Sec. 66.0907, Wis. Stats., the City shall by City personnel or on bids through a private contractor construct sidewalks along or upon any street, alley or highway in any new subdivision development in the City, and shall charge the entire cost thereof to the abutting property owner. The City shall provide through protective covenants and restrictions language establishing the authority of the City to install and assess the costs of sidewalks in new subdivision developments.
 2. **Property Owner's Option to Construct Sidewalks.** Owners of properties except those beginning with development of the Rockville Subdivision shall have the option to construct sidewalk abutting properties when required by this Ordinance, by contracting for or carrying out themselves such construction, when required as set forth in Section 8.02(1)(c).
- (c) **Requirement to construct sidewalks.** Sidewalks shall be constructed along each side of the streets in any City block where curb and gutter has been installed when any of the following conditions set forth in (1), (2) or (3) are met:
1. 50% of the property in the block has been improved with building improvements.
 2. 50% or more of the property in the block has sidewalks.

3. The City Council, by resolution, determines that construction of sidewalks would better safeguard the welfare of the public.
 4. With respect to properties zoned conservancy (C-1), the City Council may determine that no sidewalk shall be required even where the terms of subs. (a) or (b) above are met.
 5. The word "block" in this section shall mean that area between one intersection and another or between an intersection and a cul-de-sac or dead end on both sides of the street.
- (d) Specifications. All sidewalks within the City shall be repaired, rebuilt and constructed in accordance with the following specifications:
1. Width.
 - a. Sidewalks in residential areas shall be 5' in width and shall be placed 1' from the lot line unless otherwise specified by the established grade ordinance for a specific street.
 - b. Sidewalks in areas zoned for business (Fremont Street) shall, in general, extend from the building front to the back of the curb. In areas where buildings are set back from the street line, the sidewalk shall extend from the street line to the back of the curb.
 2. Longitudinal Grade (Parallel to Street).
 - a. The grade of the sidewalks shall conform to the established grade ordinance and plan for the street on which the sidewalk is to be constructed. Any deviation from the grade ordinance must be approved in writing by the authorized designee.
 - b. No deviation of a sidewalk from the established grade shall be more than 3/4". Any change in the longitudinal grade shall be constructed in such a manner as to be smooth and pleasing in appearance. Abrupt breaks in grade shall be avoided.
 3. Transverse Grade.
 - a. Sidewalks shall slope from the lot line toward the street in order to provide adequate drainage. This slope shall in general be 1/4" per foot or 1-1/4" across a 5' sidewalk. In areas where it is advantageous to meet existing conditions, this slope may be increased to a maximum of 1/2" per foot. The minimum transverse grade for sidewalks shall be 1/8" per foot.
 4. Thickness.
 - a. In residential areas, sidewalks shall be 4" thick with the exception of driveway sections which shall have a minimum thickness of 6".
 - b. Sidewalks in areas zoned for business shall be a minimum of 5" thick and driveway sections shall be a minimum of 7" thick.

c. A 2" thick crushed gravel base shall be provided for all sidewalks.

5. Concrete Composition.

a. Concrete shall meet 4500 PSI standards. All mixes will be used with a maximum slump of 5" and also a minimum air content of 6% plus or minus 1% maximum. All delivery tickets must have the mix formula on them and one copy of each shall be provided to the authorized designee not later than 24 hours after delivery of the mix to the construction site. Abutting property owners who mix their own concrete shall meet the same standards of structural integrity for their sidewalks as those for the ready-mix sidewalk described in this subsection.

6. Forms:

a. All forms for the sidewalk shall be of wood or steel and shall be set to line and grade, substantially constructed so they will not be disturbed during the placing of concrete. In each case, the forms shall be the full depth of the walks. All sharp breaks in line or grade shall be avoided.

7. Placing and Finishing Concrete.

a. Concrete shall be placed only on a damp subgrade, puddled and compacted in the forms or vibrated to secure a solid mass free of all voids. After the concrete has been compacted, it shall be struck off and worked to a smooth and even contour with a wood float, followed by a steel trowel. After the final troweling, the surface shall be lightly stripped with a fine brush to produce a fine grained, smooth but sanded texture.

b. The sidewalk shall be constructed with contraction joints. The contraction joint shall extend into the concrete to a depth of 1". A 1/2" asphalt expansion joint shall be placed at intervals not less than 45' and not more than 60'. Expansion joints shall be the full thickness of the walk.

c. The edges of all sidewalk joints shall be rounded with an edge of 1/4" radius.

(2) REPAIR OR REPLACE.

(a) Inspection. The City Council in conjunction with the authorized designee shall conduct by July 1 of the designated year, a biennial annual inspection of the City to determine where sidewalks should be repaired or replaced. Sidewalk sections in need of repair or replacement under Para. (b) will be marked with a single dot of paint; a white dot signifies replacement, and a pink dot signifies the possibility of repair, though replacement is always an option.

(b) Defective Sidewalk. The following are definitions of defective sidewalk:

1. **Vertical Displacement:** The shifting of sidewalk in a vertical direction, resulting in a long-term change in elevation. Repair by mudjacking using polyurethane foam or replacement is required when vertical displacement has occurred where sidewalk is 3/4 inches high or greater for 12 inches of a joint.
2. **Horizontal Displacement:** The shifting of sidewalk in a horizontal direction, often evidenced by cracking or splitting. Repair or replacement is required when horizontal displacement has occurred where sidewalk has greater than a 1/2 inch crack for 3 feet or longer. If the crack is level, it may be repaired by cleaning and filling the crack with concrete epoxy. If the crack is not level, it must be replaced.
3. **Profile Variance:** An inconsistency or difference of quality within the sidewalk from a side view. Repair or replacement is required when the profile varies over 4 inches per slab. Depending on the circumstances, the agent may require either repair or replacement.
4. **Inverse Slope:** An opposite or contrary position of the rise and fall within the sidewalk, typically indicated by trapped water. Depending on circumstances, the agent may require either repair or replacement.
5. **Surface Imperfections:** Irregularities on the upper layer of sidewalk. Repair or replacement is required when there are cracks measuring over 10 feet per slab, a missing piece of 3 inches x 3 inches or greater, or spalling of 50% or greater. Replacement will oftentimes be required, but a missing piece of up to 12 inches x 12 inches may be cleaned and filled with concrete epoxy.

DEFECTIVE SIDEWALK AND ACCEPTABLE REPAIRS

CRITERIA	DEFECT	REPAIRS*
<i>Vertical Displacement</i>	3/4" high or greater for 12" of joint	~Replace ~Mudjack
<i>Horizontal Displacement</i>	Greater than 1/2" for crack 3" or longer	~Replace ~Level crack may be cleaned and filled with concrete epoxy
<i>Profile Variance</i>	Over 4" per slab	~Replace ~Mudjack
<i>Inverse Slope</i>	Trapped water	~Replace ~Mudjack
<i>Surface Imperfections</i>	> 50% or more of slab spalled >Missing 3"x3" or greater >Over 10' of cracks per slab	~Replace ~Missing piece up to 12" x 12" may be cleaned and filled with concrete epoxy

*Ramping of Vertical Displacement or Concrete Overlay of sidewalk are NOT acceptable repairs

(c) Notice of requirement to repair or replace sidewalk.

1. The authorized designee shall by August 1 of each year send a notice to the owners of all properties indicating the City's determination that sidewalk section(s) should be repaired or replaced. The notice shall specify the following:
 - a. The City or its agent will perform the repair or replacement if the property owner does not indicate by December 1 that they will either hire a private contractor to perform the required sidewalk work or do the work themselves.
 - b. The property owner must complete the required sidewalk work by the following August 15, and that if work is not completed by that date, the City may itself or by its agent perform the work.
 - c. If the City or its agent performs the repair or replacement, the cost shall be charged to the abutting property owner.
 - d. Failure to repair or replace the sidewalk by the due date, unless excused for good cause by the authorized designee, shall be a violation of the Kiel Municipal Code is subject to forfeiture established in Section 25.04.

(d) Method of Repair or Replacement:

1. City. If the City or its agent performs the repair or replacement, the cost of the work shall be charged to the abutting property owner. The property owner may choose to pay with a single invoice, or by special assessment under Section 3.09.
2. Property Owner. Property owners in all areas, including in subdivision projects, shall have the alternative of repairing or replacing sidewalk abutting their properties by contracting for or carrying out themselves such repair or replacement when required to repair or replace their sidewalks as set forth in Section 8.02(2)(c). Property owners other than for new sidewalks in subdivisions beginning with the Rockville Subdivision shall be sent a notice by the authorized designee indicating the City's determination that sidewalks must be installed, repaired or replaced, in accordance with Section 8.02(2)(c) of this ordinance and the notice shall provide the property owner to whom the notice is sent time within which to advise the city if they will hire their own contractors to carry out the installation, repair or replacement of the sidewalk as ordered, or perform work themselves, with notice and return as provided for in Section 8.02(2)(c). An indication of acceptance shall be provided in writing to the authorized designee at the Kiel City Hall by the date determined in Section 8.02(2)(c).

3. Where Notice Is Not Given to City. With respect to any sidewalk which has been the subject of an order to construct, repair or replace, where notice is not received from the property owner within the time limits established pursuant to Section 8.02(2)(c), the City shall by City personnel or on bids through a private contractor install, repair or replace said sidewalk, and shall charge the entire cost thereof to the abutting property owner.

(e) Appeal to Council.

1. Any owner who is served with a notice as set forth in Section 8.02(2)(c) to comply with this section, who believes they are aggrieved, may petition the City Council for a variance requiring that a sidewalk not be constructed, replaced or repaired, provided such petition is filed with the Administrator within 20 days after receipt of such notice. Such petition shall be accepted or rejected by the City Council within 20 days after it has been filed with the Administrator.

(3) PENALTIES.

(a) Any property owner who violates any provision of this section shall upon conviction be punished by a forfeiture established in Section 25.04 of this Municipal Code. Each 24-hour period during which a violation exists shall constitute a separate offense.

8.03 DRIVEWAYS. [#418 6/29/98] No person shall construct or maintain any driveway across from any sidewalk or curbing without first obtaining a driveway permit from the Director of Public Works. No driveway shall be constructed except in accordance with the specifications prescribed by the Director of Public Works. Driveway openings in residential, commercial and conservancy districts shall not exceed a maximum width of thirty-five (35) feet. The size of driveway openings in industrial districts shall be left to the discretion of the Director of Public Works.

8.04 STREET OPENINGS.

(1) PERMIT REQUIRED. No person shall make any excavation or opening in any street or public way beyond the lot line in the City unless permission to do so shall have first been granted by the Director of Public Works and a street opening permit has first been obtained by said person from the City.

(2) PERMIT DISPLAY. A copy of any permit issued under this Chapter shall be made available at all times by the permittee at the indicated work site and shall be available for inspection by the Director of Public Works upon request.

- (3) APPLICATION AND CERTIFICATE OF LIABILITY INSURANCE. Any person desiring to make any excavation or opening shall make application for permission therefor in writing, addressed to Director of Public Works, stating the location of the excavation or opening to be made, the size of the same, the purpose for which the same is to be made and the length of time for which the excavation or opening is to remain in existence. The application and a certificate of liability insurance in a sum of not less than \$1,000,000 shall be filed with the Administrator at least 7 days prior to the date on which excavation or opening of the street or public way is to begin. The Director of Public Works shall thereupon examine the application to be sure it complies with all provisions of this section and he may disapprove the application if he finds there to have been insufficient notice of the excavation or opening for which application is made. The Director of Public Works shall submit any application he feels may not be acceptable to the City Council or its appropriate committee for review. The provisions herein contained shall be in addition to those of Section 8.07 of this Chapter, except that the Director of Public Works may waive the 7-day notice period in case of emergency under Section 8.07(2) of this Chapter. The application for a permit shall contain the following information: scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities.
- (4) USE OF DEPOSIT OR LETTER OF CREDIT. A deposit of \$500 or a letter of credit shall be made as a guarantee that the excavation or opening will be made in accordance with this section and that the street or public way in which the excavation or opening shall be made shall be placed in the same state of repair and with the same type of surfacing materials as it was prior to the excavating thereof. The repair of such street shall be made by the person excavating or opening the same under the direction of the Director of Public Works, and upon obtaining a statement from him that the street or public way has been repaired to his satisfaction, the deposit, if any, shall be refunded by the City Treasurer to the person making the same. If such street is not repaired within one year after the making of such excavation or opening, the Director of Public Works shall make such repairs and pay the expense of the same out of the deposit, or draw upon the letter of credit for such expense, refunding the balance, if any, remaining after such repairs have been completed to the person making the same.
- (5) PLACING OF EXCAVATED MATERIALS. In excavating any street or public way, all materials for paving or ballasting shall be removed with the least possible injury or loss of the same, and together with the excavated material from trenches, shall be placed where the least practicable inconvenience to the public health will be caused and admit of the free passage of water along the gutters.

(6) PROTECTION OF EXCAVATIONS. All excavations made in streets or public ways in accordance with permission given pursuant hereto shall be enclosed with sufficient barriers, and warning lamps shall be kept burning from sunset to sunrise at each end thereof and at intervals of not more than 10' along the same, and all other necessary precautions shall be taken to guard the public effectively against all accidents or damage to persons or property from the commencement to the completion of the work. Whenever the sides of the trenches made in such excavation will not stand perpendicular, sheeting and braces shall be used to prevent any unnecessary caving. Regulations of the Occupational Safety and Health Administration (OSHA) concerning trenching currently and as they may be amended from time to time in the future are hereby incorporated by reference.

8.05 OBSTRUCTIONS AND ENCROACHMENTS.

- (1) PROHIBITED. No person shall encroach upon, or in any way obstruct or encumber any street, alley, sidewalk, public grounds or land dedicated to public use, or any part thereof, or permit such encroachment or encumbrance to be placed or remain on any public way adjoining the premises of which he is the owner or occupant, except as provided in sub. (2).
- (2) EXCEPTION. The prohibition of sub. (1) shall not apply to the following:
- (a) Signs or clocks attached to buildings which project not more than 6' from the face of such building and are at least 10' above the sidewalk, street or alley surface.
 - (b) Awnings which are at least 7' above the sidewalk, street or alley surface.
 - (c) Public utility encroachments duly authorized by State law or the City Council.
 - (d) Goods, wares, merchandise or fixtures being loaded or unloaded which do not extend more than 3' on the sidewalk, provided such goods, wares, merchandise or fixtures do not remain thereon for a period of more than 2 hours.
 - (e) Temp. encroachments or obstructions authorized by permit under Section 8.06.
 - (f) Excavations and openings permitted under Section 8.04.

8.06 STREET PRIVILEGE PERMITS.

- (1) WHEN REQUIRED. Permits for the use of the streets, alleys, sidewalks, or other public ways or places of the City shall be required and may be granted to applicants by the Director of Public Works for the purpose of moving any building or structure, or of encumbering the street, alley, sidewalk or way with materials necessary in and about the construction or demolition of any building or

structure, provided such applicant has complied with the other requirements of this subsection and has obtained a building permit if required by this Municipal Code.

- (2) BOND. No street privilege permit shall be issued until the applicant shall have executed and filed with the Administrator a bond in an amount determined by the Director of Public Works, with the condition that the applicant will indemnify and save harmless the City from all liability for accidents or damage caused by reason of operations under the permit, and will remove such encumbrance upon termination of the operations, leave the vacated premises in a clean and sanitary condition and repair any and all damage to the streets, alleys, sidewalks or public property of the City resulting from such building or moving operations.
- (3) FEE. The fee for a street privilege permit shall be \$5.
- (4) CONDITIONS OF OCCUPANCY. The permission to occupy or obstruct the streets, alleys, sidewalks or public grounds is intended only for use in connection with the actual erection, alteration, repair, removal or moving of buildings or structures and shall be given upon the following terms and conditions and subject to revocation without notice by the Director of Public Works for violation thereof:
- (a) Such temporary obstruction shall cover no more than 1/3 of any street or alley.
 - (b) Obstructions shall be sufficiently lighted at night so as to be in full view of the public from all directions.
 - (c) Sidewalk traffic shall not be interrupted, but temporary sidewalks of not less than 4' in width guarded by a closed fence at least 4' high on both sides may be maintained during the period of occupancy.
 - (d) The process of moving any building or structure shall be as continuous as practicable until completed, and if ordered by the Director of Public Works, shall continue during all hours of the day and night.
 - (e) No building or structure shall be allowed to remain overnight on any street crossing or intersection, or so near thereto as to prevent easy access to any fire hydrant.
 - (f) Buildings shall be moved only in accordance with the route prescribed by the Director of Public Works.
 - (g) Upon termination of the work necessitating such obstruction, all parts of the streets, alleys, sidewalks or public grounds occupied under the permit shall be vacated, cleaned of all rubbish and obstructions and placed in a safe condition for public travel at the expense of the permittee.

- (5) TERMINATION. All street privilege permits shall automatically terminate at the end of 3 months from the date of issuance unless an earlier termination date is specified thereon at the direction of the Director of Public Works.
- (6) REMOVAL BY CITY. In addition to any other penalty imposed, if the owner or occupant of the premises adjoining any unlawfully obstructed sidewalk shall refuse or neglect to remove such obstruction within 24 hours after notice from the Director of Public Works to do so, the Director of Public Works shall remove such obstruction and make return of the cost and expense thereof to the Administrator, who shall enter such cost on the next annual tax roll as a special charge against the property abutting such obstructed sidewalk, and such sum shall be levied and collected as other special taxes against real estate.

8.07 NOTICE OF REPAIRS AND IMPROVEMENTS TO UTILITIES.

- (1) PERMIT REQUIRED. Except for Kiel Utilities, no repair or improvement to utilities where construction on city streets or alleys is required, shall begin until a permit has been obtained by the owner or their authorized agent from the General Manager of Utilities. Applications shall be made in writing upon a form furnished by the General Manager of Utilities. The fee is \$50.
- (2) BEFORE CONSTRUCTION SEASON. By May 1 of each year, the company providing natural gas and any communications utility providing service to the residents of the city under a franchise agreement shall file with the City Administrator a schedule of proposed repairs or improvements to utility service for the ensuing construction season where construction on any street or alley will occur.
- (3) EMERGENCIES. Before construction on any street or alley occurs to make emergency repairs, the General Manager of Utilities shall be notified.
- (4) VIOLATION. A violation of any of the provisions of this section shall be enforced by the General Manager of Utilities. The penalty for a violation shall be as set forth in Section 25.04 of the Kiel Code of Ordinances.

8.08 ERECTING BARRIERS FOR SCHOOL PURPOSES.

- (1) STS. PETER AND PAUL CATHOLIC CONGREGATION. There being a hazard, in the opinion of the City Council, to children engaged in play during the recess and noon play periods at and about the premises of the parochial school of St. Peter and Paul Catholic Congregation, which hazard is particularly dangerous on the alley between Fifth and Fourth Streets, on that portion of the alley

which abuts on the rear of the parochial school property, the City Council hereby designates that such portion of the alley be a restricted vehicular traffic zone during play periods on days of the school year when such school is in session, in accordance with Section 66.0301, Wis. Stats., and that suitable barriers or barricades with appropriate signs thereon in accordance with the statute be erected and maintained at the following points in the alley at such times:

- (a) The east line of the parochial school property where such property intersects with the alley.
- (b) The east line of Fifth Street where it intersects with the alley.

8.09 SNOW AND ICE REMOVAL.

- (1) FROM SIDEWALKS. The owner, occupant or person in charge of each and every building or structure, or unoccupied lot, in the City, which fronts on or abuts any street, shall clean the sidewalk upon the lot or cause it to be cleaned, of snow or ice to the width of such sidewalk within 24 hours of the time at which snow ceases to fall. Said property owner shall cause the said sidewalk to be kept clear from ice and snow, provided that when ice is formed on any sidewalk so that it cannot be immediately removed, the said owner, occupant or person in charge shall keep the said sidewalk sprinkled with sand and/or salt. If such snow and ice is not removed as required hereunder, the Director of Public Works shall cause its removal and charge the cost of removal to the abutting property.
- (2) DEPOSIT IN STREETS PROHIBITED. No person shall deposit snow removed from his premises onto or across the traveled portion of any street or sidewalk in the City.
- (3) SNOW EMERGENCY DECLARATION AND PARKING RESTRICTIONS. The Director of Public Works, and in his absence the Chief of Police, shall have the authority to declare a snow emergency in the City. Such authority may be exercised whenever a snow-fall during any period of 24 hours or less reaches a depth of 3" or more. During the period of a snow emergency, no overnight parking on any City streets shall be permitted between midnight and 7 a.m. Vehicles left on City streets in violation of a declaration of snow emergency may be towed to a place of storage by City crews or private operators at the request of City crews, and the reasonable costs of towing and storage shall be collected from the owner of the vehicle in addition to the penalties otherwise provided for parking violations under Section 7.15(4) of this Municipal Code.
- (4) EMERGENCY RESTRICTIONS ON PARKING ON THE NORTH AND EAST SIDES OF CITY STREETS. The City Council may, by resolution, prohibit parking at any time on the north and east sides of all streets in the City where, in the discretion of the City Council, it is determined that, because of

accumulations of snow and ice, the traveled portions of public streets have been narrowed to the extent that vehicular traffic is impeded or made unreasonably hazardous.

- (5) NOTICE OF SNOW EMERGENCY. Notice of snow emergency provisions shall be posted on all State and County highways entering the City. Upon declaration of a snow emergency, the Director of Public Works, or in his absence the Chief of Police, shall cause announcements of said snow emergency to be made on at least 2 radio stations whose broadcast range includes the corporate limits of the City, and on the local cable television transmission.

8.10 STREET TREES.

- (1) PLANTING WITHOUT PERMIT PROHIBITED. No person shall plant trees on any public sites, in public parks, playgrounds, streets, boulevards or the terrace strip between the lot line and the curb within the City limits without express consent of the Director of Public Works or the City Council.

(2) TRIMMING.

- (a) The City shall trim the branches of any trees or shrubs within the street right-of-way. The City shall notify the owner or owners of all trees and shrubs subject to trimming at least 24 hours in advance of the date on which the trimming is to be done.
- (b) All trees and shrubs located in the public streets of the City shall be trimmed and at all times kept trimmed so that there shall be a clear and unobstructed space of 8' between the lowest branches thereof and the grade of the sidewalk of such street, and a clear and unobstructed space of 12' between the lowest branches thereof and the grade of the roadway of such street.
- (c) The Director of Public Works shall enforce the provisions of this section. He shall give written notice to the owner or owners of all trees and shrubs not trimmed as required by this section, advising them that they must cause the same to be so trimmed within 5 days after the service of such notice. If, after receiving such notice, such owner or owners shall fail to so trim such trees and shrubs, the Director of Public Works may cause the trees and shrubs to be trimmed. He shall in that case keep a correct and accurate account of the cost of the trimming of the trees and shrubs and report the amount of such cost, together with a correct description of the real estate on which such trees and shrubs are located, to the Administrator, who shall levy the same as a special tax against the benefited property.
- (d) All costs and expenses incurred by the City in trimming trees and shrubs hereunder are hereby made a legal charge and lien against the real estate on which such trees and shrubs are located and against the owner of such real estate.

8.11 UNIFORM STREET NUMBERING SYSTEM.

- (1) All lots and parts of lots in the City shall be numbered in accordance with the house numbering map on file in the office of the Administrator. All lots and parts of lots hereafter platted shall be numbered to conform as nearly as possible to the general scheme of numbering as outlined on the map, and numbers should be allocated as nearly as possible to one number per 25'. Mueller Road shall be and constitute the north and south base line and Mill Road shall be and constitute the east and west base line for street numbering.
- (2) Any owner or occupant of any building fronting upon any street in the City who fails, 30 days after completion of such building, to attach securely or apply to the front of said building in a conspicuous position the proper number of such building shall be deemed to be in violation of this section. Said number shall be attached securely or applied to the front of the building and the number shall be not higher than the first or ground story of the building, so that it may be plainly seen from the street. The number of the building shall be that which is inscribed upon the City map. The number as placed upon the building shall be not less than 3" in height.
- (3) Numbering System in Newly Annexed Lands. All properties located on, and with a current property address referenced by a road, U.S. highway, State Trunk Highway, or County Trunk Highway shall, effective the date after legal publication of an annexation ordinance, no longer have its address identified by the above-referenced road, highway and numbering designation. Said properties shall be referenced and identified by the official City street name and address which adjoins the above-referenced highway or road, or if no such City street name exists, by a street name so designated by the City Council. Within 60 days after the date of publication of an annexation ordinance, the City Administrator shall be responsible to promptly provide written notice to the Kiel Post Office and to all property owners and residences located in any newly annexed area to the City, apprising said parties of the property's formal street address in the City of Kiel. The owner or occupant of the property is required to change their address within one year of notification.
- (4) Violation. It shall be unlawful for any persons to alter any number or, as an owner, to display any improper number other than the one designed by virtue of this section, or to otherwise violate any requirement in this section. The penalty for a violation shall be as set forth in Section 25.04 of the Kiel Code of Ordinances.

8.12 OFFICIAL MAP.**(1) PURPOSE, CERTIFICATE AND PLAT FILED WITH THE REGISTER OF DEEDS BY THE ADMINISTRATOR.**

To conserve the value of land; to insure an efficient and economical growth of the community; to minimize the cost of installing municipal facilities in future subdivisions; and to promote the general welfare of the citizens of the community, an official map is adopted for the purpose of administering the approval or disapproval of future subdivision plats, and to prevent the erection of future buildings in the bed of any street, highway or parkway as shown on such official map, within the City or in the extraterritorial jurisdiction thereof. The Administrator shall file with the Register of Deeds of Manitowoc and Calumet Counties a certificate showing that the City has established such official map and shall do likewise as to any change or addition to the official map.

(2) AUTHORITY OF CITY COUNCIL. The City Council shall administer acceptance of preliminary subdivision plats in conformity with the official map. Whenever strict compliance with the layout as shown on the official map would work an unnecessary hardship upon an owner, the City Council may permit a variance from the exact design shown on the official map.**(3) PLOT PLAN; REQUIREMENT FOR OBTAINING A BUILDING PERMIT.** For the purpose of preserving the integrity of the official map, no permit shall hereafter be issued for any building in the bed of any street, highway or parkway shown or laid out on the official map, except as provided in Section 62.23(6)(d) and (g), Wis. Stats. The Administrator, Building Inspector or other proper official authorized by the City Council to issue building permits, shall require each applicant to submit a copy of the plot as shown in a certified survey or properly recorded subdivision plat and a sketch showing the proposed location of the future building on the lot. If the official authorized to issue the permit finds that the placing of the proposed building or structure will not be in violation of this section, or any other applicable City ordinance, he shall issue a building permit, retaining a copy of the sketch and of the permit issued. Where there is a conflict between the proposed building or structure and the requirements of this section, said authorized official shall deny the permit and so inform the applicant in writing.**(4) REVISIONS AND CHANGES.** The City Council, whenever and as often as it deems necessary for the common good or in the public interest, may change or add to the official map of the City in conformity with Section 62.23(6)(c), Wis. Stats.**(5) PUBLICATION FEES.** Before publication of any legal notice shall be made in the official newspaper for public hearing for a change in the official map of the City, the person making the application for such a change shall pay to the Administrator the cost of such publication.

8.15 PENALTY. Any person who shall violate any provision of this chapter shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

CHAPTER 9
PUBLIC PEACE AND GOOD ORDER

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9.01 MUNICIPAL OFFENSES

(1) General offenses, life and bodily security offenses, public health and safety offenses, property offenses, sexual morality offenses, offenses against government and its administration, and offenses against public peace and order as defined below are all prohibited in the City of Kiel.

(a) GENERAL OFFENSES

1. PARTY TO AN OFFENSE: Whoever is concerned in the commission of an offense is a principal and may be charged with and convicted of the commission of the offense although the person did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other degree of the offense or of some other offense based on the same act.

a. A person is concerned in the commission of the offense if the person:

i. Directly commits the offense; or

ii. Intentionally aids and abets the commission of it; or

ii. Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it. Such a party is also concerned in the commission of any other crime which is committed in pursuance of the intended crime and which under the circumstances is a natural and probable consequence of the intended crime. This paragraph does not apply to a person who voluntarily changes his or her mind and no longer desires that the offense be committed and notifies the other parties concerned of his or her withdrawal within a reasonable time before the commission of the offense so as to allow the others also to withdraw.

2. ATTEMPT: Whoever attempts to commit a violation of any local ordinance for the City of Kiel may be fined for such an attempt.

(b) LIFE AND BODILY SECURITY OFFENSES

1. BATTERY: No person may cause bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed.

(c) PUBLIC HEALTH AND SAFETY OFFENSES

1. NEGLIGENT HANDLING OF BURNING MATERIAL: It is unlawful for anyone to handle burning material in a highly negligent manner or under circumstances in which the person should realize that a substantial and unreasonable risk of serious damage to property is created.

2. NEGLIGENT OPERATION OF A VEHICLE: It is unlawful for anyone to endanger another's safety by a high degree of negligence in the operation of a vehicle, not upon a highway as defined in 340.01 WI Stats.
3. INTERFERING WITH FIRE FIGHTING: It is unlawful for anyone to interfere with, tamper with or remove, without authorization, any fire extinguisher, fire hose or any other fire-fighting equipment.
 - a. It is unlawful for anyone to interfere with accessibility to a fire hydrant by piling or dumping material near it without first obtaining permission from the appropriate municipal authority.
4. RECKLESS USE OF WEAPONS: It shall be unlawful to endanger another's safety by the negligent operation or handling of a dangerous weapon; or for any person to:
 - a. Operate or go armed with a firearm while he or she is under the influence of an intoxicant;
or
 - b. Operate or go armed with a firearm while he or she has a detectable amount of a restricted controlled substance in his or her blood. A defendant has a defense to any action under this paragraph that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.
 - c. Intentionally point a firearm at or toward another. This section does not apply to a law enforcement officer acting in official capacity
 - d. While on the lands of another discharges a firearm within 100 yards of any building devoted to human occupancy situated on and attached to the lands of another without the express permission of the owner or occupant of the building. "Building" as used in this paragraph includes any house trailer or mobile home but does not include any tent, bus, truck, vehicle or similar portable unit.

(2) PROPERTY OFFENSES

- (a) ENTRY INTO LOCKED VEHICLE: It shall be unlawful for anyone to intentionally enter the locked and enclosed portion or compartment of the vehicle of another without consent and with intent to steal therefrom.

- (b) ENTRY INTO LOCKED COIN BOX:** It shall be unlawful for anyone to intentionally enter a locked coin box of another without consent and with intent to steal therefrom.
- (c)** Whoever has in personal possession any device or Instrument intended, designed or adapted for use in breaking into any coin box, with intent to use the device or instrumentality to break into a coin box and to steal therefrom, is in violation of this ordinance.
- (d) TRESPASS TO LAND:** Whoever does any of the following is in violation of this ordinance:
1. Enters any enclosed, cultivated or undeveloped land of another without the express or implied consent of the owner or occupant.
 2. Enters any land of another that is occupied by a structure used for agricultural purposes without the express or implied consent of the owner or occupant.
 3. Enters or remains on any land of another after having been notified by the owner or occupant not to enter or remain on the premises.
 4. Enters or remains on open land that is in holding of another after having been notified by the owner or occupant not to enter or remain on the land.
 5. Enters undeveloped private land from an abutting parcel of land that is owned by the United States, this state or a local governmental unit, or remains on such land, after having been notified by the owner or occupant not to enter or remain on the land.
- (e) TRESPASS TO DWELLING:** It shall be unlawful for anyone to intentionally enter the dwelling of another without the consent of some person lawfully upon the premises, under circumstances tending to create or provoke a breach of the peace.
- (f) THEFT:** It shall be unlawful for anyone to do any of the following:
1. Intentionally take and carry away, use, transfer, conceal, or retain possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of such property.
 2. Intentionally fail to return any personal property which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement after the lease or rental agreement has expired. This paragraph does not apply to a person who returns personal property, except a motor vehicle, which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement, within 10 days after the lease or rental agreement expires.

3. In any action or proceeding for a violation of this ordinance a party may use duly identified and authenticated photographs of property which was the subject of the violation in lieu of producing the property.

(g) RETAIL THEFT: A person is in violation of this ordinance and may be penalized if he or she does any of the following without the merchant's consent and with intent to deprive the merchant permanently of possession or the full purchase price of the merchandise or property:

1. Intentionally alters indicia of price or value of merchandise held for resale by a merchant or property of a merchant.
2. Intentionally takes and carries away merchandise held for resale by a merchant or property of a merchant.
3. Intentionally transfers merchandise held for resale by a merchant or property of a merchant.
4. Intentionally conceals merchandise held for resale by a merchant or property of a merchant.
5. Intentionally retains possession of merchandise held for resale by a merchant or property of a merchant.
6. While anywhere in the merchant's store, intentionally removes a theft detection device from merchandise held for resale by a merchant or property of a merchant.
7. Uses, or possesses with intent to use, a theft detection shielding device to shield merchandise held for resale by a merchant or property of merchant from being detected by an electronic or magnetic theft alarm sensor.
8. Uses, or possesses with intent to use, a theft detection device remover to remove a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(h) ISSUE OF WORTHLESS CHECKS: Whoever issues any check or other order for the payment of not more than \$2,500 which, at the time of issuance, he or she intends shall not be paid is in violation of this section.

1. Any of the following is prima facie evidence that the person at the time he or she issued the check or other order for the payment of money, intended it should not be paid:
 - a. Proof that, at the time of issuance, the person did not have an account with the drawee;
or
 - b. Proof that, at the time of issuance, the person did not have sufficient funds or credit with the drawee and that the person failed within 5 days after receiving written notice of nonpayment or dishonor to pay the check or other order, delivered by regular mail

to either the person's last-known address or the address provided on the check or other order; or

- c.** Proof that, when presentment was made within a reasonable time, the person did not have sufficient funds or credit with the drawee and the person failed within 5 days after receiving written notice of nonpayment or dishonor to pay the check or other order, delivered by regular mail to either the person's last-known address or the address provided on the check or other order.
- d.** This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check.
- (i) DAMAGE TO PROPERTY:** It is unlawful for anyone to intentionally causes damage to the physical property of another without the property owner's consent
- (j) FRAUD ON HOTEL OR RESTAURANT KEEPER, RECREATIONAL ATTRACTION, TAXICAB OPERATOR, OR GAS STATION:** It shall be unlawful for anyone to do any of the following:

 - 1.** Having obtained any beverage, food, lodging, ticket or other means of admission, or other service or accommodation at any campground, hotel, motel, boarding or lodging house, restaurant, or recreational attraction, intentionally absconds without paying for it.
 - 2.** While a guest at any campground, hotel, motel, boarding or lodging house, or restaurant, intentionally defrauds the keeper thereof in any transaction arising out of the relationship as guest.
 - 3.** Having obtained any transportation service from a taxicab operator, intentionally absconds without paying for the service.
 - 4.** Having obtained gasoline or diesel fuel from a service station, garage, or other place where gasoline or diesel fuel is sold at retail or offered for sale at retail, intentionally absconds without paying for the gasoline or diesel fuel.

(3) SEXUAL MORALITY OFFENSES

- (a) LEWD AND LASCIVIOUS BEHAVIOR:** Whoever does any of the following in a public place is in violation of this ordinance;

 - 1.** Commits an indecent act of sexual gratification with another with knowledge that they are in the presence of others; or
 - 2.** Publicly and indecently exposes genitals or pubic area. This section does not apply to a mother's breast-feeding of a child.

(b) SOLICITATION OF DRINKS PROHIBITED: Any licensee, permittee or bartender of a retail alcohol beverage establishment covered by a license or permit issued under WI Stat. Ch. 125 who permits an entertainer or employee to solicit a drink of any alcohol beverage, as defined in WI Stat. Ch. 125.02 (1), or any other drink from a customer on the premises, or any entertainer or employee who solicits such drinks from any customer, is in violation of this ordinance.

(4) OFFENSES AGAINST GOVERNMENT AND ITS ADMINISTRATION

(a) REFUSING TO AID OFFICER: It shall be unlawful for anyone without reasonable excuse, to refuse or fail, upon command, to aid any person known by the person to be a peace officer.

1. This section does not apply if under the circumstances present the officer was not authorized to command such assistance

(b) RESISTING OR OBSTRUCTING OFFICER: It shall be unlawful for anyone to knowingly resist or obstruct an officer while such officer is doing any act in an official capacity and with lawful authority. In this section:

1. "Obstructs" includes without limitation knowingly giving false information to the officer or knowingly placing physical evidence with intent to mislead the officer in the performance of his or her duty including the service of any summons or civil process.

2. "Officer" means a peace officer or other public officer or public employee having the authority by virtue of the officer's or employee's office or employment to take another into custody.

(c) ESCAPE FROM CUSTODY: It shall be unlawful for any person in custody of a police officer to intentionally escape from custody. In this section: "Custody" is defined as being pursuant to a legal arrest for or lawfully charged with or convicted of a violation of a statutory traffic regulation, a statutory offense for which the penalty is a forfeiture or a municipal ordinance

(d) IMPERSONATING PEACE OFFICERS: It shall be unlawful for anyone to impersonate a peace officer with intent to mislead others into believing that the person is actually a peace officer.

(e) TAMPERING WITH PUBLIC NOTICES: It shall be unlawful for anyone to intentionally damage, alter, remove or conceal any public notice, posted as authorized by law, before the expiration of the time for which the notice was posted

(f) CAUSING VIOLENCE OR BREACH OF PEACE BY DAMAGING OR DESTROYING A U.S. FLAG: In this section, "flag" means a flag of the United States consisting of horizontal stripes, alternately colored red and white, and a union of any number of white stars on a blue field.

1. Whoever destroys, damages, or mutilates a flag, or causes a flag to come into contact with urine, feces, or expectoration, with the intent to cause imminent violence or a breach of the

peace under circumstances in which the actor knows that his or her conduct is likely to cause violence or a breach of the peace.

(5) OFFENSES AGAINST PUBLIC PEACE AND ORDER

(a) DISORDERLY CONDUCT: It shall be unlawful for anyone, in a public or private place, to engage in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance.

1. PUBLIC URINATION/DEFECATION: It shall be unlawful for anyone to urinate or defecate on any street, park, alley, or any other public place or upon the property of another person without the consent of the owner of the property. Urination or defecation on private property shall only be permitted by the owner in an acceptable receptacle for such action.

(b) UNLAWFUL USE OF TELEPHONE: It shall be unlawful for anyone to do any of the following;

1. With intent to harass or offend, telephones another and uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

2. Makes or causes the telephone of another repeatedly to ring, with intent to harass any person at the called number.

3. Makes repeated telephone calls, whether or not conversation ensues, with intent solely to harass any person at the called number.

4. Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number.

5. Knowingly permits any telephone under his or her control to be used for any purpose prohibited by this section.

6. Call an emergency number, including, but not limited to "911", without having a legitimate reason to make said call.

(c) HARASSMENT: It shall be unlawful for anyone with the intent to harass or intimidate another person, to do any of the following;

1. Strike, shove, kick or otherwise subject the person to physical contact or attempts or threatens to do the same.

2. Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose. The following statutes following the prefix "9" defining offenses against the peace and good order of the State are adopted by reference to define offenses against the peace and good order of the City, provided the penalty for commission of such offenses hereunder shall be limited to a forfeiture imposed

under Section 25.04 of this Municipal Code. Any future amendments, revisions, or modifications of the statutes incorporated herein are intended to be made part of this chapter in order to secure uniform statewide regulation of public peace and good order.

9.02 POSSESSION AND USE OF FIREARMS AND DANGEROUS WEAPONS. It shall be unlawful for any person within the City of Kiel to carry or possess, either on his person or in any vehicle, any firearm or dangerous weapon under any circumstances in which such carriage or possession is prohibited by the Wisconsin Statutes.

- (1) No person except as authorized by Wis. Stat. § 941.23 shall go armed with a concealed weapon.
- (2) No person except as authorized by Wis. Stat. 941.235 shall go armed with a firearm in any building owned or leased by the state or any political subdivision of the state.
- (3) No person except as authorized by Wis. Stat. 941.237, shall go armed with a handgun on any premises for which a Class "B" or "Class B" license or permit has been issued.
- (4) No person except as authorized by Wis. Stat. 941.2965 may carry or display a facsimile firearm in a manner that could reasonably be expected to alarm, intimidate, threaten or terrify another person.
- (5) No person except as authorized by Wis. Stat. 941.297 may sell or distribute any look-alike firearm.
- (6) No person except as authorized by Wis. Stat 941.24 may manufacture, sell or offer to sell, transport, purchase, possess or goes armed with any knife having a blade which opens by pressing a button, spring or other device in the handle or by gravity or by a thrust or movement.

9.03 THROWING OR SHOOTING OF ARROWS, STONES OR OTHER MISSILES OR PROJECTILES.

- (1) No person shall place, throw or shoot any object, arrow, stone, snowball or other missile or projectile, by hand or by any other means, at any person or at, in or into any building, street, sidewalk, alley, highway, park, playground, vehicle or other public place within the City.
- (2) A person may shoot a bow and arrow on private property for the purpose of target practice, but only if the following requirements are met:
 - (a) Only field tips or target tips may be attached to an arrow used for target practice on private property. Broadhead hunting tips including, but not limited to, razor tips may not be attached to an arrow used for target practice.
 - (b) Material must be attached to the back of any target which will prevent an arrow from completely passing through it.

- (c) The target must be placed so that arrows missing the target will not enter neighboring properties or a building on the property may serve as a backstop.
- (d) An adult must be physically present and supervising any person under the age of 16 while that person is target practicing with a bow and arrow.
- (3) Hunting of any bird, wild fowl or animal with a bow and arrow or crossbow on property owned by the City of Kiel is prohibited.
- (4) Hunting with a bow and arrow or crossbow may take place on private property within the City of Kiel with the following restrictions:
 - (a) No person may hunt on private property with a bow and arrow or crossbow that is within 100 yards of a building located on private property owned by another individual, unless the owner of the land on which the building is located allows hunting with a bow and arrow or crossbow within 100 yards of the building.
 - (b) Any person hunting with a bow and arrow or crossbow must be at an elevation where the discharge of the arrow or bolt from the respective weapon is always toward the ground.
 - (c) Hunters who harvest animals are responsible to immediately remove and clean up litter and/or debris caused by their action including carcasses and remains of the animals.

9.04 SALE AND DISCHARGE OF FIREWORKS RESTRICTED.

- (1) DEFINITION. In this section, "fireworks" means anything manufactured, processed, or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include any of the following:
 - (a) A cap containing not more than one-quarter grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
 - (b) A toy snake which contains no mercury.
 - (c) A sparkler on a wire or wood stick not exceeding 36 inches in length that is designed to produce audible or visible effects.
 - (d) A device designed to spray out paper confetti or streamers and which contains less than one-quarter grain of explosive mixture.
 - (e) A device that is designed primarily to burn pyrotechnic smoke-producing mixtures, at a controlled rate, and that produces audible or visible effects.

- (f) A cylindrical fountain that consists of one or more tubes and that is classified by the Federal Department of Transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.
- (g) A cone fountain that is classified by the Federal Department of Transportation as a Division 1.4 explosive, as defined in 49 CFR 173.5
- (h) A fuse less device that is designed to produce audible or visible effects, and that contains less than one-quarter grain of explosive mixture.
- (2) FIREWORKS USE REGULATED. No person will possess or use fireworks in the city without a user's permit issued pursuant to this ordinance and Wis. Stats. §167.10(3); except those fireworks listed in (1) (a-h) above.
- (3) FIREWORKS SALES REGULATED. Except as provided herein, no person can sell, or possess with intent to sell, without a city issued permit, fireworks in the city.
- (4) FIREWORKS SALES LICENSE.

 - (a) No person may sell, or possess with intent to sell, fireworks, except those specifically enumerated in section (1) (a-h) above, unless said person has been issued a fireworks sale license hereunder.
 - (b) Applicants for a fireworks sale license will make an application for each site in writing on forms provided by the City Clerk-Treasurer. A licensee may possess and sell the enumerated fireworks at more than one site within the city. A nonrefundable license application fee of \$200.00 for each site will accompany each application.
 - (c) The application for license will include, without limitation, the following information:

 - 1. Name, address, and telephone number of the applicant.
 - 2. Address(es) at which the applicant intends to sell the enumerated fireworks.
 - 3. Name(s), address(es), and consent(s) of the owner(s) of the real estate upon which the enumerated fireworks will be sold. Itemization of which enumerated fireworks the applicant intends to sell.
 - (d) Fire Chief Review: The Fire Chief or designee will consider the application for fireworks sales licenses and approve or deny applications. If the permit application is denied, the applicant has the right to appeal the denial to the Common Council. The Clerk-Treasurer issues the license upon the approval of the fire chief or the common council.
- (5) ISSUANCE OF FIREWORKS SALES LICENSE

 - (a) Licenses issued are for a term of one year, from May 1 through the following April 30. Application for annual licenses are filed not later than April 1 of each year.

- (b) The common council may condition the issuance of licenses hereunder as it sees fit to protect the public interest and safety.
 - (c) The common council has the right to suspend or revoke any licenses issued hereunder as it sees fit to protect the public interest or safety. If a license is suspended or revoked, the licensee is entitled to a public hearing before the common council within seven days of the suspension or revocation.
 - (d) Licenses issued hereunder may not be transferred or assigned without the consent of the common council; and, no licensee may use a site other than the site(s) licensed pursuant to the application of the licensee.
 - (e) The fire chief, police chief or their designee may temporarily suspend and confiscate licenses if violations occur and order the closure of the site pending corrective action or appeal to the city council.
- (6) FIREWORKS USE PERMIT.** As provided in Wis. Stats. § 167.10(3), the mayor or designee may issue a fireworks use permit.
- (a) The official issuing the permit will require a certificate of liability insurance, or similar proof of coverage, in an amount deemed necessary.
 - (b) A copy of the permit and proof of insurance is filed with the clerk-treasurer, and copies of the permit are given to the Fire Chief and Chief of Police at least five days before the authorized use.
 - (c) The permit may be canceled by the Fire Chief, Police Chief or City Administrator if weather or other situations make it an unsafe condition.
- (7) OBNOXIOUS ODOR DEVICES AND PRODUCTS.**
- (a) No person may sell, possess, or use any device, product or item that has its primary purpose the production of an obnoxious odor or smell.
 - (b) Without limitation, it is grounds for suspension or revocation of a fireworks sale license if the licensee sells or possesses for sale any obnoxious odor devices, products or items.
- (8) FIREWORKS STORAGE AND HANDLING REGULATIONS**
- (a) Fire extinguishers required. No wholesaler, dealer or jobber may store or handle fireworks on the premises unless the premises are equipped with fire extinguishers approved by the fire chief.
 - (b) No person may smoke where fireworks are stored or handled.
 - (c) A person who stores or handles fireworks will notify the fire chief of the location of the fireworks.

(d) No wholesaler, dealer or jobber may store fireworks within 50 feet of a residence.

(e) No person may store fireworks within 500 feet of a public assemblage or place where gasoline or volatile liquid is sold in quantities exceeding one gallon.

(9) PARENTAL LIABILITY. Pursuant to Wis. Stats. § 167.10(7), a parent, foster parent, treatment foster parent, family operated group home parent or legal guardian of a minor who consents to the use of fireworks by the minor is liable for damages caused by the minor's use of the fireworks. Pursuant to Wis. Stats. § 167.10(9)(c), any parent or legal guardian of a minor who consents to the use of fireworks by the minor will, upon conviction, be subject to a forfeiture of not more than \$1,000.

(10) PENALTIES. Any person who violates the provision of this ordinance is subject to municipal penalties as defined under Chapter 25.04 of the City of Kiel municipal code. Each day of continued violation constitutes a separate violation and offense.

9.05 OBSTRUCTING STREETS AND SIDEWALKS PROHIBITED. No person shall stand, sit, loaf, loiter or engage in any sport or exercise on any public street, sidewalk, bridge or public ground within the City in such manner as to prevent or obstruct the free passage of pedestrian or vehicular traffic thereon or to prevent or hinder free ingress or egress to or from any place of business or amusement, church, public hall or meeting place, except with the permission of the City Council upon written application to the Council.

9.06 LOUD, DISTURBING OR UNNECESSARY NOISE PROHIBITED. No person shall make or cause to be made any noise which unreasonably disturbs, or tends unreasonably to disturb, the peace and quiet of a person or persons in the vicinity thereof, unless the making and continuing of said noise cannot be prevented and is necessary for the protection or preservation of property or of the health or safety of some person.

9.07 GAMBLING, LOTTERIES OTHER THAN THOSE RUN BY THE STATE OF WISCONSIN, FRAUDULENT DEVICES AND PRACTICES PROHIBITED. All forms of gambling, lotteries other than those run by the State of Wisconsin, and fraudulent devices and practices are prohibited within the City. Any police officer of the City shall seize anything devised solely for gambling or found in actual use for gambling within the City and dispose thereof after a judicial determination that such device was used solely for gambling or found in actual use for gambling.

9.08 LOITERING PROHIBITED.

- (1) LOITERING OR PROWLING. No person shall loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person takes flight upon appearance of a police or peace officer, refuses to identify himself or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances make it impracticable, a police or peace officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this subsection if the police or peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the person was true and, if believed by the police or peace officer at the time, would have dispelled the alarm.
- (2) OBSTRUCTION OF HIGHWAY BY LOITERING. No person shall obstruct any street, bridge, sidewalk or crossing by lounging or loitering in or upon the same after being requested to move on by any police officer.
- (3) OBSTRUCTION OF TRAFFIC BY LOITERING. No person shall loaf or loiter in groups or crowds upon the public streets, alleys, sidewalks, street crossings or bridges, or in any other public places within the City, in such manner as to prevent, interfere with or obstruct the ordinary free use of the public streets, sidewalks, street crossings and bridges or other public places by persons passing along and over the same.
- (4) LOITERING AFTER BEING REQUESTED TO MOVE. No person shall loaf or loiter in groups or crowds upon the public streets, sidewalks or adjacent doorways or entrances, street crossings or bridges or in any other public place or on any private premises without invitation from the owner or occupant, after being requested to move by any police officer or by any person in authority at such places.
- (5) LOITERING – PUBLIC DRUNKENNESS. A person who is so intoxicated that he or she is unable to care for his or own safety and is found in a public place in such condition is guilty of public drunkenness, and being in such condition is unlawful.

9.09 DESTRUCTION OF PROPERTY PROHIBITED. No person shall willfully injure or intentionally deface, destroy or unlawfully remove, take or meddle with any property of any kind or nature belonging to the City or its departments, or to any private person without the consent of the owner or proper authority.

9.10 LITTERING PROHIBITED. No person shall throw, deposit, place, or otherwise cause any glass, garbage, rubbish, waste, slop, dirty water or noxious liquid, or other litter or unwholesome substance upon the streets, alleys, highways, public parks or other property of the City, or upon any private property not owned by or upon the surface of any body of water within the City. This includes seepage from debris, rubbish, and motor vehicles leaking fuel or other chemicals onto city owned property including streets and alleys.

9.11 ANIMAL REGULATIONS.

(1) No person shall own, harbor or keep any dog, cat or other animal in a domesticated environment which does any of the following:

- (a) Habitually pursues any vehicle upon any public street, alley or highway or is allowed to run at large.
- (b) Habitually barks, crows, cries, screeches, howls or makes any other loud or annoying sound which may tend to annoy or disturb one or more persons within the City; or
- (c) Has not been licensed as required by the ordinances of the City and the laws of the State.

(2) **PROHIBITED ANIMALS.** No person shall bring into, keep, maintain, offer for sale or barter, or release to the wild, nor shall any person permit such activities to occur on premises owned, controlled, rented, or maintained by that person:

- (a) Any rooster, fowl other than chicken (*Gallus gallus domesticus*), turkeys, ducks, geese, cows, cattle, horses, sheep, swine, goats, pot-bellied pigs, or any other domesticated livestock.
- (b) Wild animals, including but not limited to, any live monkey, or other nonhuman primate, raccoon, skunk, prairie dog, fox, wolf, panther, lynx, opossum, or any other warm-blooded animal which can normally be found in the wild. For the purposes of this code, wolf-dog hybrids are considered wild animals.
- (c) Any poisonous or venomous, biting or injecting species of reptiles, amphibians, arachnids, or insects, including bees, unless such bees are part of an agricultural operation.
- (d) Snakes not indigenous to Wisconsin or any snake exceeding three feet in length.

- (e) The above paragraph shall not be construed to apply to zoological parks, circuses or like entertainment organization or to an educational or medical institution.

(3) RESTRICTIONS ON KEEPING CATS OR DOGS.

- (a) Any person owning or having charge, custody, care or control of any cat or dog shall keep such animals exclusively upon their own premises, either by keeping such animal upon an appropriate chain or tie no longer than 15' in length or in an enclosed yard which is either walled or fenced by material or electronic means, or in any other appropriate restraining enclosure on the owner's property.
- (b) A cat or dog may be off such premises only when if it is restrained by a substantial leash or chain not exceeding 8' in length, in the hands of the person directly controlling the movement of the animal, or if it is being trained or shown in an area or at an event approved for such purposes by the Director of Public Works. If an animal is not so provided for or restrained, it shall be considered to be "running at large". A dog is considered to be running at large if it is off the premises of its owner and not restrained by a substantial leash or chain.
- (c) Cats and dogs shall be prohibited in all City parks, beaches or other public grounds, except for walkways, and except in areas designated by the Director of Public Works for the training or showing of cats or dogs.
- (d) No person shall permit any domesticated animal including a cat or dog owned by him/her to defecate upon any property not owned by such persons without the consent of such other property owner or upon any public property, without immediately removing the feces left by the animal.
- (e) Cats and dogs shall be prohibited on all private property except in cases where the presence of the cat or dog is with the express consent of the owner of the premises or party in control of such premises.

(4) CONFINEMENT AND DISPOSITION.

- (a) Confinement of Offending or Running Animals. The Police Department or any officer appointed by the City Council may apprehend any dog or other animal found running at large within the City or which does any of the things prohibited under this ordinance and confine the same in a suitable place.
- (b) Disposition of Unclaimed Dogs and Other Animals. The Police Department or the keeper of a pound shall keep all dogs or other animals apprehended until they can be placed in an animal shelter, which shall be done as soon as possible (unless sooner claimed by the owner or keeper).

Prior to the release of any confined animal, the owner of the animal will pay a \$10 impound fee to the Police Department for each confined animal.

(5) ANIMAL BITES.

- (a)** Every owner or person harboring or keeping an animal including a dog or cat who knows that such animal has bitten any person accidental or otherwise shall immediately report such fact to the police department, and shall follow all prescribed quarantine procedures as directed by the police department in accordance with directions by the appropriate county health department. All of the costs associated with the quarantine are the responsibility of the owner or keeper of such animal. This section does not apply to a dog that is used by a law enforcement agency if the dog injures a crime suspect while the dog is performing law enforcement functions.
- (b)** The police department shall investigate and complete a formal report detailing all incidents of reported animal bites and determine if the incident warrants further enforcement action. Upon completion of their investigation, the police department will make a determination as to whether or not the animal bite incident was the result of an accident or that the animal is vicious.
- (c)** Upon demand; the owner or keeper of any such dog, cat, or other animal involved in a bite incident shall surrender the animal to the police department for examination by a licensed veterinarian. All of the costs associated with the examination are the responsibility of the owner or keeper of such animal.
- (d)** No person shall own, harbor or keep any dog, cat or other animal in a domesticated environment which assaults or attacks any person or is otherwise deemed vicious. A showing that a dog or other animal has bitten, attacked or injured any person shall constitute a prima facie showing that such dog or animal is vicious.

(6) COURT ORDER TO KILL A DOG

- (a)** In accordance with state law; the City of Kiel may determine that a dog is vicious and seek civil action to obtain a judgment from a court ordering that a dog be killed in a humane manner at the owner or keeper's expense.
- (b)** The court may grant the judgment to have the dog killed if the court finds;
 - 1.** The dog caused serious injury to a person or domestic animal on 2 separate occasions off the owner's property, without reasonable cause.

2. The owner of the dog was notified or knew prior to the 2nd injury, that the dog caused the first injury.

(7) ENFORCEMENT

- (a) Any animal owner who violates any section of this ordinance will be subject to a graduated enforcement and monetary fine schedule as set forth in Section 25.04 as well as any other applicable penalties.

9.12 TRAPS PROHIBITED. Use of any devices or traps that shut suddenly as with a spring, for taking game and other animals, except for live box traps, shall be prohibited within the City.

9.13 OPEN CISTERNS, WELLS, BASEMENTS OR OTHER DANGEROUS EXCAVATIONS PROHIBITED.

No person shall have or permit on any premises owned or occupied by him any open cisterns, cesspools, wells, unused basements, excavations or other dangerous openings. All such places shall be filled, securely covered or fenced in such manner as to prevent injury to any person, and any cover shall be of a design, size and weight such that the same cannot be removed by small children. Any violation of this section is a public nuisance and may be disposed of in accordance with Chapter 823, Wis. Stats.

9.14 ABANDONED OR UNATTENDED REFRIGERATORS AND OTHER LOCKING CONTAINERS PROHIBITED.

No person shall leave or permit to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, dwelling or other structure, under his control in a place accessible to children, any abandoned, unattended or discarded refrigerator or other container which has an airtight door or lid, snap lock or other locking device which may not be released from the inside without first removing such door or lid, snap lock or other locking device from such refrigerator or container unless such container is displayed for sale on the premises of the owner or his agent and is securely locked or fastened.

9.15 CURFEW.

(1) HOURS.

- (a) Specified. No person under the age of 17 shall loiter, idle or remain upon any street, alley or other public place in the City between 11 p.m. and 5 a.m. the next day unless such person is accompanied by his parent, guardian or other adult person having legal custody of such person.
- (b) Exceptions. This section shall not apply to a child:

1. Who is performing an errand as directed by his parent, guardian or person having lawful custody.
 2. Who is performing an errand of urgent necessity.
 3. Who is on his own premises or in the areas immediately adjacent thereto.
 4. Whose employment makes it necessary to be upon the streets, alleys or public places or in any motor vehicle during such hours.
 5. Who is returning home from a supervised school, church or civic function, or going to or from places of business, amusements or private homes.
 6. Any activities protected by the First Amendment.
 7. An emergency involving the protection of a person or property from an imminent threat of serious bodily injury or substantial damage.
 8. Any activity conducted by a non-profit or governmental entity that provides recreation, education, training or other care under the supervision of one or more adults.
- (c) These exceptions shall not, however, permit a person to loiter unnecessarily about the streets, alleys or public places or be in a parked motor vehicle on the public streets.
- (2) PARENTAL VIOLATION. No parent, guardian or other person having legal custody of a person under the age of 17 years shall permit such person to loiter, idle or remain upon any street, alley or other public place in the City between 11 p.m. and 5 a.m. the next day, unless such person is accompanied by his parent, guardian or other adult person having legal custody of such person.
- (3) RESPONSIBILITY OF OPERATORS OF HOTELS, MOTELS AND ROOMING HOUSES. No person operating a hotel, motel or lodging or rooming house within the City, or any agent, servant or employee of such person, shall permit any person under the age of 17 years to visit, idle, wander or stroll in any portion of such hotel, motel or lodging or rooming house between 11 p.m. and 5 a.m. the next day unless such person is accompanied by his parent, guardian or other adult person having legal custody of such person.
- (4) LOITERING IN SCHOOL AND SCHOOL CAMPUS. [#360 3/13/90, #376 2/25/92] No person not in official attendance or on official school business shall enter into, congregate, loiter, wander, stroll, stand or play in any school building or in or about any school campus area adjacent thereto within the City. This prohibition shall apply to school buildings, playground areas, parking lots, and all other school properties.
- (5) DETAINING A PERSON UNDER 17 YEARS OF AGE. A person under 17 years of age, believed to be violating the provisions of this section, shall be taken to the Police Department or the County

Sheriff's Department for proper identification. Any law enforcement officer on duty may, consistently with the provisions of Section 938.19, Wis. Stats., detain any person under the age of 17 years violating subs. (1), (3) or (4) until such time as the parent, guardian or adult person having legal custody of such person has been immediately notified and the person so notified has, as soon as reasonably possible thereafter, reported to the Police Department or the Sheriff's office for the purpose of taking such person into custody and has signed a release for him.

(6) WARNING. The first time a person under 17 years of age is detained by law enforcement officers as provided in sub. (5), the parent, guardian or person having legal custody shall be advised as to the provisions of this section; and any violation of this section occurring thereafter by such person, or any other person under such adult's care or custody, shall result in a penalty being imposed as provided in sub. (7).

(7) GENERAL PENALTY.

(a) Any parent, guardian or person having legal custody of a person under 17 years of age described in subs. (1), (3) or (4) who has been warned in the manner provided in sub. (6), and who thereafter violates any of the provisions of this section shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

(b) Any person under 17 years of age who violates this section after being detained and released under sub. (5) shall be dealt with under Chapter 938, Wis. Stats.

9.16 PARK CLOSING HOURS.

(1) All City parks shall be closed to the public between 10 p.m. and 5 a.m.

(2) Persons found in a park or its roadways during the above closed period shall be considered violators.

(3) Special permission to enter a park during the above hours may be granted by the Chief of Police where ingress and egress for property adjoining the park is necessary. Use of a City park after closing hours may be granted only upon application to the City Council for a special park use permit.

9.17 BURNING, RECREATIONAL FIRES, AND OUTDOOR COOKING FIRES. [#419 7/14/98]

(1) BURNING. Burning of garbage and rubbish is prohibited. No person, other than the City or its agents, shall set fire to or burn any garbage or rubbish on any street or on any public or private premises. "Garbage" as used herein is defined as "discarded materials resulting from the handling, processing,

storage and consumption of food". "Rubbish" as used herein is defined as "non-organic discarded materials which are not food or foodstuffs".

(2) RECREATIONAL FIRES. "Recreational fire" is defined as follows: Any fire such as a camp fire or cooking fire located at a single or two-family private residence for the purpose of recreation and personal enjoyment. All recreational fires shall comply with the following requirements:

- (a)** No recreational fire pit, portable fire pit or fireplace shall be closer than fifteen (15) feet from any building structure, shed, or garage.
- (b)** No recreational fire shall be in an area larger than three (3) feet by three (3) feet.
- (c)** All recreational fires shall be in a below ground fire pit with minimum depth of ten (10) inches and shall be covered when not in use or the fire pit shall be surrounded on the outside, above the ground, by a noncombustible material such as concrete block or rock.
- (d)** Portable fire pits shall be extinguished when not attended by a responsible person. It is recommended to have a cover and screen but not mandatory.
- (e)** No recreational fire shall be started unless there are favorable conditions for burning with regard to wind direction and speed.
- (f)** Material for recreational fires shall not include rubbish, garbage, treated wood, wet wood, trash or hazardous materials and shall not contain any flammable or combustible liquids as prohibited in Section 14.06 of the City's Code of Ordinances.
- (g)** All recreational fires shall be attended at all times by at least one (1) responsible person of age sixteen (16) years or older.
- (h)** No open fire shall be allowed that causes smoke which is a public nuisance or causes a traffic hazard because of diminished visibility. Public nuisance is defined as set forth in Section 10.02 of the City's Code of Ordinances.
- (i)** The entity, person, firm, association, corporation, limited liability company (L.L.C.), limited liability partnership (L.L.P.) , or property owner starting a fire shall be liable for any damage caused by any open fire. The City of Kiel Police Department will be charged with requiring any entity, person, firm, association, corporation, L.L.C., L.L.P., or property owner from ceasing and desisting from the violation of the provisions of this ordinance. In the event any such entity, person, firm, association, corporation, L.L.C., L.L.P., or property owner fails or refuses to comply with a directive from the police department to cease and desist from any violation of this ordinance, then, in that event, the Kiel Fire Department may be requested by a law enforcement officer to extinguish the fire. If so requested the cost of controlling and/or extinguishing the fire by the

Kiel Fire Department shall be a cost charged to the property owner, entity, person, firm, association, corporation, L.L.C. or L.L.P. who has violated this ordinance and shall be payable by that violator in addition to the forfeiture required herein. The costs chargeable to the violator for the fire department's control or extinguishing of such a fire shall be at the going rate to be reviewed yearly by the City of Kiel Fire Department.

- (3) OUTDOOR COOKING FIRE.** Open or closed outdoor cooking fires (barbecue grills) and approved grills and/or containers are exempt from the open fire requirements as described hereinabove except as follows:
- (a)** For all dwellings more than one story in height, the use of any propane or charcoal portable cooking device or any portable fireplace device is strictly prohibited above the first floor occupancy.
- (4) EMERGENCY POWERS OF THE FIRE CHIEF.** When the Fire Chief determines there are environmental conditions likely to produce a fire which would constitute a serious threat to life and property, the Fire Chief shall be authorized to impose a burning ban and burning restrictions and to require that no person may:
- (a)** Set, build or maintain any open fire, except a fire in a charcoal- or wood-burning grill, or a gas grill or camp stove, when in the immediate vicinity of a residence and when placed on a noncombustible surface;
 - (b)** Throw, discard or drop matches, ashes or other burning materials while outdoors in the immediate vicinity of combustible natural vegetation;
 - (c)** Light or use any fireworks, as defined by the Wisconsin Statutes, or caps, toy snakes, sparklers, smoke bombs, or cylindrical or cone fountains which emit sparks and smoke, except in displays or for a use authorized by the Fire Chief, where adequate fire prevention measures have been taken;
 - (d)** At such time as the Fire Chief determines that he needs to exercise the emergency powers prescribed herein, he shall notify the residents of the City through publication and posting, if reasonably able to do so if the emergency is not so great as to make it unreasonable for him to spend time in doing so, through one insertion in the official newspaper of the City and through posting at the City Hall, in both cases at least one week before the Fire Chief proposes to implement the burning ban or burning restrictions.
- (5) VIOLATIONS.** Any entity, person, firm, association, corporation, limited liability company, limited liability partnership, or property owner who shall violate any provision of this chapter shall be

subject to a penalty as provided in Section 25.04 of the City of Kiel Code of Ordinances as well as payment of actual costs incurred by the Kiel Fire Department as prescribed in Section (2)(i) above.

9.18 DRUG PARAPHERNALIA:

- (1) 'Drug paraphernalia' as used in this ordinance is defined as stated in Wisconsin Statutes Section 961.571, as revised or amended from time to time.
- (2) No person may use, or possess with the primary intent to use, drug paraphernalia, to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or introduce into the human body, a controlled substance or controlled substance analog in violation of Wisconsin Statutes Chapter 961.
- (3) This ordinance applies only to persons who do not have a previous conviction for possession of drug paraphernalia or any other drug related offense.
- (4) All provisions of Wisconsin Statutes Sections 961.573(1) and (2), 961.50 and 938.344(2e), as revised or amended from time to time, are hereby incorporated by reference.
- (5) A person who violates any provision of this ordinance is subject to a forfeiture of not less than \$50. Enforcement procedures shall be those set forth in Section 25.04 of the Kiel Municipal Code.

9.19 PURCHASE AND POSSESSION OF CIGARETTES AND TOBACCO PRODUCTS BY JUVENILES PROHIBITED. [#400]

(1) DEFINITIONS.

- (a) "Cigarette" has the meaning given in Section 139.30(1), Wis. Stats.
- (b) "Distributor" means a person specified under Section 139.30(3) or 139.75(4), Wis. Stats.
- (c) "Identification card" means a license containing a photograph issued under Section 343.17, Wis. Stats.; an identification card issued under Section 343.50, Wis. Stats., and an identification card issued under Section 125.085, Wis. Stats.
- (d) "Jobber" has the meaning given in Section 139.30(6), Wis. Stats.
- (e) "Law Enforcement Officer" has the meaning given in Section 165.85(2)(c), Wis. Stats.
- (f) "Manufacturer" means any person specified under Sections 139.30(7) or 139.75(5), Wis. Stats.
- (g) "Place of business" means any place where cigarettes or tobacco products are sold, manufactured or stored for the purpose of sale or consumption, including any building, vessel, vehicle, airplane, train or vending machine.

- (h)** "Retailer" means any person licensed under Section 134.65(1), Wis. Stats., for the sale of cigarettes and tobacco products.
- (i)** "School" has the meaning given in Section 115.01(1), Section 115.001(1) and Section 115.001(3r), Wis. Stats.
- (j)** "Subjobber" has the meaning given in Section 139.75(11), Wis. Stats.
- (k)** "Tobacco products" has the meaning given in Section 139.75(12), Wis. Stats.
- (l)** "Vending machine" has the meaning given in Section 139.30(14), Wis. Stats.
- (m)** "Vending machine operator" has the meaning given in Section 139.30(15), Wis. Stats.
- (n)** "Nicotine product" has the meaning given in s. 134.66(1)(f).

(2) RESTRICTIONS AND LIMITATIONS ON USE AND SALE.

- (a)** No person under the age of 18 shall buy any cigarettes or tobacco products for his or her own use or that of anyone else; nor shall any person under the age of 18 attempt to buy any cigarettes or tobacco products by falsely representing his or her age for the purpose of receiving any cigarette or tobacco product, or for possessing any cigarette or tobacco product.
- (b)** Notwithstanding the provisions of subsection (a), a person under the age of 18 may purchase or possess cigarettes or tobacco products for the sole purpose of resale in the course of his or her employment during working hours, if employed by a retailer licensed under Section 134.65(1), Wis. Stats.
- (c)** No retailer shall sell or give cigarettes or tobacco products to any person under the age of 18, with the sole exception of providing cigarettes or tobacco products to a person under the age 18 for the sole purpose of resale in the course of that person's employment during his or her working hours.
- (d)** A vending machine operator shall not be liable for the purchase of cigarettes or tobacco products from his or her vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase at the time it was made and had no reason to believe that a purchase had been made by a person under the age of 18.
- (e)** A retailer shall post a sign in areas within his or her place of business's premises where cigarettes or tobacco products are sold to consumers stating that the sale of any cigarette or tobacco product to a person under the age of 18 is unlawful under this ordinance and under Wisconsin state law, if applicable.
- (f)** No person shall place a vending machine dispensing cigarettes or tobacco products within 500 feet of a school building.

- (g)** No manufacturer, distributor, jobber, subjobber or retailer, or any employee or agent of any of the above, shall provide cigarettes or tobacco products for nominal or no consideration to any person under the age of 18.
- (h)** A retailer who sells cigarettes or tobacco products to a person under the age of 18 shall have to prove all of the following facts in order to establish a defense to any prosecution for a violation of the prohibition of selling or giving cigarettes or tobacco products to any person under the age of 18.

 - 1.** That the purchaser falsely represented that he or she had attained the age of 18 and presented to the retailer, or to the employee or agent of the retailer, an identification card purporting to show that the person under the age of 18 had attained the age of 18.
 - 2.** That the appearance of the purchaser was such that an ordinary and prudent person would reasonably believe that the purchaser had attained the age of 18.
 - 3.** That the sale was made in good faith, in reasonable reliance upon the identification card and the appearance of the purchaser, and in the good faith belief that the purchaser had attained the age of 18.
 - 4.** A person under 18 years of age, but not under 15 years of age, may purchase, attempt to purchase or possess cigarettes, nicotine products, or tobacco products in the course of his or her participation in an investigation under s. 254.916 that is conducted in accordance with s. 254.916(3) and subsection
 - 5.** No Person over the age of 18 may purchase or provide cigarettes, nicotine products, or tobacco products to a person under 18 years of age.
- (i)** A law enforcement officer shall be authorized to seize any cigarette or tobacco product involved in any violation of the prohibitions established in this ordinance when that violation is committed in the presence of the law enforcement officer.
- (j)** In enforcement of the prohibitions established in this ordinance, a court of law shall have available to it the penalty alternatives provided in Section 134.66, Wis. Stats.
- (k)** The provisions of this ordinance are separable. If any part of this ordinance is determined to be unconstitutional or contrary to law, the remainder of the ordinance shall remain in full force and effect.
- (l)** No person may purchase cigarettes, tobacco products, or nicotine products on behalf of, or to provide to, any person who is under 18 years of age.

9.20 PROHIBITION OF SMOKING: Definition: As used herein, to “smoke” means to carry a lighted cigar, cigarette, pipe or any other lighted smoking equipment. The term “smokeless tobacco” means any tobacco, which is used by means other than smoking.

(1) No person may, at any time, use any tobacco product, nicotine product and electronic smoking devices, or any derivative of a tobacco product, in a public or private school building, on public or private school grounds, in a public or private school vehicle, or in or upon any public or private school facility within the City of Kiel.

(a) Smoking Prohibited in Enclosed Spaces. Effective July 5th, 2010 the City of Kiel hereby adopts and incorporates by reference Section 101.123 of the Wisconsin Statutes, as amended from time to time, prohibiting smoking in enclosed places.

(b) Any person violating this section of the Municipal Code shall be subject to forfeiture under the terms of Section 25.04 of the Municipal Code.

9.21 TRUANCY AND HABITUAL TRUANCY. [#361 4/24/90, #417 4/13/99]

(1) DEFINITIONS. For the purposes of this Section, the following terms shall have the following meanings:

(a) “Truancy” means any absence of part or all of one or more days from school during which the school attendance officer, principal or teacher has not been notified of the legal cause of the absence by the pupil’s parent or guardian and also means intermittent attendance carried on for the purposes of defeating the intent of the compulsory school attendance law.

(b) “Truant” means a pupil who is absent from school without an acceptable excuse for part or all of any day on which school is held during a school semester.

(c) “Habitual Truancy” means any absence from school without an acceptable excuse for part or all of five (5) or more days on which school is held during a school semester.

(d) “Habitual Truant” means a pupil who is absent from school without an acceptable excuse for part or all of five (5) or more days on which school is held during a school semester.

(e) “Dropout” means a child who has ceased to attend school, does not attend a public or private school, technical college or home-based private educational program on a full-time basis, has not graduated from high school, is not enrolled in a program leading to high school graduation or a high school equivalency diploma and does not have an acceptable excuse for being absent from school.

- (f) "School Attendance Officer" means an employee designated by the School Board to deal with matters relating to school attendance and truancy. "School Attendance Officer" does not include a person designated to take truants into custody, unless that person has also been designated to deal with matters related to school attendance and truancy.
- (g) "Acceptable Excuse" shall mean written approval of a child's parent or guardian for participation of that child in a program or curriculum modification under Section 118.15 of the Wis. Stats., or in a written statement provided by a parent, a medical doctor, or a psychiatrist or psychologist, or a registered psychiatric counselor, setting forth the specific reasons why a pupil may be or has been absent from school during a period of time for which the student was enrolled and expected by the school authorities to be attending classes, which said written statement shall meet the standards for an "acceptable excuse" as established by Sections 118.15 and 118.16 of the Wis. Stats.
- (2) TRUANCY VIOLATION. It shall be a violation of the Kiel Municipal Code for a child to be a "truant" as defined in Section 9.21(1)(b).
- (3) PENALTY. The following penalties may be imposed, in alternative form, upon a child found to be truant after being so charged under Section 9.21(2).
- (a) Suspension of the child's operating privilege for operation of an automobile, as defined in Section 340.01(40) of the Wis. Stats., for not less than thirty (30) days nor more than ninety (90) days. Any suspension under this section shall be accompanied by a notice stating the reason for and duration of said suspension directed to the Wisconsin Department of Transportation, Motor Vehicle Division.
- (b) A forfeiture in an amount not greater than \$50.00 for a first offense and not more than \$100.00 for a second, third or fourth offense.
- (c) Ordering of the child to participate in counseling, community service, or a supervised work program as provided for in Sections 938.34 (1) and 938.34(5g) and (5m), Wis. Stats.
- (d) An order that the child shall remain at home except during hours in which he or she shall attend religious worship or a school program, including travel time required to get to and from the school program or place of worship. An order that the child remain at home except for attendance at religious worship or a school program may permit the child to leave his or her home if accompanied by a parent or guardian.
- (e) An order that the child attend an educational program as provided for in Section 938.34(7d), Wis. Stats.

- (4) HABITUAL TRUANCY VIOLATION. It shall also be a violation of the Kiel Municipal Code for a child to be a "habitual truant", as defined in Section 9.21(1)(d).
- (5) PENALTY. The following penalties may be imposed, in alternative form, upon a child found to be a habitual truant after being so charged under Section 9.21(4).
- (a) Suspension of the child's operating privilege for operation of an automobile, as defined in Section 340.01(40) of the Wis. Stats., for not less than thirty (30) days nor more than ninety (90) days. Any suspension under this section shall be accompanied by a notice stating the reason for and duration of said suspension directed to the Wisconsin Department of Transportation, Motor Vehicle Division.
 - (b) A forfeiture in an amount not greater than \$500.00 plus, if the child is fourteen (14) years of age or older, court costs. Said forfeiture plus costs may be assessed against the child, the child's parents or guardian, or both.
 - (c) Ordering of the child to participate in counseling, community service, or a supervised work program as provided for in Sections 938.34(1) and 938.34(5g) and (5m), Wis. Stats.
 - (d) An order that the child shall remain at home except during hours in which he or she shall attend religious worship or a school program, including travel time required to get to and from the school program or place of worship. An order that the child remain at home except for attendance at religious worship or a school program may permit the child to leave his or her home if accompanied by a parent or guardian.
 - (e) An order that the child attend an educational program as provided for in Section 938.34(7d), Wis. Stats.
- (6) REFERENCE TO STATUTES. References to specific statutory sections wherever used in this ordinance shall mean the Wis. Stats. of 1999-2000, as from time to time amended, modified, repealed or otherwise altered by the legislature of the State of Wisconsin.
- (7) SEVERABILITY. If any section or part of this ordinance is adjudged unconstitutional or invalid by any court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

9.22 FAILURE TO RETURN LIBRARY MATERIALS ON TIME. [#401 4/12/96]

- (1) Any person who has checked out library materials using the process established by the staff of the Kiel Public Library, and who fails to return the materials by the due date as indicated to the borrower at the time that the books, video tapes or other library materials, are to be returned, shall be sent a warning letter at the last known registered address of said borrower, requiring return of the

borrowed item or items within 14 days of the date of the warning letter. If any borrowed item is not returned on the date stated, that shall be a violation of this ordinance by the borrower and each day thereafter on which the item is not returned shall be a separate violation by the borrower, of this ordinance.

- (2) The Library Director shall file a complaint with the Police Department for any violation and the Police Department shall issue a citation thereon.
- (3) A forfeiture of not less than \$10 nor more than \$50 may be assessed for each violation of Section 9.22(1), in addition to assessment of the Library's original purchase cost for the library materials not returned. Enforcement procedures shall be those set forth in Section 25.04 of the Kiel Municipal Code.

9.225 RELATING TO PUBLIC PEACE AND GOOD ORDER IN PARKS

- (1) It shall be unlawful for any person in the Kiel Park system to operate, use or have in the marked restricted area for skateboard any bicycle, motorcycle or any other motorized vehicle.

9.23 PENALTY.

- (1) Except as otherwise provided in this chapter, any person who shall violate any provision of this chapter shall be subject to penalty as provided in Section 25.04 of this Municipal Code.
- (2) In addition to any penalty imposed for violation of Section 9.09 of this chapter, any person who shall cause physical damage to or destroy any public property shall be liable for costs of replacing or repairing such damaged or destroyed property. The parent or parents of any unemancipated minor child who violates Section 9.09 may also be held liable for the cost of replacing or repairing such damaged or destroyed property in accordance with Section 895.035, Wis. Stats. either verbal or written.

9.24 FALSE ALARMS.

- (1) In this section, "alarm" is defined as any device that when activated by whatever means designed produces an audible or visual alert or cause the notification of an alarm processing center which in turn prompts the response of a law enforcement officer to respond to the location to investigate the cause of the alarm.
- (2) No person shall give or cause a false alarm of any type to be activated. Alarms require emergency police response and false alarms threaten public peace and order and jeopardize the safety of all

involved. False alarms include all of the following activations whether intentional or accidental, but do not include alarms activated when the cause is determined to be weather related due to storms or electrical outages.

- (a) Activation of alarm due to maintenance testing of an alarm system when the activator of the system has not notified the police and fire departments and/or dispatch center in advance.
 - (b) Activation of alarm due to improper entry of alarm codes and/or improper entry or exit into or from the area or structure where alarm is located or functioning.
 - (c) Mechanical failure of alarm system other than due to power shortage or weather related.
- (3) The police department will issue written warning notices to business and residential property owners and/or individuals on scene during investigation of alarms advising them of the alarm's activation and the police department's response to that alarm. After two (2) such false alarm notices have been issued to a business or residential property, the police department will issue citations to the property owner or other appropriate party based upon the classification of the structure and/or area where the alarm is located on the following fine schedule.

(a) Third false alarm	\$50.00
(b) Fourth and above false alarms	\$100.00

9.25 POSSESSION OF TETRAHYDROCANNABINOLS:

- (1) No person may possess or attempt to possess tetrahydrocannabinols, commonly known as 'THC', in any form, including but not limited to tetrahydrocannabinols that are contained in marijuana, obtained from marijuana, or chemically synthesized, or any controlled substance analog of tetrahydrocannabinols, unless the person obtains the substance or the analog directly from, or pursuant to a valid prescription or order of, a practitioner who is acting in the course of his or her professional practice, or unless the person is otherwise authorized by state statute to possess the substance or the analog.
- (2) This ordinance applies only to person who do not have a previous conviction for possession of tetrahydrocannabinols or for any other drug related offence, and only if the quantity of tetrahydrocannabinols is less than 8 grams at the time that is weighed by law enforcement.
- (3) All provisions of Wisconsin Statutes Sections 961.41(3g), 961.50, and 938.344.(2e), as revised or amended from time to time, are hereby incorporated by reference

- (4) A person who violates this ordinance is subject to a forfeiture of not less than \$50 nor more than \$1000. Enforcement procedures shall be those set forth in Section 25.04 of the Kiel Municipal Code.
- (5) A positive result for the presence of cannabinoids, using the police department's approved field test, shall be prima facie evidence of possession in this ordinance.

9.26 USE OF A DRONE.

- (1) It shall be unlawful for anyone to use a drone, as defined in Wis. Ss. 175(1)(a), with the intent to photograph, record, or otherwise observe another individual in a place or location where the individual has a reasonable expectation of privacy. This section does not apply to a law enforcement officer authorized to use a drone pursuant to Wis. Ss. 175.55(2).

9.27 PARENTAL RESPONSIBILITY FOR JUVENILE MISCONDUCT

- (1) Purpose. The purpose of this section is to reduce the incidents of misconduct by juveniles by requiring proper supervision on the part of custodial parents.
- (2) Definitions. For Purposes of this section, unless otherwise defined:
 - (a) "Child" means a person under the age of eighteen years.
 - (b) "custodial parent" means a parent or legal guardian of a minor child who has custody of said child.
 - (c) "Custody" means either physical custody of a child under a court order specific to sections of the Wisconsin Statutes, custody of a child under a stipulation under Wisconsin Statutes, or actual physical custody of the child. Custody does not include legal custody, as defined under Section 48.02(12) Wisconsin Statutes, by an agency or a person other than a child's birth or adoptive parent. In determining which parent has custody of a child for purposes of this section, the court shall consider which parent had responsibility for caring for and supervising the child at the time that the child's ordinance violations occurred.
- (3) Prohibited Conduct. Every custodial parent has a duty to properly supervise his or her child. Any custodial parent whose child is convicted of a City of Kiel Municipal Code violation twice in a six-month period or three or more times within a twelve-month period is guilty of failing to properly supervise said child. The six and twelve-month periods shall be measured from the date of the first violation.
- (4) Penalty. The offense described under section three (3) shall be subject to penalty of a minimum of \$100 and a maximum of not more than \$1,000.

(5) Defenses. The following shall be defenses to a violation of section 3:

- (a) Where the parent has made all reasonable and available efforts under the circumstances to prevent the juvenile misconduct;
- (b) Where the parent is not legally responsible for the supervision of the juvenile at the time the misconduct occurred; or
- (c) Where the parent has a physical or mental disability or incompetency rendering them incapable of supervising the juvenile at the time the misconduct occurred.
- (d) It is not a defense where the parent assigns their parental responsibility to another, except pursuant to legal proceedings which result in a court order effectuating the same.
- (e) the parent has the burden of proving their defense by clear and satisfactory evidence.

9.28 SEXUAL OFFENDER RESIDENCY RESTRICTIONS.

(1) FINDING AND ISSUE:

- (a) Repeat sexual offenders, sexual offenders who use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses; and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.
- (b) It is the intent of this section not to impose a criminal penalty but rather to serve the City's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence.

(2) DEFINITIONS. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

- (a) Child means a person under the age of 18 for the purpose of this section.
- (b) Designated Offender means any person who is required to register under Wis. Stat. ' 301.45 for any sexual offense against a child or any person who is required to register under Wis. Stat. ' 301.45 for whom a bulletin to law enforcement agencies has been issued under Wis. Stat. ' 301.46(2m).

- (c) Loitering means whether in a group, crowd, or as an individual, to stand idly about, loaf, prowl, congregate, wander, stand, linger aimlessly, proceed slowly or with many stops, to delay or dawdle.
- (d) Permanent Residence means a place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.
- (e) Temporary Residence means a place where the person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or non-consecutive days in any month and which is not the person's permanent residence.
- (f) Adult Child for the purposes of this section means a person who is 18 years of age or older.

(3) SEXUAL OFFENDER AND SEXUAL PREDATOR RESIDENCE; PROHIBITION; PENALTIES; EXCEPTIONS.

- (a) Prohibited Location of Residence. It is unlawful for any designated offender to establish a permanent residence or temporary residence within 1,000 feet of any school, licensed day care center, park, recreational trail, playground, place of worship or library.
- (b) Prohibited Loitering. It is unlawful for any designated offender to loiter within 500 feet of any school, licensed day care center, park, trail, playground, place of worship, or any other place designated by the City as a place where children are known to congregate.
- (c) Prohibited Activity. It is unlawful for any designated offender to participate in a holiday event involving children under 18 years of age, such as distributing candy or other items to children. Holiday events in which the offender is the parent or guardian of the children involved, and no non-familial children are present, are exempt from this paragraph. Participation is to be defined as actively taking part in the event.
- (d) Measurement of Distance.
 1. For the purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to nearest outer property line of a school, licensed day care center, park, recreational trail, playground, place of worship or any other place designated by the City as a place where children are known to congregate.
 2. The Kiel Police Department shall prepare an official map showing prohibited locations as defined by this section. The Kiel Police Department shall also maintain the map on file at the Kiel Police Department and update the map at least annually to reflect any changes in

the location of prohibited zones. These shall be designated on the map as child safety zones.

(e) Exceptions. A designated offender residing within a prohibited area as described in paragraph (3) does not commit a violation of this section if any of the following apply:

1. The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stat. ' 301.45 before the effective date of this ordinance.
2. The person is a minor or ward under guardianship.
3. The school, licensed day care center, park, recreational trail or playground within 1,000 feet of the person's permanent residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Wis. Stat. ' 301.45.
4. The residence is also the primary residence of the person's parents, grandparents, siblings, spouse or adult children, provided that such parent, grandparent, sibling, spouse or adult child established the residence at least two years before the designated offender established residence at the location.

(f) Property Owners Prohibited from Renting Real Property to Certain Sexual Offenders and Sexual Predators.

1. It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to this article, if such place, structure, or part thereof, trailer or other conveyance, is located within a prohibited location zone described in paragraph 3(a), and not subject to an exception set forth in paragraph 3(e) above.
2. A property owner's failure to comply with this section shall constitute a violation of this ordinance and shall subject the property owner to the penalties set forth in Section (5).

(g) Appeal.

1. The above 1,000-foot requirement may be waived upon approval of the Kiel City Council through appeal by the affected party. Such appeal shall be made in writing to the City Clerk's Office, who shall forward the request to the Kiel City Council, which shall receive reports from the City of Kiel Police Department on such appeal. The Kiel City Council shall convene and consider the public interest, as well as the affected party's presentation and

concerns. After deliberation, the Kiel City Council shall forward its decision in writing via the minutes or otherwise to the City of Kiel Police Department for their information and action.

A written copy of the decision shall be provided to the affected party.

- (4) SEVERABILITY. The provisions of this Ordinance shall be deemed severable and it is expressly declared that the Common Council would have passed the other provisions of this Ordinance irrespective of whether or not one or more provisions may be declared invalid. If any provisions of this Ordinance or the application to any person or circumstance are held invalid, the remainder of this Ordinance or the application of such other provisions to other persons or circumstances shall not be affected.
- (5) PENALTIES. A person who violates any provision of this section shall be punished by a forfeiture set forth in Section 25.04 of this Municipal Code. Each day a person maintains a residence in violation of this section constitutes a separate violation. The City of Kiel may also seek equitable relief.

CHAPTER 10
PUBLIC NUISANCES

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10.01 PUBLIC NUISANCES PROHIBITED. No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the City.

10.02 PUBLIC NUISANCE DEFINED. A public nuisance is a thing, act, occupation, condition or use of property which continues for such length of time as to:

- (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
- (2) In any way render the public insecure in life or in the use of property.
- (3) Greatly offend the public morals or decency.
- (4) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property.

10.03 PUBLIC NUISANCES AFFECTING HEALTH. The following acts, omissions, places, conditions and things are specifically declared to be public health nuisances; but such enumeration shall not be construed to exclude other health nuisances coming within the definition of Section 10.02:

- (1) **ADULTERATED FOOD.** All decayed, adulterated or unwholesome food or drink sold or offered for sale to the public.
- (2) **UNBURIED CARCASSES.** Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within 24 hours after death.
- (3) **BREEDING PLACES FOR INSECTS OR VERMIN.** Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material in which flies, mosquitoes, disease carrying insects, rats or other vermin can breed.
- (4) **STAGNANT WATER.** All stagnant water in which mosquitoes, flies or other insects can multiply.
- (5) **PRIVY VAULTS AND GARBAGE CANS.** Privy vaults and garbage cans which are not fly tight.
- (6) **NOXIOUS WEEDS.** All noxious weeds and other rank growth of vegetation. All weeds and grass shall be kept cut to a height not to exceed 1'. The City may cause all weeds and grass to be cut and removed and brush to be removed and the cost thereof charged to the property as provided for in Section 10.09.
- (7) **WATER POLLUTION.** The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage, creamery or industrial wastes or other substances.

- (8) NOXIOUS ODORS, ETC. Any use of property, substances or things within the City emitting or causing any foul, offensive, noisome, noxious or disagreeable odors, gases, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the City.
- (9) STREET POLLUTION. Any use of property which causes any noxious or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the City.
- (10) AIR POLLUTION. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the City or within one- and one-half miles there from in such quantities as to endanger the health of persons of ordinary sensibilities or threaten or cause substantial damage to property in the City.
- (11) STORAGE OF JUNK, ETC., AND FAILURE TO TIMELY SET OUT AND RETRIEVE TRASH AND BULKY ITEMS FOR PICK-UP. The open storage of junk, refuse, litter, garbage, scrap or waste matter, disassembled, damaged, unlicensed or inoperable motor vehicles, whether awaiting repair or not, as well as placing trash or bulky items out for collections by the City more than 72 hours before a scheduled collection date or failing to retrieve from the curbside and re-store within 72 hours trash or bulky items not picked up by the City on a scheduled collection date.
- (12) KEEPING OF ANIMALS AND FOWL. The keeping of more than 5 fur bearing animals within 300' of a residence or park or the keeping of more than 5 pigeons or 20 other fowl within 150' of a residence or park.
- (13) JUNKED VEHICLES.
- (a) Definitions. The following definitions shall apply in the interpretation and enforcement of this ordinance:
1. "Person" shall mean any individual, firm, partnership, association, corporation, company, or organization of any kind.
 2. "Vehicle" shall mean a machine propelled by power other than human power designated to travel along the ground, air or water by use of wheels, reads, runners, or slides and transport persons or property or pull machinery and shall include, without limitation, automobile, truck, trailer, motor home, motorcycle, tractor, buggy, wagon, boat and aircraft.
- (b) no person shall keep any dismantled or partially dismantled, junked, wrecked, unregistered, unlicensed, or inoperable vehicle on any privately owned premises in the City, or upon any publicly owned premises within the City, including any street, highway other roadway, for a period of time in excess of 72 hours. Any such vehicle shall constitute a public nuisance, and

any owner or keeper of such vehicle upon receiving written notice from the Chief of Police or his/her designee shall remove the vehicle or remedy the condition of the vehicle within 72 hours from the time and date served with the notice. If the vehicle and condition still exists after 72 hours of written notice, any owner or keeper of such vehicle shall be subject to forfeiture with each date of the existing condition resulting in a separate fineable offense. If the Chief of Police or designee has official police department documentation which shows that a property owner has previously received written notification within the past 12 months regarding violations under this ordinance: the 72-hour warning period is hereby waived and official enforcement can occur immediately.

(c) EXCEPTIONS

1. A "junked vehicle" shall not include vehicles owned by a collector as defined in Sec. 341.266(1) of the Wisconsin Statutes, duly stored on the collector's property as provided in Sec. 341.266(4) of the Wisconsin Statutes
2. A vehicle shall not be considered junked as provided in this section if the vehicle is kept in an enclosed building, is in an appropriate storage place or depository maintained and authorized by the City, is kept in connection with and in the ordinary course of business of an automotive sales or repair business enterprise located on property that is properly zoned for that type of business.
3. Storage of junked automobiles may be permitted only upon the issuance of a permit pursuant to the provisions of Section 175.25, Wisconsin Statutes, which statute is incorporated herein by reference.

(d) IMPOUNDING AND SALE

1. Any junked vehicle found to be in violation of this section may be officially claimed as an "abandoned vehicle" and thereby impounded and disposed of upon five days written notice, as provided in Sec. 342.40 of the Wisconsin Statutes, and any other governing law. Notice shall be given by personal service or certified mail, return receipt requested. Except in the case of stolen vehicles, any cost incurred in the removal and sale of such vehicle shall be recovered from the owner of the vehicle. If the owner cannot be located after reasonable effort, the cost of removal and sale of the vehicle shall be charged to the property owner from which the vehicle is removed, and such charges may be entered as a special charge on the tax role. Any person who received a notice of vehicle impoundment and objects to all or any part thereof, may appeal to the City Council within written five (5) days of receipt

of the notice and the City Council shall hear such appeal within 30 days of receipt of the written notice of appeal. No action to impound or sell a vehicle shall be taken if appeal is made as provided in this section, until such time as a decision is made by the City Council. After such hearing the City Council may reverse, affirm, or modify the order of impoundment.

10.04 PUBLIC NUISANCES OFFENDING MORALS AND DECENCY. The following acts, omissions, places, conditions and things are specifically declared to be public nuisances offending public morals and decency; but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of Section 10.02:

- (1) DISORDERLY HOUSES. All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual intercourse or gambling.
- (2) GAMBLING DEVICES. All gambling devices and slot machines.
- (3) CONTINUOUS VIOLATION OF CITY ORDINANCES. Any place or premises within the City where City ordinances or State laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.

10.05 DUTCH ELM DISEASE.

- (1) PUBLIC NUISANCE DECLARED. The City Council, having determined that the health of the elm trees within the City is threatened by a fatal disease known as Dutch elm disease, hereby declares the following to be public nuisances:
 - (a) Any living or standing elm tree or part thereof infected with Dutch elm disease fungus or which harbors any of the elm bark beetles.
 - (b) Any dead elm tree or part thereof, including logs, branches, firewood, stumps or other elm materials from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying insecticide.
- (2) PARK BOARD TO ENFORCE. The Park Board shall have the powers and perform the duties imposed by this section and by Chapter 27, Wis. Stats. In carrying out such duties, it may employ a forester or designate a city employee to perform the duties of forester.
- (3) DEFINITIONS. For the purpose of this section, the following phrases are defined as follows:
 - (a) Public Nuisance.

1. Dutch elm disease.
 2. Elm bark beetles *Scolytus multistriatus* (Eichh) or *Hylurgopinus rufipes* (Marsh)
 3. Any living or standing elm tree infected with Dutch elm disease fungus or in a weakened condition which harbors any of the elm bark beetles.
 4. Any dead elm tree or part thereof, including logs, branches, firewood, stumps or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying concentrate.
- (b) Public Property. Any premises owned or controlled by the city including, but not restricted to, public sites, parks, playgrounds, streets, alleys, sidewalks, boulevards and terrace strips between the lot line and the curb or improved portion of any public way.

(4) INSPECTIONS.

- (a) The Park Board shall inspect or cause to be inspected at least twice a year, all premises and places within the City to determine whether any public nuisance exists thereon. It shall also inspect any elm tree reported or suspected to be infected with Dutch elm disease or any elm bark bearing material reported or suspected to be infected with elm bark beetles.
- (b) Whenever necessary to determine the existence of Dutch elm disease or elm bark beetles in any tree, the inspector shall remove or cut specimens from the tree in such manner as to avoid permanent injury thereto and forward them to the State Department of Agriculture, Trade and Consumer Protection for analysis to determine the presence of such nuisances.
- (c) The Board and its agents or employees may enter upon private premises at reasonable times for the purpose of carrying out any of the provisions of this section.

(5) ABATEMENT OF NUISANCES.

- (a) The Park Board shall order, direct, supervise and control the abatement of public nuisances by spraying, removal, burning or other means which it determines to be necessary to prevent as fully as possible the spread of Dutch elm disease fungus or the insect pests or vectors known to carry such disease fungus.
- (b) Whenever the Board determines that a public nuisance exists on public property in the City, it shall immediately abate or cause the abatement of such nuisance in such manner as to destroy or prevent as fully as possible the spread of Dutch elm disease or the insect pests or vectors known to carry such disease fungus.
- (c) When the Board determines with reasonable certainty that a public nuisance exists upon private premises, it shall immediately serve personally or by registered mail upon the owner of such

property, if he can be found, or upon the occupant thereof, a written notice of the existence of such nuisance, directing that the nuisance be abated within 10 days after service of such notice. Such notice shall describe the nuisance and recommend the procedure for its abatement and shall state that, unless the owner abates the nuisance as specified in the notice, the Board will cause the abatement thereof at the expense of the property served. If the owner or occupant cannot be found, such notice shall be given by publication in a newspaper of general circulation in the City.

(6) SPRAYING.

- (a)** Whenever the Board determines that any elm tree or part thereof is infected with Dutch elm disease fungus or is in a weakened condition and harbors elm bark beetles, it may cause all elm trees within a 1,000' radius thereof to be sprayed with an effective elm bark beetle destroying concentrate.
- (b)** To facilitate the work and minimize the inconvenience to the public of any spraying operation conducted under this section, the Board shall cause to be given advance public notice of such operation by newspaper, radio, television public service announcements or other effective means and shall cause the posting of appropriate warning notices in the areas and along the streets where trees are to be sprayed at least 24 hours in advance of spraying. When any residue or concentrate from municipal spraying operations can be expected to be deposited on any public street, the Board shall also notify the Chief of Police, who shall make and enforce such temporary parking and traffic regulations on such streets as conditions require. Temporary "no parking" notices shall be posted in each affected block of any street at least 24 hours in advance of spraying operations.
- (c)** If appropriate warning notices and temporary "no parking" notices have been given and posted in accordance with par. (b) above, the City shall not allow any claim for damages to any vehicle caused by such spraying operations.
- (d)** When trees on private property are to be sprayed, the Board shall notify the owner of such property and proceed in accordance with Sub. (5)(c).

(7) SPECIAL ASSESSMENTS FOR TREE CARE AND ABATEMENT.

- (a)** The cost of abatement of a public nuisance or spraying elm trees or elm wood at the direction of the Board, if the nuisance tree or wood is located in a public park or on other public grounds, shall be borne by the City.

(b) The cost of abating a public nuisance or spraying elm trees or elm wood located on private premises or in the public right-of-way, when done at the direction and under the supervision of the Park Board, shall be assessed to the property on which such nuisance tree or wood is located or which abuts on the public right-of-way in which such nuisance tree or wood is located, as follows:

1. The Board shall keep account of the cost of such work or spraying and the amount chargeable to each lot or parcel and shall report such work charges, the description of lands to which they are chargeable and the names and addresses of the owners of such lands to the City Administrator on or before October 15 of each year.
2. The City Administrator shall mail notice of the amount of such final assessment to each owner of property assessed at his last known address, stating that, unless paid within 30 days of the date of the notice, such assessment shall bear interest at the current legal rate and will be entered on the tax roll as a delinquent tax against the property; and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such assessment.
3. The City hereby declares that, in making assessments under this section, it is acting under its police power. No damages shall be awarded to any owner for the destruction of any diseased or infested elm tree or elm wood or part thereof.

(8) PROHIBITED ACTS. No person shall:

- (a) Transport any bark bearing elm wood, elm bark or elm material on public streets or highways or other public premises without first securing the written permission of the Public Works Director.
- (b) Interfere with or prevent any act of the Board, or of its agents or employees, while they are engaged in the performance of duties imposed by this section.
- (c) Refuse to permit the Board or its duly authorized representative to enter upon his premises at reasonable times to exercise the duties imposed by this section.
- (d) Permit any public nuisance to remain on any premises owned or controlled by him when ordered by the Board to abate such nuisance.

10.06 NUISANCE TREES. [#410 8/26/97] All trees which are a nuisance to public safety or are the cause of substantial annoyance to the general public.

- (1) All cottonwood trees (of the Populous family) and all other trees bearing a cotton-like substance which can be carried by air currents, are hereby declared to be a menace to public health, safety, and welfare and a public nuisance. No person, firm, corporation, or other business entity shall hereafter plant or set out cottonwood trees or other trees bearing a cotton-like substance within the City of Kiel. In the event that any such tree is planted or set out in the City of Kiel after the effective date of this ordinance, the Director of Public Works shall issue an order to the owner of said property on which such tree is located to remove the tree within ten (10) days after notification. If after ten (10) days the owner has failed to comply with the order, the Director of Public Works may cause such tree to be removed. The cost of such removal shall be chargeable to the owner of the property; and if not paid within thirty (30) days after the work is completed, the same shall be certified by the Director of Public Works to the City Administrator and shall be taxed and levied as a special assessment charge upon the real estate in the manner provided for the taxing of special assessments against the land. Any person, firm, corporation or other business entity who or which violates this section may also be charged under Section 25.04 of this Code, and each day the violation continues may be charged as a separate offense.
- (2) Trees which are defined as bearing a cotton-like substance shall include, but not be limited to, female Cottonwood trees and female Silver Leaf Poplar trees (*Populous alba*). Bearing is defined as having a cotton-like substance growing on the tree, whether continually or merely seasonally.

10.07 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY. The following acts, omissions, places, conditions and things are declared to be public nuisances affecting peace and safety; but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the definition of Section 10.02:

- (1) **DANGEROUS SIGNS, BILLBOARDS, ETC.** All signs, billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated or constructed as to endanger the public safety.
- (2) **ILLEGAL BUILDINGS.** All buildings erected, repaired or altered in violation of City ordinances relating to materials and manner of construction of buildings and structures within the City.
- (3) **UNAUTHORIZED TRAFFIC SIGNS.** All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing which purport to be or may be mistaken as official traffic control devices or railroad signs or signals or which because of their

color, location, brilliance or manner of operation, interfere with the effectiveness of any such device, sign or signal.

- (4) OBSTRUCTION OF INTERSECTIONS. All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.
- (5) LOW HANGING TREE LIMBS. All limbs of trees which project over and less than 12' above any public street or 8' above any public sidewalk.
- (6) DANGEROUS TREES. All trees which are a menace to public safety or are the cause of substantial annoyance to the general public.
- (7) FIREWORKS. All use or display of fireworks except as provided by State laws and city ordinances.
- (8) BLIGHTED BUILDINGS AND PREMISES. Premises existing within the City which are blighted because of faulty design or construction, failure to maintain them in a proper state of repair, improper management or because of the accumulation thereon of junk or other unattractive debris, structurally unsound fences (and other items which depreciate property values) and jeopardize or are detrimental to the health, safety, morals or welfare of the people of the City. Elimination of blighted premises and prevention of blighted premises in the future is in the best interest of the residents and this shall be fostered and encouraged by this chapter. It is essential to the public interest that this chapter be liberally construed to accomplish the purposes of this subsection.
- (a) "Blighted premises" are those which contribute to conditions that are dangerous to the public health, safety, morals and general welfare of the people; the conditions necessitate excessive and disproportionate expenditure of public funds for public health, public safety, crime prevention, fire protection and other public services; the conditions cause a drain upon public revenue and impair the efficient and economical exercise of governmental functions in such areas.
- (b) Elimination of blighted premises and prevention of blighted premises in the future is in the best interest of the residents and this shall be fostered and encouraged by this chapter. It is essential to the public interest that this chapter be liberally construed to accomplish the purposes of this subsection.
- (9) LOW-HANGING WIRES AND CABLES. All electrical wires and cables over streets, alleys or public grounds which are strung less than 18' above the surface thereof, and any other wires or cables less than 16' above the surface thereof.

- (10) NOISY ANIMALS OR FOWL. The keeping or harboring of any animal or fowl which, by frequent or habitual howling, yelping, barking, crowing or making of other noises, greatly annoys or disturbs a neighborhood or any considerable number of persons within the City.
- (11) OBSTRUCTIONS OF STREETS; EXCAVATIONS. All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the ordinances of the City, but including those which, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished or which do not conform to the permit.
- (12) UNLAWFUL ASSEMBLIES. Any unauthorized or prohibited use of property abutting on a public street, alley or sidewalk, or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.
- (13) FLAMMABLE LIQUIDS. Repeated or continuous violations of the ordinances of the City or the laws of the State relating to the storage of flammable liquids.
- (14) PROHIBITED USES OF TRAILS AND PATHS. Use of the City-developed path along the Sheboygan River and other City-developed paths in the City of Kiel by ATV's and snowmobiles is prohibited. Use by horses, ATV's and snowmobiles of the asphalt trail between the City of Kiel and the City of New Holstein and any other similar trails in the City is prohibited.

10.08 ABATEMENT OF PUBLIC NUISANCES.

- (1) ENFORCEMENT. The Chief of Police, Fire Chief, and Building Inspector shall enforce those provisions of this chapter that come within the jurisdiction of their offices; and they shall make periodic inspections and inspections upon complaint to ensure that such provisions are not violated. No action shall be taken under this section to abate a public nuisance unless the officer has inspected or caused to be inspected the premises where the nuisance is alleged to exist and has satisfied himself that a nuisance does in fact exist.
- (2) SUMMARY ABATEMENT. If the inspecting officer determines that a public nuisance exists within the City and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Mayor may direct the proper officer to cause the same to be abated and charge the costs thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.
- (3) ABATEMENT AFTER NOTICE. If the inspecting officer determines that a public nuisance exists on private premises but that such nuisance does not threaten great and immediate danger to the

public health, safety, peace, morals or decency, he shall serve notice on the person causing or maintaining the nuisance to remove the same within 10 days. If such nuisance is not removed within 10 days, the proper officer shall cause the nuisance to be removed as provided in sub. (2).

- (4) OTHER METHODS NOT EXCLUDED. Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the City or its officials in accordance with the laws of the State.
- (5) COURT ORDER. Except when necessary under sub. (2), an officer hereunder shall not use force to obtain access to private property to abate a public nuisance but shall request permission to enter upon private property if such premises are occupied and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.

10.09 COST OF ABATEMENT. In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the City shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance; and if notice to abate the nuisance has been given the owner, such cost shall be assessed against the real estate as a special charge.

10.10 PENALTY. Any person who shall violate any provision of this chapter, or any regulation, rule or order made hereunder, or permit or cause a public nuisance, shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

10.11 CHRONIC NUISANCE PREMISES

- (1) FINDINGS. The Common Council finds that certain premises within the City receive and require more than the general, acceptable level of police services. Such premises place an undue and inappropriate burden on City of Kiel taxpayers, and constitute public nuisances. The Common Council therefore authorizes the Chief of Police to charge the owners of such premises the costs associated with abating the violations at premises where nuisance activities chronically occur and to provide for forfeitures for the failure of property owners to abate such nuisance activities.
- (2) DEFINITIONS. The following terms shall be defined as follows:
 - (a) "Chief of Police" means the Chief of the Kiel Police Department or his or her designee.
 - (b) "Chronic Nuisance Premises" means premises that meet any of the following criteria:
 - 1. The premises has had three (3) or more Nuisance Activities resulting in Enforcement Action on separate occasions within thirty (30) days, or;

2. The premises has had six (6) or more Nuisance Activities resulting in Enforcement Action on separate occasions within a twelve (12) month period of time.
- (c) "Enforcement Action" means any of the following: The physical arrest of a person(s), the issuance of a citation(s) for a law violation and/or referral of charges by the police department to the City Attorney or District Attorney for prosecution for Nuisance Activities.
- (d) "Nuisance Activity" shall mean any of the following activities, behaviors or conduct occurring on or within two hundred (200) feet of a premises whenever engaged in by premises owners, operators, occupants or a person or persons associated with a premises:
1. An act of Harassment, as defined in §947.013, Wis. Stats.
 2. Disorderly Conduct, as defined in §947.01, Wis. Stats.
 3. Crimes of Violence as defined in §940, Wis. Stats.
 4. Lewd and Lascivious Behavior, as defined in §944.20, Wis. Stats.
 5. Prostitution, as defined in §944.30, Wis. Stats.
 6. Keeping a Place of Prostitution, as defined in §944.34, Wis. Stats.
 7. Soliciting Prostitution, as defined in §944.32, Wis. Stats.
 8. Patronizing Prostitutes, as defined in §944.31, Wis. Stats.
 9. Pandering, as defined in §944.33, Wis. Stats.
 10. Theft, as defined in §943.20, Wis. Stats.
 11. Receiving Stolen Property, as defined in §943.34 Wis. Stats.
 12. Arson, as defined in §943.02, Wis. Stats.
 13. Possession, Manufacture, or Delivery of a Controlled Substance or related offenses, as defined in Ch. 961, Wis. Stats.
 14. Gambling, as defined in §945.02, Wis. Stats.
 15. Animal violations as defined by §9.11, Kiel Municipal Code.
 16. Trespassing, as defined in §943.13 and §943.14 Wis.Stats.
 17. The production or creation of excessive noise, as defined in §9.06, Kiel Municipal Code.
 18. Loitering, as defined in §9.08, Kiel Municipal Code.
 19. Littering, as defined in §9.11, Kiel Municipal Code.
 20. Crimes involving illegal possession or use of firearms as defined in §941, §948.60, Wis.Stats., and §9.02, Kiel Municipal Code.
 21. Indecent exposure as defined in §944.20(1)(b), Wis.Stats.
 22. Possessing open intoxicants in public, as defined in §11.28 and §11.39, Kiel Municipal Code.

23. Selling or giving away tobacco products to persons under the age of eighteen (18) as defined in §9.19, Kiel Municipal Code.
 24. Illegal sale, discharge and use of fireworks as defined in §9.04, Kiel Municipal Code.
 25. Truancy and contributing to truancy as defined in §9.21, Kiel Municipal Code.
 26. The operation of structures for the purpose of prostitution or gambling as defined in §10.04(1), Kiel Municipal Code.
 27. Underage consumption, possession or procurement of alcohol, as defined in §125, Wis. Stats. and §11.25, Kiel Municipal Code.
 28. Conducting a disorderly, riotous, or indecent licensed premise, as defined in §10.04 (1) and §11.16 (1), Kiel Municipal Code.
 29. Illegal sale of intoxicating liquor or fermented malt beverages, as defined in §125, Wis. Stats., and §11, Kiel Municipal Code.
 30. Any conspiracy to commit, as defined in §939.31, Wis. Stats., or attempt to commit, as defined in §939.32, Wis. Stats., any of the activities, behaviors or conduct enumerated above.
 31. Any act of aiding and abetting, as defined in §939.05, Wis. Stats., any of the activities, behaviors or conduct enumerated above.
 32. The use of, or allowing the use of, cigarette or tobacco products as prohibited by §9.20 of the Kiel Municipal Code.
 33. Frivolous calls to the police.
- (e) "Person associated with a premises" means the premises owner, operator, manager, officer, director, resident, occupant, guest, visitor, customer, patron or employee or agent of any of the above individuals, or one who waits to enter or attempts entry to the premises.
- (f) "Premises" means an individual or multi-family dwelling unit; any property used for residential purposes whether or not owner occupied; an individual business or commercial property; and associated common areas.
- (3) CHRONIC NUISANCE PREMISES PROHIBITED. It shall be unlawful for any property owner, operator, tenant, occupant, or person associated with a premises to allow the establishment of, keep, or maintain a chronic nuisance premises as described herein.
- (4) NOTICE OF CHRONIC NUISANCE Whenever the Chief of Police determines that:
- (a) three (3) or more Nuisance Activities resulting in Enforcement Action have occurred on separate occasions at the premises within thirty (30) days, or:

(b) six (6) or more Nuisance Activities resulting in Enforcement Action have occurred on separate occasions at the premises within a twelve (12) month period of time, the Chief of Police shall notify the premises owner in writing that the premises is a Chronic Nuisance Premises. Nuisance activities which were reported by the owner or manager of the premises shall not be counted in determining whether a premises is a Chronic Nuisance Premises.

(5) PROCEDURE.

(a) Upon determining that a premises meets the definition of a Chronic Nuisance Premises, the Chief of Police shall provide written notice to the owner of the premises which shall contain the following information:

1. the street address or legal description sufficient to identify the premises,
2. a description of the nuisance activities that have occurred at the premises, including the dates that the nuisance activities are alleged to have occurred,
3. a statement indicating that the cost of future enforcement may be assessed as a special charge against the premises pursuant to §66.0627 Wis. Stats.,
4. a statement that the owner shall respond to the Chief of Police within ten (10) days to propose a written course of action to abate the nuisance activities or to appeal the determination, and that failure to submit a plan to abate such nuisance activities within ten (10) days shall subject the owner to a forfeiture of not less than two hundred fifty (\$250.00) and not more than one thousand dollars (\$1,000.00).
5. a statement that the owner of the premises may be subject to a forfeiture of not less than five hundred (\$500.00) dollars nor more than one thousand (\$1,000.00) dollars for each and every day the owner maintains, keeps or allows the Chronic Nuisance Premises to exist.
6. a notice as to the appeal rights of the owner.

(b) The above notice shall be deemed to be properly delivered to the owner if delivered by any one of the following methods:

1. by personally delivering the notice to the premises owner, or
2. by sending it registered mail or by certified mail return receipt requested to the owner of the premises last known address, or
3. if the premises owner cannot be located, the notice shall be deemed to be properly delivered if a copy of it is left at the owner's usual place of abode in the presence of some competent member of the family at least fourteen (14) years of age, or a competent adult currently residing there and who shall be informed of the contents of the notice, or

4. by publication as a Class 1 notice together with mailing the notice to the owner's last known residential or business address.
- (c) Upon receipt of the notice, the premises owner shall respond within ten (10) days to the Chief of Police with a written course of action outlining the abatement actions the premises owner proposes to take in response to the notice. The Chief of Police may accept, reject or work with owner to modify the proposal. The proposal shall be deemed acceptable if it can reasonably be expected to abate the Nuisance Activities within sixty (60) days after submission of the proposal.
- (6) COST RECOVERY.
- (a) Whenever the Chief of Police determines that additional nuisance activity has occurred on the premises for which a notice has been served pursuant to (5)(b) above, that this nuisance activity has occurred not less than fifteen (15) days after the notice has been served, and that the owner has not complied with the requirements of (5)(c), the Chief of Police shall then cause all costs, fees and expenses to be charged against the owner of the premises and if unpaid, levied and collected by the City as a special charge against the premises pursuant to Sec. 66.0627.
- (b) Calculation. In calculating the fees and expenses that may be levied and collected by the City as a special charge under (a) above, the Chief may consider but is not limited to the actual labor costs, including overtime, materials, vehicle expenses and related administrative time for enforcement action upon and/or pertaining to the premises in calculating the total costs, fees and expenses.
- (7) PENALTIES. In addition to the recovery of costs, expenses and fees as provided in subsection (6)(a) and (b), the following penalties may be jointly and severally sought and/or employed by the City and may be ordered and/or imposed for violations herein:
- (a) A premises owner who fails to respond to the Chief of Police within ten (10) days with a written course of action to abate the nuisance activities, pursuant to subsection (5)(c), shall forfeit and pay to the City a forfeiture of not less than two hundred fifty (\$250.00) and not more than one thousand dollars (\$1,000.00) plus court costs and fees.
- (b) Any person who shall allow the establishment of, keep, or maintain a chronic nuisance premises after notice by the Chief of Police that the premises were designated Chronic Nuisance Premises shall forfeit and pay to the City not less than five hundred dollars (\$500.00) nor more than (\$1,000.00) for each separate incident of nuisance activity.

(c) The foregoing penalties and remedies are not in lieu of any other legal or equitable remedies available pursuant to other city ordinances, state statutes, or state administrative codes.

- (8) APPEAL. Appeal of the determination of the Chief of Police declaring a property to be a Chronic Nuisance Premises or appeal of the imposition of special charges against the premises, shall be submitted in writing to the Administrative Review Appeals Board within ten (10) days of receipt of notice of the determination or imposition of special charges. In the event such appeal is timely filed, all parties shall be afforded an opportunity to present evidence and to rebut or offer countervailing evidence at a hearing after reasonable notice. The review procedures provided by Chapter 68, Wis. Stats. shall not apply to appeals under this ordinance.
- (9) WHEN NUISANCE DEEMED ABATED. The public nuisance created by a Chronic Nuisance Premises shall be deemed abated when no enforcement action to address nuisance activities occurs for a period of six (6) months from the date stated on the notice declaring the premise a Chronic Nuisance Premise.

CHAPTER 11
ALCOHOL BEVERAGES

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GENERAL LICENSING PROVISIONS

11.01 LICENSE FEES. Unless otherwise indicated, fees for licenses issued under this chapter shall be as follows:

- (1) CLASS A FERMENTED MALT BEVERAGE RETAILER'S LICENSE. \$150 per year.
- (2) CLASS B FERMENTED MALT BEVERAGE RETAILER'S LICENSE. \$100 per year.
- (3) TEMPORARY CLASS B (PICNIC) LICENSE. \$10.
- (3) WHOLESALE'S FERMENTED MALT BEVERAGE LICENSE. \$50 per year.
- (4) RETAIL CLASS A INTOXICATING LIQUOR LICENSE. \$200 per year.
- (5) RETAIL CLASS B INTOXICATING LIQUOR LICENSE. \$250 per year.
- (6) TRANSFER FROM ONE PREMISES TO ANOTHER. \$10 per transfer.
- (7) OPERATOR'S LICENSE. \$45 for a two year period; \$15 for any period of less than one year.
Application fee is non-refundable.
- (8) TEMPORARY OPERATOR'S LICENSE. \$5 FOR 1-14 days for persons employed by or donating their services to non-profit corporations. **Application fee is non-refundable.**
- (9) PROVISIONAL LICENSE. \$35 for a two year period; \$20 for any period of less than one year – Person must be enrolled in State Beverage Server Training course. Application fee is non-refundable.
- (10) RESERVE CLASS B LIQUOR LICENSE. Said license shall have the meaning established by Wis. Stats., Section 125.51(4)(a)4. The initial fee for said license shall be \$10,000. The annual fee for obtaining the initial license and for renewal of a license granted under this section shall be the fee established by Section 11.01(5)."

11.02 DEFINITIONS. As used in this chapter, the following terms have the meanings indicated:

- (1) ALCOHOL BEVERAGES. Fermented malt beverages and intoxicating liquor.
- (2) BREWER. Any person who manufactures fermented malt beverages for sale or transportation.
- (3) CLUB. An organization, whether incorporated or not, which is the owner, lessee or occupant of a building or portion thereof used exclusively for club purposes, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain and which only sells alcohol beverages incidental to its operation.
- (4) DEPARTMENT. The State Department of Revenue.
- (5) FERMENTED MALT BEVERAGES. Any beverage made by the alcohol fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing 0.5% or more of alcohol by volume.

- (6) HOTEL. All places where accommodations are offered for pay to transients, in 5 or more rooms, and all places used in connection therewith provided with a restaurant. See Section 125.02(7), Wis. Stats.
- (7) INTOXICATING LIQUOR. All ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include "fermented malt beverages."
- (8) LICENSE. An authorization to sell alcohol beverages issued by the City Council, or for sub (g) by the City Clerk-Treasurer under this chapter. Licenses issued under this chapter are described as follows:
- (a) Class A Fermented Malt Beverage License. Authorizes retail sales of fermented malt beverages in original packages, containers and bottles for consumption off the premises where sold.
 - (b) Class B Fermented Malt Beverage License. Authorizes retail sales of fermented malt beverages to be consumed whether on the premises where sold or off the premises.
 - (c) Temporary Class B License. A fermented malt beverage license issued to bona fide clubs, county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for not less than 6 months before the date of application, and to posts of veterans' organizations authorizing them to sell fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society.
 - (d) Wholesaler's Fermented Malt Beverage License. Authorizes sales of fermented malt beverages, only in original packages or containers, to retailers or wholesalers, not to be consumed in or about the premises where sold.
 - (e) Retail Class A Intoxicating Liquor License. Authorizes the retail sale of intoxicating liquor in original packages, containers and bottles for consumption off the premises where sold.
 - (f) Retail Class B Intoxicating Liquor License. Authorizes retail sales of intoxicating liquor for consumption on the premises where sold by the glass and in the original package or container, in multiples not to exceed 4 liters at any one time, and to be consumed off the premises where sold. Wine may be sold for consumption off the premises in the original package or otherwise in any quantity.
 - (g) Operator's License. A license which authorizes a person who has attained the legal drinking age, who is neither the licensee nor the agent of the licensee, to serve or sell alcohol beverages in any place operated under a Class A or B license or permit without the immediate supervision of the licensee or agent or a person holding an operator's license on the premises at the time.

All operator's licenses shall be for 2 years and expire on June 30th of odd-numbered years. The Clerk-Treasurer may issue a license for less than 2 years, and that term shall end June 30th.

- (h) Provisional Operator's License.** [#372 10/8/91] The City Clerk-Treasurer may issue a provisional operator's license to a person qualified under Chapter 125, Wis. Stats. for an operator's license, provided such person has applied for a regular operator's license and is enrolled in a training course under Section 125.17(6), Wis. Stats. The fee for a provisional operator's license shall be \$25.00 and such license shall expire 60 days after its issuance. A provisional license may not be issued to any person who has been denied an operator's license by the Common Council, and the City Clerk-Treasurer may revoke the provisional operator's license if he or she discovers that the holder of the license made a false statement on the application.
- (i) Waiting Period.** An application under 11.02(8) that is denied by the City Council for any reason will be required to wait 6 months from the date of denial before re-applying.
- (9) MANUFACTURER.** A person, other than a rectifier, who ferments, manufactures or distills intoxicating liquor.
- (10) PEACE OFFICER.** A sheriff, under sheriff, deputy sheriff, police officer, constable, marshal, deputy marshal or any employee of the Department of Revenue or the Department of Justice authorized to act under Chapter 125, Wis. Stats.
- (11) PERMIT.** Any permit issued by the Department of Revenue under Chapter 125, Wis. Stats.
- (12) PERSON.** A natural person, sole proprietorship, partnership, limited liability company, corporation or association.
- (13) PREMISES.** The area described in a license or permit.
- (14) REGULATION.** Any rule or ordinance adopted by the City Council.
- (15) RESTAURANT.** Any building, room or place where meals or lunches are prepared, served or sold to transients or the general public, and all places used in connection therewith. See Section 254.61(5), Wis. Stats.
- (16) RETAILER.** Any person who sells, or offers for sale, any alcohol beverages to any person other than a person holding a permit or license under this chapter.
- (17) SELL, SOLD, SALE OR SELLING.** Any transfer of alcohol beverages for a consideration or any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages or any shift, device, scheme or transaction for obtaining alcohol beverages, including the solicitation of orders for or the sale for future delivery of, alcohol beverages.

(18) WHOLESALE. A person, other than a brewer, manufacturer or rectifier, who sells alcohol beverages to a licensed retailer or to another person who holds a permit or license to sell alcohol beverages at wholesale.

(19) WINE. Products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead and sake, if such products contain .5% or more of alcohol by volume.

11.03 STATE STATUTES ADOPTED. The provisions of Chapter 125, Wis. Stats., relating to the sale, procurement and consumption of intoxicating liquor and fermented malt beverages, including provisions relating to the penalty to be imposed for violation of such statutes, except where such penalty is a fine or term of imprisonment, are adopted and made a part of this chapter by reference. A violation of any of such provisions shall constitute a violation of this chapter.

11.04 LICENSES REQUIRED.

(1) WHEN REQUIRED. No person, except as provided by Section 125.06, Wis. Stats., shall distribute, vend, sell, offer or keep for sale at retail or wholesale, deal or traffic in or, for the purpose of evading any law or ordinance, give away any beverages, or cause the same to be done, without having procured a license as provided in this chapter, nor without complying with all the provisions of this chapter and all statutes, ordinances and regulations of the State and City applicable thereto. See Section 125.04(1), Wis. Stats.

(2) SEPARATE LICENSE REQUIRED FOR EACH PLACE OF SALE. A license shall be required for each stand, place, room or enclosure or for each suite of rooms or enclosures which are in direct connection or communication to each other where alcohol beverages are kept, sold or offered for sale.

11.05 LICENSE APPLICATION.

(1) FORM. Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on forms prescribed by the State Department of Revenue and filed with the Clerk-Treasurer. The fee prescribed for such license in Section 11.01 shall be paid at the time the license is issued. The premises shall be physically described, including every room and storage space to be covered by the license and including all rooms joined by connecting entrances or not separated by a solid wall.

- (2) DUPLICATE. Upon approval, a duplicate copy of each application shall be forwarded by the Clerk-Treasurer to the State Department of Revenue.
- (3) SUBSEQUENT CHANGES. If any fact given in an application subsequently changes, the licensee shall file a notice in writing of such change with the Clerk-Treasurer within 10 days.
- (4) [#414 5/6/88] Prior to the issuance of an operator's license pursuant to Section 11.04, the Police Department shall be required to conduct a background check on each applicant. The background check system used may be the State of Wisconsin TIME system or a similar system.

11.06 FORM AND EXPIRATION OF LICENSES. All licenses shall be numbered in the order in which they are issued and shall state clearly the specific premises for which granted, the date of issuance, the fee paid and the name of the licensee and, unless sooner revoked, shall expire on June 30 thereafter except as otherwise provided. The Clerk-Treasurer shall affix his or her affidavit.

11.07 TRANSFER OF LICENSES.

- (1) AS TO PERSON. No license shall be transferable as to licensee except as provided by Section 125.04(12), Wis. Stats.
- (2) AS TO PLACE. Licenses issued pursuant to this chapter may be transferred as provided in Section 125.04(12), Wis. Stats. Application for such transfer shall be made on blanks furnished by the State Department of Revenue. Proceedings for transfer shall be had in the same manner and form as the original application.

11.08 POSTING AND CARE OF LICENSES. Every license issued under this chapter shall be posted and at all times displayed as provided in Section 125.04(10), Wis. Stats. No person shall post such license or permit any other person to post it upon premises other than those mentioned in the application or knowingly deface or destroy such license.

11.09 REVOCATION AND SUSPENSION OF LICENSES.

- (1) PROCEDURE. Whenever the holder of any license under this chapter violates any portion of this chapter, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by Section 125.12, Wis. Stats., and the provisions therein relating to granting a new license shall likewise be applicable.
- (2) EFFECT OF REVOCATION. See SECTION 11.15(7) of this chapter.

11.10 NONISSUANCE OR NONRENEWAL OF LICENSES. Whenever the applicant or holder of any license under this chapter is refused, the licensee shall be given written notice of any charges or violations against them and the reasons proposed for nonissuance or nonrenewal, and the proceedings of such license may be instituted in the manner and under the procedure established by Section 125.12, Wis. Stats., and the provisions therein relating to granting a new license shall likewise be applicable.

11.11 COMMERCIAL QUADRICYCLE LICENSING.

(1) DEFINITIONS.

- (a) "Applicant" means the individual applying for a license under this section or any person who is an officer of a corporation that is applying for a license under this section.
- (b) "Commercial Quadricycle" means a vehicle with fully operative pedals for propulsion entirely by human power that:
 - 1. has 4 wheels and is operated in a manner similar to a bicycle,
 - 2. is equipped with at least 12 seats for passengers,
 - 3. is designed to be occupied by a driver and by passengers providing pedal power to the drive train of the vehicle,
 - 4. is used for commercial purposes, and
 - 5. is operated by the vehicle owner or an employee of the owner.
- (c) "Commercial Quadricycle Business" means any enterprise that owns a commercial quadricycle or manages the operation of a commercial quadricycle.
- (d) "Commercial Quadricycle Operator's License" means a public vehicle operator's license as described in Kiel Municipal Code Section 11.11 (2).
- (e) "Public Commercial Quadricycle Operator" means any person who operates a commercial quadricycle or commercial quadricycle which transport passengers for hire or compensation.

(2) LICENSES REQUIRED.

- (a) Commercial Quadricycle Business License. No person may engage in a Commercial Quadricycle Business unless each Commercial Quadricycle used in the business is licensed. A Commercial Quadricycle Business license shall expire on December 31 of each year.
- (b) Operator's License. No person may operate a Commercial Quadricycle for purposes upon a highway or public road unless the person is licensed as a Public Commercial Quadricycle Operator. The Public Commercial Quadricycle Operator's License shall expire on December 31 of each year.

(3) COMMERCIAL QUADRICYCLE BUSINESS APPLICATION PROCESS.

- (a)** Application. A person wishing to operate a Commercial Quadricycle Business shall apply to the City Clerk for a business license in 11.11 (2) (a) using an approved form and pay the Clerk a \$25 license fee for each Commercial Quadricycle managed by the person. The Clerk shall forward the application to the police department for review. The police department shall deny the application if any of the following applies:
1. The circumstances of a pending criminal charge against the Applicant substantially relate to the licensed activity.
 2. The Applicant has been convicted of any felony, misdemeanor or other offense, the circumstances of which substantially relate to the particular job or licensed activity.
 3. The Applicant made a false statement on the application.
 4. The Applicant is under 18 years old.
- (b)** Route approval. If the police department approves the application for a Commercial Quadricycle Business License, the police department shall forward the application to the Common Council to approve, deny, or amend the proposed route.
- (c)** Appeal. If the police department denies an application for a Commercial Quadricycle Business license, the Applicant may appeal within 15 days after the police department mails a notice of denial to the Applicant. If the Applicant files a timely appeal with the Clerk, the Clerk shall schedule an appeal hearing before the Common Council.
- (d)** Hearing Before Council. The Common Council may approve any application placed on its agenda only if the Applicant is qualified under this section and may place conditions upon approval.
- (e)** Issuance. The Clerk shall issue the Commercial Quadricycle Business license if the applicant has been approved by the Common Council and has satisfied all other provisions of this section.
- (f)** Vehicle Inspection. Before a Commercial Quadricycle Business may operate a Commercial Quadricycle on a highway, the Applicant shall obtain a license sticker from the police department by passing an inspection. The police department shall collect \$25 for each Commercial Quadricycle inspection. This paragraph does not apply to a Commercial Quadricycle owned or operated by:
1. A nonprofit corporation that provides to the police department proof that the vehicle passed a state vehicle inspection.
 2. An organization which is exempt from federal income tax under IRC § 501(c)(3) that provides to the police department proof that the vehicle passed a state vehicle inspection.

- (g) Maintain liability insurance coverage for the Commercial Quadricycle containing the limits of not less than \$500,000 per occurrence combined single limit bodily injury and property damage, issued by a company authorized to do business in the State of Wisconsin. A certificate of insurance coverage specific to each Commercial Quadricycle shall be filed with the Risk Management Division.
- (h) Police Department Review. The police department shall affix a license sticker to the rear of each inspected Commercial Quadricycle if the department determines that the Commercial Quadricycle is:

 - 1. Licensed with the City Clerk.
 - 2. In a safe operating condition.
 - 3. Insured as required by this section.
 - 4. Conspicuously displaying on the exterior driver and passenger side of the vehicle:
 - a. The name or trade name of the public vehicle business.
 - b. The phone number of the public vehicle business.
 - c. A unique number assigned by the Commercial Quadricycle Business that identifies the particular vehicle.
 - 5. Conspicuously displaying within the front passenger compartment:
 - 6. A display holder within which Commercial Quadricycle Operators can show their licenses while operating the Commercial Quadricycle.

(4) COMMERCIAL QUADRICYCLE OPERATOR'S LICENSE APPLICATION PROCESS.

- (a) Application. A person wishing to obtain a Commercial Quadricycle Operator's License shall apply to the City Clerk using a Common Council approved form and pay to the Clerk the proper license fee and submit an acceptable passport-sized photo. The Clerk shall forward the application to the police department for review. If the police department approves the application, it shall forward its recommendation to the Common Council. The police department shall deny the application if any of the following applies:

 - 1. The circumstances of a pending criminal charge against the Applicant substantially relate to the licensed activity.
 - 2. The Applicant has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the particular job or licensed activity.
 - 3. The Applicant made a false statement on the application.
 - 4. The Applicant is under 18 years old.

(b) Appeal. If the police department denies an application for a Commercial Quadricycle Operator's License, the Applicant may appeal within 15 days after the police department mails a notice of denial to the Applicant. If the Applicant files a timely appeal with the Clerk, the Clerk shall schedule an appeal hearing before the Common Council. The Council shall approve the application only if the Applicant is qualified under this section and may place conditions upon approval.

(c) Issuance. The Clerk shall issue a Commercial Quadricycle Operator's License if the Applicant has been approved by the the Common Council and has satisfied all other provisions of this section.

(5) COMMERCIAL QUADRICYCLE REGULATIONS. The owner and operator of a Commercial Quadricycle are both responsible for ensuring compliance with this subsection.

(a) Licensees must adhere to the routes specified in their submitted application. New routes must be applied for and approved by the Common Council before a licensee may use the new routes. Temporary routes must be applied for and approved by the Common Council. A temporary route application must be submitted in writing and include a proposed map no later than fifteen (15) days prior to the applicant's proposed first date of operation of the temporary route. No Licensee shall operate a Commercial Quadricycle on a street closed off to public traffic regardless of whether the street is included in an approved route. Any deviation from a route without approval shall be a violation of this section.

(b) Commercial Quadricycle operation is permitted between the hours of 10:00 a.m. and 10:30 p.m. Commercial Quadricycle operation does not include the use of a Commercial Quadricycle for maintenance, inspection, or without passengers.

(c) It is unlawful for any person to operate or to permit another to operate a Commercial Quadricycle at other times or in other locations than those approved by the Common Council.

(d) No Public Commercial Quadricycle Operator shall drive, or be permitted by a Public Commercial Quadricycle Operator to drive, a Commercial Quadricycle without a valid Wisconsin driver's license, or a valid driver's license issued by any other state in the United States.

(e) Passengers on a Commercial Quadricycle may possess on or carry onto the Commercial Quadricycle no more than 36 ounces of fermented malt beverages as defined in Wis. Stat. § 125.02(6). No other alcohol beverages, as defined in Ch. 125, Wis. Stats., may be possessed on, carried upon, or consumed upon a Commercial Quadricycle.

(f) No glass containers may be carried on a Commercial Quadricycle.

- (g)** Restrictions on possession, transportation and consumption of alcohol beverages in the operation of Commercial Quadricycles upon city highways and public places shall apply to operation of Commercial Quadricycles when used for non-revenue producing events or transportation in addition to regular commercial activities.
- (h)** No driver of a Commercial Quadricycle may consume alcohol while the Commercial Quadricycle is occupied by passengers.
- (i)** No person may drive a Commercial Quadricycle with an alcohol concentration of more than 0.02.
- (j)** No person may drive a Commercial Quadricycle on which any alcohol beverages are carried or consumed other than fermented malt beverages under this section.
- (k)** No person may drive a Commercial Quadricycle on which alcohol beverages are sold and may not transport alcohol beverages on a Commercial Quadricycle for the purposes of sale or delivery upon sale.
- (l)** Passengers shall be advised by the operator, driver or other person responsible for the operation of the Commercial Quadricycle that no alcohol beverages shall be possessed on, carried upon, or consumed on a Commercial Quadricycle in violation of city ordinance or state statute, and shall conspicuously post a notice of these restrictions upon the Commercial Quadricycle in a form and manner approved by the city.
- (m)** The operator of the Commercial Quadricycle shall hold a valid operator's license pursuant to Section 11.11 (4), Kiel Municipal Code.
- (n)** The operator of the Commercial Quadricycle shall operate the vehicle at all times in compliance with applicable local and state traffic and parking laws.
- (o)** Failure of a person to comply with the regulations of this section or to operate in accordance with the approved plan of operation shall constitute grounds for revocation or suspension as provided in Section 11.09, Kiel Municipal Code.
- (p)** The Common Council may adopt and from time to time amend the regulations relating to Commercial Quadricycles and their operations, including, but not limited to, hours of operations, routes, vehicle markings and safety equipment.

RESTRICTIONS AS TO LICENSES**11.15 LICENSE RESTRICTIONS GENERALLY.**

- (1) STATUTORY REQUIREMENTS. Class A and B licenses shall be issued only to persons eligible therefor under Section 125.04(5), Wis. Stats.
- (2) LOCATION.
 - (a) No retail Class A or B license shall be issued for premises the main entrance of which is less than 300' from the main entrance of any established public school, parochial school, hospital or church. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, church or hospital to the main entrance to such premises.
 - (b) This paragraph shall not apply to premises licensed as such on June 30, 1974, nor shall it apply to any premises licensed as such prior to the occupying of real property within 300' thereof by any school building, hospital building or church building.
- (3) HEALTH AND SANITARY REQUIREMENTS. No retail Class B license shall be issued for any premises which do not conform to the sanitary, safety and health requirements of the State Department of Commerce pertaining to buildings and plumbing, to the rules and regulations of the State Department of Health and Family Services applicable to restaurants and to all such ordinances and regulations adopted by the City.
- (4) LICENSE QUOTA. The number of persons and places that may be granted a retail Class B liquor license under this chapter is limited as provided in Section 125.51(4), Wis. Stats.
- (5) CORPORATIONS. No license shall be granted to any corporation when more than 50% of the voting stock interest, legal interest or beneficial interest is held by any person or persons not eligible for a license under this chapter.
- (6) AGE REQUIREMENT. No license hereunder shall be granted to any person under the legal drinking age.
- (7) EFFECT OF REVOCATION OF LICENSE. Whenever any license has been revoked, at least 12 months shall elapse before another license shall be granted to the person whose license was revoked.
- (8) DELINQUENT TAXES, ASSESSMENTS AND CLAIMS. No license shall be granted for any premises for which taxes, assessments or other claims of the City are delinquent and unpaid, or to any person or agent delinquent in payment of such claims to the City.

- (9) ISSUANCE FOR SALES IN DWELLINGS PROHIBITED. No license shall be issued to any person for the purpose of possessing, selling or offering for sale any alcohol beverages in any dwelling house, flat or residential apartment.

11.16 REGULATION OF LICENSED PREMISES AND LICENSEES.

- (1) GAMBLING AND DISORDERLY CONDUCT PROHIBITED. Each licensed premises shall at all times be conducted in an orderly manner; and no disorderly, riotous or indecent conduct or gambling shall be allowed at any time on any licensed premises.
- (2) SALES BY CLUBS. No club shall sell intoxicating liquors or fermented malt beverages except to members and guests invited by members.
- (3) SAFETY AND SANITATION REQUIREMENTS. Each licensed premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used.
- (4) SALES TO INTOXICATED PERSONS. No licensee or permittee shall sell, vend, deal or traffic in alcohol beverages to or with a person who is intoxicated.
- (5) SOLICITATION OF DRINKS PROHIBITED. No person shall solicit or be allowed to solicit drinks on licensed premises.
- (6) SALES TO UNDERAGE PERSONS. No licensee or permittee may sell, vend, deal or traffic in fermented malt beverages to or with any person under the legal drinking age not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age or sell, vend, deal or traffic in intoxicating liquor to or with any person under the legal drinking age.
- (7) NUDE AND NEARLY NUDE DANCE PROHIBITED. [#356 9/26/89]
- (a) It shall be unlawful for a person to perform nude or nearly nude when that person appears on the premises of an establishment licensed to sell liquor for consumption on the premises, in such a manner or utilizing such attire as to expose to view any portion of the pubic area, anus, vulva or genitals, or any simulation thereof, or when any female appears on such an establishment's premises in such a manner of attire as to expose to view that portion of the breast referred to as the areola, nipple, or simulation thereof.
- (b) The proprietor or owner of a licensed establishment who knowingly permits the nude or nearly nude activity proscribed by subsection (a) on his or her premises shall have his or her liquor license for said premises revoked for not less than twelve (12) months. Each performance in violation of subsection (a) shall be a separate offense.

- (c) Any person who performs nude or nearly nude in violation of subsection (a) shall be subject to a forfeiture as stated in Section 25.04 of the Municipal Code.

11.17 CLOSING HOURS. No premises for which a wholesale or retail liquor or fermented malt beverage license has been issued shall remain open for the sale of alcohol beverages:

- (1) If a wholesale license, between 5 p.m. and 8 a.m., except on Saturday when the closing hour shall be 9 p.m.
- (2) If a retail Class A license, between 9 p.m. and 6 a.m.
- (3) [#369 12/11/90] If a retail Class B license, between 2 a.m. and 6 a.m. on week days, Monday through Friday, and between 2:30 a.m. and 6:00 a.m. on Saturdays and Sundays; except on January 1, when premises operating under a Class B license or permit are not required to close. As a further exception, on that day of each year when the standard of time is advanced under Section 175.095, Wis. Stats., the closing hours shall be between 3:30 a.m. and 6:00 a.m.
- (4) Hotels and restaurants whose principal business is the furnishing of food or lodging to patrons, and bowling alleys and golf courses, may remain open for the conduct of their regular business but no intoxicating liquors or fermented malt beverages shall be sold during prohibited hours.

11.18 OUTDOOR PREMISES

(1) PURPOSE. The City Council finds that restrictions are necessary for Outdoor Premises (also referred to as "Beer Gardens") at premises holding "Class B" and Class "B" liquor and fermented malt beverages licenses due to concerns arising from noise, density and related problems. This Section enacted pursuant to police power provides a framework for regulatory controls on such Outdoor Premises.

(2) APPROVAL REQUIRED.

- (a) No Licensee shall conduct or sponsor any Outdoor Premises on property forming any part of the real property on which the licensed premises exist without the prior approval of the City Council.
- (b) Permit Required for Outdoor Premises / Outdoor Consumption. No licensee shall permit the consumption of alcohol beverages on any part of the licensed premises not enclosed within the building, except under an Outdoor Premises permit granted by the City Council. The permits are a privilege in which no rights vest and, therefore, may be revoked by the City Council at its pleasure at any time or shall otherwise expire on June 30 of each year. No person shall consume

or have in his or her possession alcohol beverages on any unenclosed part of a licensed premise which is not described in a valid Outdoor Premises permit.

- (3) APPLICATION.** If a Licensee desires to maintain an Outdoor Premises on the Licensee's property, the Licensee shall file an application with the Clerk-Treasurer setting forth the following information: The application shall accurately describe the area intended for use as an Outdoor Premises and shall indicate the nature of fencing or other measures intended to provide control over the operation of the Outdoor Premises. Every Outdoor Premises shall be enclosed with a fence or wall of a style and design subject to approval by the City of Kiel City Council upon recommendation of the City Building Inspector and Plan Commission. Except for emergency exits, customer access to the Outdoor Premises must be made through the main licensed premise. Application must also include a detailed drawing with measurements describing the outdoor area to be included within the description of the licensed premise as an "Outdoor Premises". The Licensee's application must also include a plan for maintaining the cleanliness of the Outdoor Premise to prevent the accumulation of litter and/or other refuse.
- (4) FILING FEE.** The application shall be accompanied by payment of a non-refundable fee of Thirty Dollars (\$30.00) for review and processing of the application.
- (5) REVIEW.** The City Council shall review the applications in light of the standards of this Section. If the nature of the property requires the imposition of additional regulations, the City Council may impose these regulations upon an express finding detailing the reasons for additional regulation. All property owners within one hundred fifty (150) feet of the proposed Outdoor Premises shall be notified of the pendency of an application for a permit by first class mail and be provided with an opportunity in a public forum to voice their opinion to the City Council to approve or disapprove of an Outdoor Premises Permit.
- (6) LIMITAIONS ON ISSUANCE OF OUTDOOR PREMISES PERMITS.** Outdoor premises approved under this section are subject to the following requirements;
- (a)** Outdoor Premises may be permitted only on properties located in areas zoned commercial.
 - (b)** Outdoor Premises shall not be located in any actual or required yard area that directly abuts an adjoining property specifically used for residential purposes unless there is at least a 3 foot buffer zone between the Outdoor Premises and the adjoining property and an approved privacy fence is installed (See building code for fence reference)

- (c) Lighting in the Outdoor Premises must be shielded and not be of intensity or brilliance to create glaring which is distracting or nuisance to adjoining property owners or which is a hazard or danger to vehicular traffic.
 - (d) Noise from any source that is emitted from the outdoor area is to cease as of 10:00pm unless specifically modified (increased or decreased) by the City Council as part of the permit application review process. Factors to consider when modification is necessary include the physical location of the licensed premise and its proximity to adjoining residential properties that may be affected by noise from the Outdoor Premise.
 - (e) No permit shall be issued for an Outdoor Premises if the Outdoor Premises area is greater than fifty percent (50%) of the gross area of the adjoining licensed premises.
 - (f) Maximum capacity for an Outdoor Premise is subject to the State of Wisconsin Building Codes as part of the licensed premise.
 - (g) The sale of alcoholic beverages upon an area licensed as an outdoor premise shall be prohibited. Consumption of alcoholic beverages shall be permitted but the sale or service of alcoholic beverages upon said licensed area licensed as an outdoor premise is prohibited.
- (7) STATE STATUTES ENFORCED WITHIN OUTDOOR PREMISIS. Every permittee under this Section shall comply with and enforce all provisions of Chapter 125, Wis. Stats., applicable to Class "B" licensed premises, except insofar as such provisions are clearly inapplicable. Violation of the provisions of Chapter 125, Wis. Stats., shall be grounds for immediate revocation of the Outdoor Premises permit by the Common Council.
- (8) VIOLATIONS. Failure of the Licensee to comply with any of the provisions of this Section shall be grounds for suspension, non-renewal or revocation of the Licensee's alcohol beverage license or licenses.

11.19 SIDEWALK CAFÉ PERMITS

- (1) PURPOSE. To enliven downtown and other areas of the city and provide opportunities for social and economic activities, the city council finds and determines:
- (a) That there exists the need for outdoor eating facilities in certain areas of the city to provide a unique environment for relaxation, social interaction, and food consumption.
 - (b) That sidewalk cafés will permit enhanced use of the available public rights-of- way, will complement business operations operating from fixed premises, and will promote economic activity in the area.

(c) That the existence of sidewalk cafés encourages additional pedestrian traffic but may impede the free and safe flow of pedestrians such that a need exists for regulations and standards to ensure safety.

(d) That the establishment of permit conditions and safety standards for sidewalk cafés is necessary to protect and promote public health, safety and welfare.

(2) DEFINITIONS. For purposes of this Ordinance, the following terms have the following meanings:

(a) "Alcohol Beverages" means fermented malt beverages and intoxicating liquor as defined in Wis. Stat. Sec. 125.02(1), (6) and (8) or any successor to that statute.

(b) "Restaurant" as defined in Wis. Stat. Sec. 97.01(14g) and if serving alcohol, operating within the guidelines set forth in Kiel Municipal Code Sec. 11.26(6).

(c) "Sidewalk Café" means an expansion of a restaurant, bistro, coffee shop or other establishment offering beverages or food that provides seating for more than 3 people in the form of a group of tables, chairs, benches, trash containers and suitable decorative devices maintained upon any part of the sidewalk for use on part of the public property that immediately adjoins the licensed premises for the purpose of consuming food or beverages of the patrons of the establishment.

(3) LOCATION.

(a) No permit will be issued for a sidewalk café located in a nonresidential district if any part of the sidewalk café is within fifty (50) feet of a structure used for residential purposes and located on a residentially zoned parcel except residential uses located in the same structure as the licensed premises or a residence which is owned by the same person who owns the licensed premises. Upon appeal to the City Council, a full or partial waiver of the distance requirements in this provision may be granted.

(b) No permit will be issued to an establishment if it is located in a district zoned R-1 through R-3.

(4) APPLICATION. Application for a permit to operate a sidewalk café is submitted to the City Clerk's Office and will include at least the following:

(a) A site sketch accurately depicting the dimensions of the existing sidewalk area or other public property and adjacent private property for the proposed location of the sidewalk café including the layout of any furnishings; and

(b) The size and number of tables, chairs, steps, planters, location of doorways, trees, sign posts, hydrants, sidewalk benches, trash receptacles, heaters, traffic signal poles, light poles and any other obstructions, either existing or proposed.

- (c) If the applicant intends to sell or serve alcoholic beverages to patrons of the sidewalk café, the applicant must obtain the appropriate alcohol beverage license describing and including the outdoor area where alcoholic beverages will be sold, served or consumed.
- (d) The permittee is responsible for complying with the approved sidewalk café plan as submitted in the initial permit application.
- (5) APPEALS. Any person denied a sidewalk café permit may appeal the denial. An appeal may be made in writing to City Clerk, who will forward the request to the City Administrator and City Council. The City Council will convene within 30 days of the appeal being filed with the Clerk to hear from the Chief of Police and the affected business. After deliberation, the City Council will act on the appeal. A written copy of the decision will be provided to the affected business.
- (6) PERMIT AND FEES.

 - (a) Fee for a sidewalk café permit is fifty (\$50.00) dollars per year.
 - (b) The permit issued hereunder is not transferable by the owner to any other restaurant or any subsequent owner of the premises.
- (7) DAYS AND HOURS OF OPERATION. Each sidewalk café permit is effective from March 15 to November 15, with hours of operation from 11:00 A.M. to 10:00 P.M. Operation of a sidewalk café outside of those days and hours is prohibited.
- (8) SUSPENSION OR REVOCATION OF PERMIT. The City Administrator or the Chief of Police, upon obtaining reasonable information that any permittee has violated any provision of this Section or any state or federal law may immediately suspend or revoke a permit granted under this Chapter pending hearing by the City Council.
- (9) LIABILITY & INSURANCE. No person may obtain a sidewalk café permit unless the applicant procures commercial liability insurance.

 - (a) The permittee agrees to maintain insurance in the amount of \$1,000,000 per occurrence and name the City of Kiel as additional insured showing how the coverage extends to the area used for the sidewalk café, insured. The permittee must provide the City with a certificate of insurance and must execute an indemnification agreement.
 - (b) As a condition of the permit, the permittee must indemnify and hold the City harmless from any claims arising from the use of the permit.
- (10) STANDARDS & CONDITIONS.

 - (a) No portion of any sidewalk café may encroach on the sidewalk adjacent to any other property other than the property that is licensed in this section.

- (b) The permittee must maintain approximately a four-foot-wide unencumbered, open and accessible portion of the sidewalk for pedestrian traffic safety at all times. The permittee must comply with all applicable requirements of the Americans with Disabilities Act, 42 USC 12101 to 12213, and all applicable Federal, State and local laws.
- (c) The permittee will provide for the removal of garbage and be responsible for the cleanliness of the outdoor area.
- (d) The use of a portion of the public property as a sidewalk café is not an exclusive use and will not have any vested rights. All public improvements, including but not limited to, trees, light poles, traffic signals, manholes or any public initiated maintenance procedures will take precedence over said use at all times.
- (e) The City Administrator, Chief of Police, or their designees may temporarily order the termination of sidewalk cafes for the following reasons, but not limited to, special events, including but not limited to, construction, parades, sponsored runs or walks, or for any reason to maintain the health, safety, and welfare of the public. The permittee is responsible for removing any furniture, furnishings, and equipment upon termination, and if the permittee fails to do so, the City may remove the furniture and other items and store them if necessary, at the permittee's expense.
- (11) FURNISHINGS: All furniture, furnishings, and equipment must be of safe, sturdy construction and maintained in good repair. Any heaters or other equipment/furnishings must be portable and approved for outdoor use. All umbrellas must be anchored in such a way that a sudden burst of wind will not lift them out of their holders or blow them over. No public property, including, but not limited to, light poles, utility poles, flower planters, trees or other amenities, may be used as a point of attachment for anything, including, but not limited to, ropes, posters or signs.
- (12) LIGHTING: The permittee must keep the sidewalk café area sufficiently illuminated so as to prevent injury to persons using the same. Any lighting of the outdoor area must be shielded so as not to shine directly onto adjoining property or create a glare which is distracting to adjoining property or vehicles traveling in the public right-of-way.
- (13) MUSIC/NOISE: Noise from any source that is emitted from the outdoor area must not exceed the standards contained in Kiel Municipal Code Sec. 9.06 Loud, Disturbing, or Unnecessary Noises Prohibited.
- (14) SERVING OF ALCOHOL BEVERAGES. The City of Kiel allows permittees to serve alcoholic beverages in outdoor cafes, provided the permittee complies with all requirements for obtaining an alcoholic

beverage license, and the sidewalk café is listed on the alcohol beverage license application as being an extension of the licensed premises. Alcohol may be served at sidewalk café if:

- (a)** The permittee has a valid and appropriate retail alcohol beverage license for the principal premises.
- (b)** No alcoholic beverages may be served at any time if the restaurant has not received Council approval for the enlargement of the premises under its liquor license that includes the area of the public sidewalk where the sidewalk café is located. Further, the liquor license will be automatically conditioned at the time of the enlargement of premises to allow for the consumption of alcoholic beverages within the sidewalk café area only. Approval of the enlargement of premise area (sidewalk café) does not grant any permittee or licensed premise any vested rights and such approval may be suspended or revoked or non- renewed without cause being shown.
- (c)** The outdoor area utilized for service and consumption of food and alcohol beverages must be visible from the restaurant establishment.
- (d)** Alcoholic beverages must be sold and served by the permittee or permittee's employees who have operator's licenses and sold, served, and consumed by patrons seated at tables in the sidewalk café. (Reference Wisconsin Statutes sections 125.32(2) and 125.68(2).
- (e)** Alcoholic beverages may only be served at the sidewalk café when food service is available through the licensed establishment.
- (f)** The permittee will not allow patrons of the sidewalk café to bring alcohol beverages which were not purchased at the establishment into the sidewalk café, nor to carry open containers of alcohol beverages about in the sidewalk café area, nor to carry open containers of alcohol beverages served in the sidewalk café outside of the sidewalk café area.
- (g)** The permittee must display signage indicating alcohol may only be consumed by patrons seated at tables in the sidewalk café.
- (h)** Alcohol beverages must be dispensed inside the establishment. No food preparation or beverage dispensing equipment is permitted in the sidewalk café area except when permitted by a city issued special event permit.
- (i)** Permittee is responsible for the acts of all employees, patrons and agents of the business. A violation of any provision of this section, any City ordinance or Wis. Stat. Ch. 125, by a patron, agent or employee of the permittee, will constitute a violation by the permittee.

(j) If any person violates this ordinance on three or more occasions in any twelve-month period, and such violations do not involve the same incident, the City may order the revocation of the sidewalk café permit and the permittee is liable for all court costs incurred in pursuing the order.

(15) PENALTY. Any person who commits a violation of this chapter is subject to a forfeiture as provided in Section 25.04 of this municipal code.

RESTRICTIONS AS TO UNDERAGE PERSONS

11.25 SALES OF ALCOHOL BEVERAGES TO. No person shall procure for, sell, dispense or give away any fermented malt beverages to any person under the legal drinking age not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age or procure for, sell, dispense or give away any intoxicating liquor to any person under the legal drinking age.

11.26 PRESENCE OF UNDERAGE PERSONS IN PLACES OF SALE. No person under the legal drinking age not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age may enter or be on the premises for which a license or permit for the retail sale of alcohol beverages has been issued, for any purpose except the transaction of business pertaining to the licensed premises with or for the licensee or his or her employee. The business may not be amusement or the purchase, receiving or consumption of edibles or beverages or similar activities which normally constitute activities of a customer of the premises. This section does not apply to:

- (1) A person under the legal drinking age who is a resident, employee, lodger or boarder on the premises controlled by the proprietor, licensee or permittee of which the licensed premises consist or are a part.
- (2) A person under the legal drinking age who enters or is on Class A retail intoxicating liquor premises for the purpose of purchasing edibles or beverages other than alcohol beverages. Any person under the legal drinking age so entering the premises may not remain on the premises after the purchase.
- (3) Hotels, drug stores, grocery stores, bowling alleys, cars operated by any railroad, regularly established athletic fields, stadiums or public facilities as defined in Section 125.51(5)(b)1.d., Wis. Stats., which are owned by a county or municipality.
- (4) Concessions authorized on State-owned premises in the State parks and State forests and defined or designated in Chapters 27 and 28, Wis. Stats., and parks owned or operated by agricultural societies.

- (5) Ski chalets and golf clubhouses.
- (6) Premises operated under both a Class B fermented malt beverage or a Class B intoxicating liquor license or permit and a restaurant permit where the principal business conducted is that of a restaurant. If the premises are operated under both a Class B fermented malt beverage or Class B intoxicating liquor license or permit and a restaurant permit, the principal business conducted is presumed to be the sale of alcohol beverages, but the presumption may be rebutted by competent evidence.
- (7) A person under the legal drinking age who enters or remains on Class B premises for the purpose of transacting business at an auction or market as defined in Section 125.07(3)(a)(7), Wis. Stats., if the person does not enter or remain in a room where alcohol beverages are sold, furnished or possessed.

11.27 MISREPRESENTATION OF AGE.

- (1) No person shall misrepresent that he or she is at least of legal drinking age for the purpose of receiving alcohol beverages from a licensee or permittee.
- (2) Proof of the following facts by a seller of alcohol beverages to a person under the legal drinking age is a defense to any prosecution for a violation of this section:
 - (a) That the purchaser falsely represented in writing and supported with other documentary proof that he or she was of legal drinking age.
 - (b) That the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal drinking age.
 - (c) That the sale was made in good faith and in reliance on the written representation and appearance of the purchaser in the belief that the purchaser was of legal drinking age.
- (3) Every retail alcohol beverage licensee or permittee shall cause a book to be kept for the purposes of this section. The licensee or permittee or his or her employee shall require any person who has shown documentary proof which substantiates that the person is of legal drinking age to sign the book if the person's age is in question. The book shall show the date of the purchase of alcohol beverages, the identification used in making the purchase, the address of the purchaser and the purchaser's signature.

11.28 POSSESSION OR CONSUMPTION IN PUBLIC PLACES. No person under the legal drinking age not accompanied by his or her parent, guardian or spouse who has attained legal drinking age shall knowingly possess or consume in public any intoxicating liquor or fermented malt beverage. This section shall not prevent a person under the legal drinking age in the employ of a licensee or permittee from possessing fermented malt beverage for sale or delivery to customers.

11.29 POSSESSION ON SCHOOL GROUNDS.

(1) **DEFINITIONS.** In this section, terms shall have the meanings prescribed below:

(a) Motor Vehicle. A motor vehicle owned, rented or consigned to a school.

(b) School. A public, parochial or private school which provides an educational program for one or more grades between grades K and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.

(c) School Administrator. The person designated by the governing body of a school as ultimately responsible for the ordinary operations of a school.

(d) School Premises. Premises owned, rented or under the control of a school.

(2) **PROHIBITED.** Except as provided by sub. (3), no person shall possess or consume alcohol beverages:

(a) On school premises.

(b) In a motor vehicle, if a pupil attending the school is in the motor vehicle.

(c) While participating in school-sponsored activities.

(3) **EXCEPTIONS.** Alcohol beverages may be possessed or consumed on school premises, in motor vehicles or by participants in school-sponsored activities if specifically permitted in writing by the school administrator consistent with applicable laws and ordinances.

OTHER RESTRICTIONS

11.35 SALES TO INTOXICATED PERSONS. No person shall procure for, sell, dispense or give away alcohol beverages to a person who is intoxicated.

11.36 FREE ALCOHOL BEVERAGES IN RESTAURANTS. No person holding a permit to operate a restaurant may give away or permit to be given away any alcohol beverages on the restaurant premises.

11.37 PUBLIC PLACE. No owner, lessee or person in charge of a public place shall permit the consumption of alcohol beverages on the premises of the public place unless the person has an

appropriate retail license or permit. This section does not apply to municipalities, buildings and parks owned by counties, regularly established athletic fields and stadiums, school buildings, churches, premises in a state fair park or clubs.

11.38 PLACE-TO-PLACE DELIVERIES. No person shall peddle any alcohol beverage from house-to-house where the sale and delivery are made concurrently.

11.39 PUBLIC CONSUMPTION OF ALCOHOL BEVERAGES PROHIBITED. No person shall drink any alcohol beverage or have in his possession open containers of alcohol beverages on any public sidewalk, street or alley within the City. The only exception shall be where the City Council gives its approval for drinking alcohol beverages or possessing open containers of alcohol beverages for a particular event.

PENALTIES

11.40 PENALTY.

- (1)** Any person who commits a violation of this chapter shall be subject to a forfeiture as provided in Section 25.04 of this Municipal Code.
- (2)** Any person under 18 years of age who commits a violation of this chapter shall be subject to a forfeiture which shall be consistent with the provisions of Section 938.344, Wis. Stats., and disposition and proceedings against a person under 18 years of age on the date of disposition shall be as provided by Section 938.344, Wis. Stats., all as incorporated into the Kiel Municipal Code by Section 9.01.
- (3)** Any license or permit issued to a person who commits a violation of this chapter may be revoked by the municipal court.
- (4)** A violation of this chapter by an authorized agent or employee of a licensee shall constitute a violation by the licensee.

CHAPTER 12
LICENSES AND PERMITS

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12.01 LICENSES REQUIRED. A license shall be required for each of the following at the indicated license fee, which shall be for one year unless otherwise indicated.

- (1) BICYCLES. \$1 for 2 years.
- (2) CIGARETTE SALES. \$100.
- (3) DIRECT SELLERS. \$10 processing fee.
- (4) DOGS AND CATS. [#374 1/2/92]
 - (a) Neutered Males and Spayed Females. \$10.
 - (b) Unneutered Males and Unspayed Females. \$15.
 - (c) Kennel License. \$60.

It is the intent of the City of Kiel to retain a portion of the entire fee, subtracting the minimum payment of the respective counties, Calumet and Manitowoc, with the City of Kiel retaining the balance.

- (5) MOBILE HOMES. See Section 66.0435, Wis. Stats.
- (6) MOBILE HOME PARKS. \$75 per unit deposit. \$150 park license.
- (7) DUMP SITE. A person applying for a dump site license shall prove residency within the City of Kiel to obtain said license which must be proven by verification as may be required by the City Administrator's office.

12.02 GENERAL PROVISIONS AS TO LICENSES.

- (1) TERMS INTERCHANGEABLE. The words "license" and "permit," as used throughout this chapter, shall be interchangeable.
- (2) LICENSE REQUIRED. No person shall engage in any item enumerated in Section 12.01 without a license therefor as provided by this chapter.
- (3) APPLICATION. Application for a license required by this chapter shall be made to the Administrator on a form furnished by the City and shall contain such information as may be required by the provisions of this chapter or as may be otherwise required by the City Council.
- (4) LICENSE FEES. Fees to Accompany Application. License fees imposed under Section 12.01 shall accompany the license application. The Administrator shall issue the applicant a receipt for his license fee.
- (5) GRANTING OF LICENSES. Unless otherwise designated, licenses required by this chapter shall be issued by the Administrator.

- (6) TERMS OF LICENSES. Bicycle licenses issued hereunder shall expire on April 30, dog and cat licenses on December 31, and all other licenses issued hereunder shall expire on June 30 in the year of issuance unless issued for a shorter term, when they shall expire at midnight of the last effective day of the license, or unless otherwise provided by this Municipal Code or State laws.
- (7) FORM OF LICENSES. All licenses issued hereunder shall show the dates of issue and expiration and the activity licensed and, when required, shall be signed by the appropriate City authority.
- (8) RECORDS OF LICENSES. The proper City authority shall keep a record of all licenses issued.
- (9) DISPLAY OF LICENSES. All licenses hereunder shall be displayed upon the premises, vehicle or animal for which issued or, if carried on the person, shall be displayed to any officer of the City upon request.
- (10) COMPLIANCE WITH ORDINANCES REQUIRED. It shall be a condition of holding a license under this chapter that the licensee comply with all relevant ordinances of the City. Failure to do so shall be cause for suspension or revocation of the license.
- (11) TRANSFER OF LICENSES. All licenses issued hereunder shall be personal to whom issued, and no license shall be transferred without the consent of the Council.
- (12) EXEMPTIONS. No license, other than a liquor or beer license, shall be required under this chapter for any nonprofit educational, charitable, civic, military or religious organization if the activity which would otherwise be licensed is conducted for the benefit of the members or for the benefit of the public generally.
- (13) RENEWAL OF LICENSES. Unless otherwise specifically provided, all applications for renewal of cigarette sales licenses and mobile home park licenses hereunder shall be made to the Administrator by April 15.
- (14) CONSENT TO INSPECTION. An applicant for a license under this chapter thereby consents to the entry of police or authorized representatives of the City upon the licensed premises at all reasonable hours for the purposes of inspection and search, and consents to removal from the premises and introduction into evidence in prosecutions for violations of this chapter, all things found therein in violation of this chapter or State law.
- (15) REVOCAION AND SUSPENSION OF LICENSES.

 - (a) Except as otherwise provided, any license issued under this chapter may be revoked for cause by the City Council. No license shall be revoked except upon written verified complaint filed with the City Council by the Mayor, a member of the City Council, the Chief of Police or a resident of the City. The licensee shall be served with a written copy of the charges and shall

be given an opportunity to be heard before the City Council. The licensee shall be given notice of such hearing, which shall be not more than 20 nor less than 5 days after notice, except as otherwise agreed between the parties.

- (b) At such hearing, the licensee shall be entitled to be represented by counsel, shall have the right to present and cross-examine witnesses and, upon request, may have subpoenas issued by the Mayor or presiding officer of the City Council to compel the attendance of witnesses.
- (c) After hearing the evidence, the City Council may revoke such license or impose a limited period of suspension. The determination of the Council shall be final, subject to review under Chapter 24 of this Municipal Code, provided the licensee shall not be entitled to a further hearing unless granted by the City Council.
- (d) The Police Department shall repossess any license revoked hereunder.
- (e) If the licensee does not apply for a hearing within the time provided, the license may be revoked by the City Council.

12.03 CIGARETTE SALES. Section 134.65, Wis. Stats., is adopted by reference as part of this chapter, exclusive of the penalty imposed. The annual license fee shall be as provided in Section 12.01.

12.04 MOBILE HOMES AND MOBILE HOME PARKS.

(1) DEFINITIONS.

- (a) Mobile Home. A vehicle designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used, or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction. "Mobile home" includes the mobile home structure, including the plumbing, heating, and electrical systems and all appliances and all other equipment carrying a manufacturer's warranty.
- (b) Manufactured Home. Either of the following:
 - 1. A structure, transportable in one or more sections, which in a traveling mode is 8 body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet, and which is built in a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities;
 - 2. A structure which meets all the requirements of par. 1 except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the Secretary

of Housing and Urban Development and complies with standards established under Chapter 42 of the United States Code, Sections 5401 to 5425.

The term "mobile home" where used in this Municipal Code shall cover manufactured homes.

- (c) Unit. One single-family mobile home or manufactured home.
 - (d) Nondependent Mobile Home or Manufactured Home. A mobile home or manufactured home equipped with complete bath and toilet facilities, all furniture, cooking, heating, appliances and complete year-round facilities.
 - (e) Dependent Mobile Home or Manufactured Home. A mobile home or manufactured home which does not have complete bathroom facilities.
 - (f) Mobile Home Park. Any plot or plots of ground upon which 2 or more units, occupied for dwelling or sleeping purposes, are located, regardless of whether or not a charge is made for such accommodations.
 - (g) Space. A plot of ground within a mobile home park, designed for the accommodation of two vehicles and one mobile home unit.
 - (h) Person. Includes an individual, partnership, firm, company, corporation, whether tenant, owner, lessee, licensee or their agent, heir or assign.
 - (i) Licensee. Any person licensed to operate and maintain a mobile home park under this Section.
 - (j) Park. Mobile home park.
 - (k) Recreational Vehicle. A mobile home that does not exceed the statutory size under Section 348.07, Wis. Stats.
 - (l) Camping Trailer. A vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, but not including a mobile home.
 - (m) Utility Trailer. A vehicle without motive power designed for carrying property wholly on its own structure and for being drawn by a motor vehicle; said utility trailer shall not include a mobile home or a recreational vehicle.
- (2) LICENSE.**
- (a) Required. No person shall operate or maintain, or offer for public use, within the City, any mobile home park without first applying for and receiving from the Council a license to do so, or without complying with the regulations contained herein.

(b) Exceptions. No person shall maintain any camping trailer, utility trailer or mobile home upon any lot or parcel of land in the City, except that a mobile home may be maintained in a licensed mobile home park. However, this Section shall not prevent the keeping of a camping trailer, utility trailer or recreational vehicle within the City for not more than 72 hours, except as hereinafter provided, on condition that during such time adequate water supply and toilets are available at all times to the occupants. This exception is especially intended to provide for occupants of camping trailers, utility trailers and mobile homes, who may be guests of residents, where an adequate water supply and toilet facilities are available to the guests in the homes of their hosts, but in no case shall this exemption extend beyond the 72-hour limitation. Any camping trailer, utility trailer or mobile home which is parked in the City merely for storage purposes shall also be excepted from this Section. This Section shall not prevent the parking of unoccupied mobile homes for the purposes of inspection and sale.

(3) LICENSE FEES.

- (a)** There is hereby imposed on each owner of a nonexempt, occupied mobile home in the City a monthly parking permit fee determined in accordance with Section 66.0435(3), Wis. Stats., which is hereby adopted by reference and made part of this Section as if fully set forth herein. It shall be the full and complete responsibility of the licensee to collect the proper amount from each mobile home owner. Licensees shall pay to the City Treasurer such parking permit fees on or before the 10th of the month following the month for which such fees are due in accordance with the terms of this Section and such regulations as the Treasurer may reasonably promulgate.
- (b)** Licensees of mobile home parks and owners of land on which are parked any occupied, nonexempt mobile homes shall furnish information to the Administrator and City Assessor on such homes added to their park or land within 5 days after arrival of such home on forms furnished by the Administrator in accordance with Section 66.0435(3)(c) and (e), Wis. Stats.
- (c)** [#387 12/14/93] Owners of nonexempt, occupied mobile homes upon receipt of notice from the City Administrator of their liability for the monthly parking permit fee, shall remit to the City Administrator a cash deposit of \$75 to guarantee payment of such fees when due to the City Treasurer. It shall be the full and complete responsibility of the licensee of a mobile home park to collect such cash deposits from each occupied, nonexempt mobile home therein and remit such deposits to the City Administrator. Upon receipt of a notice from the owner or licensee that the nonexempt, occupied mobile home has been or is about to be removed from the City, the City Administrator shall direct the City Treasurer to apply the cash deposit to

reduce any monthly parking permit fees for which the owner is liable and refund the balance, if any, to the owner.

- (4) APPLICATION FOR LICENSE.** Application for a mobile home park license shall be filed with the Administrator. The application shall be in writing signed by the applicant and shall contain the following:
- (a)** The name and address of the applicant.
 - (b)** The location and legal description of the mobile home park.
 - (c)** A complete mobile home park plan of the park showing compliance with this Section.
 - (d)** Plans and specifications of all buildings and other improvements constructed or to be constructed within the mobile home park.
 - (e)** Such further information as may be requested by the City Council to enable it to determine if the proposed park shall comply with legal requirements.
 - (f)** The application and all accompanying plans and specifications shall be filed with the Administrator and the Chief of Police. They shall investigate the application and inspect the proposed plans and specifications. If the proposed mobile home park will be in compliance with all provisions of this Section and all other applicable ordinances or statutes, the City Council shall approve the application and, upon completion of the park according to the plans, the Administrator shall issue the license.
- (5) REVOCATION AND SUSPENSION.** The City Council may suspend or revoke a license after a hearing held pursuant to Section 66.0435(2)(d), Wis. Stats.
- (6) MOBILE HOME PARK PLAN.** The mobile home park shall conform to the following requirements:
- (a)** The park shall be located on a well-drained site, properly graded to insure rapid drainage and freedom from stagnant pools of water.
 - (b)** Mobile home spaces shall be provided consisting of a minimum of 4,500 sq. ft. for each space, such spaces being of a minimum of 50' wide and clearly defined. Each unit shall be so harbored on each space that there shall be at least 30' clearance between the mobile homes. No mobile home shall be located closer than 8' from any property line bounding the park, and shall not be located closer than 16' from any existing residential building.
 - (c)** All mobile home spaces shall abut upon a mobile home park access driveway of not less than 25' in width which shall have unobstructed access to a public street, alley or highway. All driveways shall be hard surfaced, well-marked in the daytime with adequate lighting at night.

- (d) Garages attached to mobile homes shall be set back a minimum of 5' from each lot line; unattached garages shall be set back a minimum of 3' from each lot line.
 - (e) Electrical service to mobile home spaces shall conform to the regulations set forth in the State Electrical Code incorporated herein by reference as though fully set forth. Provisions for underground wiring shall be made.
 - (f) All mobile homes within a mobile home park shall be parked within the designated spaces.
 - (g) Each mobile home space shall provide for a setback of 25' from the mobile home park access driveways or public streets. At least 625 sq. ft. of each space must be seeded and landscaped.
 - (h) There shall be constructed on each mobile home space a concrete pad, or its equivalent, as determined by the City Building Inspector to be used for the accommodation of necessary water and sanitary connections as set forth in the City Building Code.
 - (i) A minimum of 550 sq. ft. per mobile home space, exclusive of that provided for individual mobile home spaces, shall be required for the express purpose of providing open space and recreational area for the residents of the mobile home park.
- (7) LOCATION. Mobile home parks may be located in the districts prescribed within the City as Mobile Home Park Districts.
- (8) SEWAGE AND REFUSE DISPOSAL. Waste from showers, bathtubs, toilets, slop sinks and laundries shall be discharged into a public sewer system in compliance with applicable ordinances. Disposal of all garbage and rubbish shall be in containers provided by the City's approved hauler, with payment of the cost for said containers to be made by January 1 of each year. Said containers shall be kept in a sanitary condition at all times and shall be provided and maintained in accord with the rules established by the City and its approved hauler for containers for disposal of garbage and rubbish. The licensees of the mobile home park shall provide for pick-up locations for all garbage, and in said respect shall comply with all sanitary requirements of this Municipal Code and of the Wisconsin State Statutes.
- (9) APPEARANCE. Every mobile home park shall be located and maintained so as to appear attractive and the City may at any time require that any mobile home park be screened by hedges or in some other suitable manner.
- (10) SANITARY FACILITIES. If a mobile home park offers space for dependent units, it shall provide service buildings to house toilet facilities, bathing facilities, laundry facilities and other sanitary facilities. Service buildings shall be well lighted permanent structures large enough and with enough facilities to service the number of people using them. They shall be maintained in a clean, sightly

condition and kept free of any condition that will menace the health of any occupant or the public or constitute a nuisance.

12.05 CAT AND DOG LICENSING AND REGULATIONS.

- (1) **LICENSE REQUIRED.** Every person residing in the City who owns a cat or dog which is more than 5 months of age on January 1 of any year, or 5 months of age within the license year, shall annually, or on or before the date the dog or cat becomes 5 months of age, pay the dog or cat license tax and obtain a license therefor. Persons failing to obtain the required license prior to April 1 of each year, or within 30 days of acquiring ownership of a licensable dog or cat or if the owner failed to obtain a license on or before the dog or cat reached licensable age, shall pay a late fee of \$5 for each unlicensed cat and dog.
- (2) **FEES.** See Section 12.01 of this chapter.
- (3) **RABIES VACCINATION AND TAG REQUIREMENTS.**

 - (a) All cats and dogs shall be vaccinated by a veterinarian within 30 days after the cat or dog reaches 4 months of age and revaccinated within one year after the initial vaccination program is required and thereafter at 3-year intervals.
 - (b) The veterinarian shall issue a certificate of vaccination to the owner and keep a record of the information on file. He shall issue a rabies vaccination tag to the owner bearing the same serial number as the certificate.
- (4) **ISSUANCE OF LICENSE.** Upon receipt of the required fee and certificate of the rabies vaccination from the owner of a cat or dog, the City Treasurer shall issue to the owner a license to keep the cat or dog for a period of one year. The owner of the cat or dog shall then be required to place upon his or her cat or dog a collar or tag bearing the owner's name plainly stamped thereon and a tag which shall be furnished to him or her by the City Treasurer upon receipt of the required fee. The City Treasurer shall be authorized to demand proof of certification of rabies vaccination.
- (5) **FORFEITURES.** Any person found to be in violation of any provision of this Section shall be subject to a forfeiture of not less than \$10 nor more than \$25 for the first violation, not less than \$25 nor more than \$50 for a second violation, and not less than \$50 nor more than \$100 for a third or subsequent violation.

12.06 DIRECT SELLERS.

- (1) **REGISTRATION REQUIRED.** No direct seller shall engage in direct sales within the City without being registered for that purpose as provided herein.
- (2) **DEFINITIONS.** For the purposes of this Section, the following words and phrases shall be defined as:
- (a) **Direct Seller.** Any individual who, for himself or for a partnership, association, limited liability company or corporation, sells goods or takes sales orders for the later delivery of goods at any location other than the permanent business place or residence of such individual, partnership, association, limited liability company or corporation and shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods includes donations required by the direct seller for the retention of goods by a donor or prospective customer.
 - (b) **Permanent Merchant.** A direct seller who, for at least one year prior to the consideration of the application of this Section to such merchant, has continuously operated an established place of business in the City, or has continuously resided in the City and now does business from his residence.
 - (c) **Goods.** Includes personal property of any kind and shall include goods provided incidental to services offered or sold.
 - (d) **Charitable Organization.** Any benevolent, philanthropic, patriotic or charitable person, partnership, association or corporation or one purporting to be such.
 - (e) **Administrator.** The Administrator.
- (3) **EXEMPTIONS.** The following shall be exempt from all provisions of this Section:
- (a) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.
 - (b) Any person selling goods at wholesale to dealers in such goods.
 - (c) Any person selling agricultural products which such person has grown.
 - (d) Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this City and who delivers such goods in their regular course of business.
 - (e) Any person who has an established place of business where the goods being sold are offered for sale on a regular basis, and in which the buyer has initiated contact with and specifically requested a home visit by such person.

- (f) Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer.
- (g) Any person selling or offering for sale a service unconnected with the sale or offering for sale of goods.
- (h) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
- (i) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of such organization, provided that there is submitted to the Police Department proof that such charitable organization is registered under Section 440.42, Wis. Stats. Any charitable organization not registered under Section 440.42, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to register under this Section.
- (j) Any person who claims to be a permanent merchant, but against whom complaint has been made to the Police Department that such person is a transient merchant; provided that there is submitted to the Police Department proof that such person has leased for at least one year, or purchased, the premises from which he is conducting business, or proof that such person has conducted such business in the City for at least one year prior to the date complaint was made.

(4) REGISTRATION.

- (a) Applicants for registration shall complete and return to the Police Department a registration form furnished by the Police Department which shall require the following information:
 1. Name, permanent address and telephone number and temporary address, if any.
 2. Age, height, weight, color of hair and eyes.
 3. Name, address and telephone number of the person, firm, association, limited liability company or corporation that the direct seller represents or is employed by, or whose merchandise is being sold.
 4. Temporary address and telephone number from which business shall be conducted, if any.
 5. Nature of business to be conducted and a brief description of the goods offered and any services offered.
 6. Proposed method of delivery of goods, if applicable.
 7. Make, model and license number of any vehicle to be used by applicant in the conduct of his business.
 8. Last cities, villages, towns, not to exceed 3, where applicant conducted similar business.

9. Place where applicant can be contacted for at least 7 days after leaving the City.
10. Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's transient merchant business within the last 5 years; the nature of the offense and the place of conviction.

(b) Applicants shall present to the Police Department for examination:

1. A driver's license or some other proof of identity as may be reasonably required.
2. A State certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighting and measuring devices approved by State authorities.
3. A State health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under State law. Such certificate shall state that applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application for license is made.

(c) At the time the registration is returned, the fee required in Section 12.01 shall be paid to the Police Department to cover the cost of processing such registration.

(d) The applicant shall sign a statement appointing the Police Department his agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, if the applicant cannot, after reasonable effort, be served personally.

(e) Upon payment of the fee and the signing of the statement, the Administrator shall register the applicant as a direct seller and date the entry. Such registration shall be valid for a period of one year from the date of entry, subject to subsequent refusal as provided in sub. (5)(b), below.

(5) INVESTIGATION.

(a) Upon receipt of each application, the Chief of Police shall make and complete an investigation of the statements made in such registration.

(b) The Police Department shall refuse to register the applicant if it is determined, pursuant to the investigation above, that the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received against the applicant by authorities in the last cities, villages and towns, not exceeding 3, in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last 5 years, the nature of which is directly related to the

applicant's fitness to engage in direct selling; or the applicant failed to comply with any applicable provision of sub. (4)(b), above.

(6) APPEAL. Any person denied registration may appeal the denial through the appeal procedure provided in Chapter 24 of this Municipal Code.

(7) REGULATION OF DIRECT SELLERS.

(a) Prohibited Practices.

1. A direct seller shall be prohibited from calling at any dwelling or other place between the hours of 9 p.m. and 9 a.m. except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.
2. A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale, the purpose of his visit, his identity or the identity of the organization he represents. A charitable organization direct seller shall specifically disclose what portion of the sale price of goods being offered shall actually be used for the charitable purpose for which the organization is soliciting. Such portion shall be expressed as a percentage of the sale price of the goods.
3. No direct seller shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.
4. No direct seller shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a 100' radius of the source.
5. No direct seller shall allow rubbish or litter to accumulate in or around the area in which he is conducting business.

(b) Disclosure Requirements.

1. After the initial greeting and before any other statement is made to a prospective customer, a direct seller shall expressly disclose his name, the name of the company or organization he is affiliated with, if any, and the identity of goods or services he offers to sell.
2. If any sale of goods is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel the cash transaction of more than \$25, in accordance with the procedure as set forth in Section 423.203, Wis.

Stats., and the seller shall give the buyer 2 copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Section 423.203(1)(a), (b) and (c), (2) and (3), Wis. Stats.

3. If the direct seller takes a sales order for the later delivery of goods, he shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.

(8) REVOCACTION OF REGISTRATION

- (a) Registration may be revoked by the City Council after notice and hearing if the registrant made any material omission or materially inaccurate statement in the application of registration, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales, violated any provision of this Section or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling.
- (b) Written notice of the hearing shall be served personally on the registrant at least 72 hours prior to the time set for the hearing; such notice shall contain the time and place of hearing and a statement of the acts upon which the hearing will be based.

12.061 SPECIAL EVENTS.

- (1) DEFINITIONS. A special event is any activity which occurs upon public or private property that will affect the standard and ordinary use of public streets, rights-of-way, or sidewalks, and/or which requires City services. Examples include, but are not limited to fairs, festivals, sporting events, foot runs, bike-a-thons, markets, parades, exhibitions, auctions, dances, and motion picture filming. Special events are further classified as public special events or private special events:
 - (a) A "public special event" is defined as a special event which honors service to the United States, the State of Wisconsin or the City of Kiel or commemorates an historical event or person significant to our nation, state or community.
 - (b) A "private special event" is defined as a special event for social or fundraising purposes or as part of a sporting event, or any special event that would not be considered a "public special event."

- (c) Exemptions. Funerals and funeral processions; students going to and from public or private school or participating in educational activities or school sporting events, school sponsored parades, provided such activity is under immediate direction and supervision of the proper school authority; events sponsored by the City or a City agency.
- (2) PERMIT REQUIRED. A permit must be filed with the City Clerk at least 45 days in advance of the event. There is no fee for a non-profit applicant hosting a special event. The fee for a for-profit applicant hosting a special event is \$100.
- (3) CITY SERVICES. The applicant shall be responsible for reimbursement to the City for any City personnel, services, equipment, and facilities provided for the special event. Reimbursable costs include wages and overtime. An invoice will be sent to the applicant within 15 days following the event. Payment is due within 30 days of invoice. The City reserves the right to require full or partial payment of estimated costs in advance. Generally, "public special events" will be exempt from this section as well as any other event that the City Council for the City of Kiel deems exempt from city service fees, including the Kiel Community Picnic and the Kiel Picnic Parade.
- (4) POLICE DEPARTMENT SECURITY SERVICES. A "private special event" where event organizers anticipate at least 200 people may require at least one uniformed Kiel Police Department police officer present at the event. This type of security presence is considered over and above normal policing provided to the community, however, police presence at the event is subject to emergent needs for policing other areas. The chief of police or his/her designee is the sole determiner of the level of coverage necessary to provide adequate security for an event. The permit holder is required to reimburse the City of Kiel for security related services in accordance with subsection (2).
- (5) CLEANING/DAMAGE The applicant shall be fully responsible for all cleanup and damage associated with the permitted event within 12 hours of the conclusion of the event. If any damage occurs during the event, or if the cleanup is not performed to the satisfaction of the City, the Applicant shall be held liable for the costs associated with the damage and the costs of additional cleanup. The City may also deny future permits to any applicant who has been in violation of this Section.
- (6) LIABILITY INSURANCE. The special event sponsor is required to obtain insurance for special events that include alcohol, have more than 150 people per day or involve a road closure. Proof of comprehensive general liability insurance with coverage of not less than \$1,000,000 which names and endorses the City, its officers, agents, employees, and contractors as an additional insured party will be submitted to the City no later than 20 days before the event. The applicant will notify the City in the event there is a modification of any of the terms of the insurance coverage. Such

notification shall be provided not less than two weeks prior to the effective date of that change. Any change to coverage requires City approval.

- (7) INDEMNIFICATION. The applicant and event sponsor(s) shall agree to hold the City, its officers, employees, agents, and contractors, harmless against all claims, liability, loss, damage or expense (including but not limited to actual attorney's fees) incurred by the City for any damage or injury to person or property caused by or resulting directly or indirectly from the activities for which the permit is granted.
- (8) LIMITATION OR TERMINATION OF EVENT. The City may limit the size of, or shut down a special event if it is deemed to be a public safety hazard or public nuisance by the police or fire department, or there is a violation of City or county ordinances, state statutes or the terms of the applicant's permit. The City may limit or shut down any amplified music at an event if excessive complaints are received by the police department. The City Administrator or designee may revoke an approved license if the applicant fails to comply with the provisions of the permit prior to the event date.

12.10 PENALTY. Except as otherwise provided, any person who shall violate any provision of this chapter or who shall conduct any business or activity licensed hereunder without the proper license shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

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GENERAL

13.01 UTILITIES ESTABLISHED AND COMBINED.

- (1) ESTABLISHMENTS. The City of Kiel has established municipal electric, sewer and water departments. These departments together are designated City of Kiel Utilities which shall be managed and operated by the City through a Director of Public Works as to water, a Administrator as to electric and a Superintendent of Sewer Utility as to the sewer system and wastewater treatment facilities.
- (2) OVERSIGHT. The general control and supervision of each of the utilities established by the City shall be by the Common Council, which shall exercise said control through the enactment & amendment of appropriate ordinances and through oversight by such standing committees of the City as the Mayor and Common Council may determine under Sec. 2.01 of this Municipal Code.
- (3) CONSTRUCTION AND DEFINITIONS. This ordinance shall be liberally construed to affect its purposes. As used herein, the terms "management and control" or "management and operation" shall be construed broadly and shall include, without limitation by enumeration, all authority related to the utility properties of the City, and all authority related to purchasing, acquiring, leasing, constructing, adding to, improving, conducting, controlling, operating or managing the City's public utilities except as specifically withheld by statute.
- (4) UTILITIES COMBINED. The waterworks system and the sanitary sewer and wastewater system of the City shall be combined and operated as a single public utility, except for financial reporting, and said utility shall be subject to all of the provisions of Section 66.0819, Wis. Stats. and any modifications or renumbering of said statute or regulation.

13.02 RULES AND REGULATIONS. The rules and regulations for the operation of the combined water and sewer utility shall be those adopted by the City Council and approved and on file with the State Public Service Commission.

13.03 UTILITIES TO BE PLACED UNDERGROUND. All facilities and wires for the supply and distribution of electrical energy, telephone, telegraph and cable television service to be constructed in the City on all undeveloped property for residential purposes shall be placed underground. For the purposes of this section, appurtenances and associated equipment such as, but not limited to, surface mounted transformers, pedestal mounted terminal boxes and meter cabinets, and concealed ducts in an underground system may be placed above the ground. This section shall not apply to utility lines which do not provide service to the area being developed.

13.04 CROSS CONNECTION CONTROL AND BACKFLOW PREVENTION.

- (1) CROSS CONNECTION PROHIBITED: No person shall establish, or permit to be established, or maintain, or permit to be maintained, any cross connection. No interconnection shall be established whereby potable water from a private, or auxiliary or emergency water supply, other than the public water supply of the utility, unless such private, auxiliary or emergency water supply and the method of connection and use of such supply have been approved by the utility and the Wisconsin Department of Natural Resources.
- (2) RESPONSIBILITY: The (utility) shall be responsible for the protection of the public potable water distribution system from contamination or pollution due to backflow of contaminants or pollutants. The utility shall charge fees according to the utility's Cross Connection Control Manual for maintaining a Comprehensive Cross Connection Control Protection Plan.
- (3) OWNER RESPONSIBILITY: The property owner shall be responsible for the protection of the customer's potable water system. The responsibilities include the elimination of, or protection from, all cross connections on their premises. The owner shall, at their own expense, install, maintain and test any and all backflow preventers on their premises in compliance with the Department of Commerce Comm. 82.21 requirements and the utility's Cross Connection Control Manual and any modifications or renumbering of said statute or regulation. The property owner shall have corrected any malfunction revealed by periodic testing of any backflow preventer on their premises. The property owner shall inform the utility of any proposed or modified cross connections and also any existing cross connections that are not protected by an approved backflow prevention means. The property owner shall not install a by-pass around any backflow preventer unless there is a backflow preventer of the same type in the by-pass. Property owners who cannot shut down operation for testing of the backflow prevention assembly must supply additional assemblies necessary to allow testing and maintenance to take place. In the event the property owner installs potable water using fixtures, equipment or appurtenances upstream of the backflow preventer, such must have its own approved backflow prevention means. The property owner is required to follow the protection practices described in the American Water Works Association publication AWWA M-14 titled "Recommended Backflow Prevention and Cross Connection Control", United States Environmental Protection Agency publication titled "Cross Connection Control Manual", Wisconsin Department of Commerce Plumbing Code, Comm. 82-84, and any modifications or renumbering of said statutes or regulations, and the utility's "Cross Connection Control Manual", unless the utility requires or

authorizes other means of protecting the potable water systems. These requirements or authorizations will be at the discretion of the utility.

- (4) INSPECTIONS: It shall be the duty of the utility to cause surveys to be made of all properties serviced by the utility where cross connections with the public water system is deemed possible. Residential properties serviced by the utility shall be surveyed on a twenty (20) year interval. Industrial, manufacturing, commercial and public authority properties serviced by the utility shall be surveyed on an interval of two (2) years. Low Risk Commercial users (i.e. offices or retail stores) will have an interval of ten (10) years depending on the nature of their water usage. The utility may, but is not required to, perform the cross connection survey of the customer's property. If, in the opinion of the utility, the utility is not able to perform the survey, the property owner must, at their own expense, have the water system piping surveyed for cross connections by a person who has been properly trained in accordance with the America Society of Sanitary Engineers (ASSE) Standard number 5120 as a Cross Connection Control Surveyor and any modifications or renumbering of said statute or regulation. The frequency of required surveys and re-surveys, based upon the potential health hazards, may be shortened by the utility.
- (5) RIGHT OF ENTRY: Upon presentation of credentials, representatives of the utility shall have the right to request entry at any reasonable time to examine property served by a connection to the public potable water system of the utility for cross connections. If entry is refused, such representatives shall obtain a special inspection warrant under s.66.122, Wisconsin Statutes and any modifications or renumbering of said statute or regulation. The utility shall charge the property owner a fee of \$10 per day for refusal to allow entry to examine any property. Upon request, the owner, lessee or occupant of any property served shall furnish to the inspection agency any pertinent information regarding the piping system on such property.
- (6) AUTHORITY TO DISCONTINUE SERVICE: The utility is hereby authorized and directed to discontinue water service to any property wherein any connection in violation of this section exists and to take such other precautionary measures deemed necessary to eliminate any damage or contamination of the potable water system. Water service shall be discontinued if the means of backflow prevention required by the utility is not installed, tested, maintained and/or repaired in compliance with this ordinance, the Department of Commerce Plumbing Code Comm. 82-84 and any modifications or renumbering of said statute or regulation and the utility's Cross Connection Control Manual, or if it is found that the means of backflow prevention required by this ordinance has been removed or bypassed. Water service shall be discontinued only after reasonable notice and

opportunity for hearing under Chapter 68, Wisconsin Statutes and any modifications or renumbering of said statute or regulation, except as provided in subsection 9 of this section.

- (7) RECONNECTION OF SERVICE: Water service to any property disconnected under provisions of this ordinance shall not be restored until the cross connection(s) has been eliminated or backflow prevention means, approved by the utility, has been installed in compliance with the provisions of this section.
- (8) EMERGENCY DISCONTINUATION OF SERVICE: If it is determined by the utility that a cross connection or an emergency endangers public health safety or welfare and requires immediate action, service may be immediately discontinued. The owner, lessee or occupant shall have an opportunity for hearing under Chapter 68, Wisconsin Statutes and any modifications or renumbering of said statute or regulation, with ten (10) days of such emergency discontinuance. Such hearing shall be before the Kiel Water Utility Council and shall conform to all existing due process requirements.
- (9) ADDITIONAL PROTECTION: In the case of premises having (a) cross connections that cannot be permanently corrected or controlled, or (b) intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for surveying purposes, making it impractical or impossible to ascertain whether or not dangerous cross connections exist, the public water supply system shall be protected in the service line. In the case of any premises where there is any material dangerous to health that is handled in such a manner that, in the opinion of the utility, could create an actual or potential hazard to the public water supply system, an approved air gap separation or an approved reduced pressure principle backflow assembly shall protect the public water supply system. Examples of premises where these conditions will exist include premises with auxiliary water supplies either interconnected or not interconnected with the public water supply system, premises where inspection is restricted, hospitals, mortuaries, clinics, laboratories, piers, docks and other waterfront facilities, sewage treatment plants, sewage lift stations, food and beverage, processing plants, chemical plants using a water process, metal processing plants or nuclear reactors, car washing facilities, and premises with reclaimed water systems. In the case of any presence of toxic substances, the utility may require an approved air gap or reduced pressure principle backflow assembly at the service connection to protect the public water supply system. This requirement will be at the discretion of the utility.

- (10) PUBLIC WATER SUPPLIES: This section does not supersede the State of Wisconsin Department of Natural Resources Administrative Code NR811 and any modifications or renumbering of said statute or regulation, but is supplementary to it.
- (11) PLUBING CODE: The Kiel Water Utility Council adopts by reference the Wisconsin Uniform Plumbing Code being Chapter Comm. 82-84, Wisconsin Administrative Code and any modifications or renumbering of said statute or regulation. This section does not supersede the Wisconsin Uniform Plumbing Code.

13.05 COMPULSORY CONNECTION TO SEWER AND WATER.

- (1) NOTICE TO CONNECT. Whenever sewer and water becomes available to any building used for human habitation, the Director of Public Works shall notify in writing the owner, agent or occupant thereof to connect all facilities thereto required by the City. If such person to whom the notice has been given shall fail to comply for more than 10 days after the notice, the City shall cause the necessary connection to be made and the expense thereof shall be assessed as a special tax against the property pursuant to Section 281.45, Wis. Stats. and any modifications or renumbering of said statute or regulation.
- (2) ABATEMENT OF PRIVIES AND CESSPOOLS. After connection to a water main and public sewer, no privy, privy vault or cesspool shall be constructed or maintained upon such lot or parcel and shall be abated upon 10 days written notice for such abatement by the City. If not so abated, the City shall cause the same to be done and the cost thereof assessed as a special tax against the property.
- (3) TIME EXTENSION. The City Council may extend the time for connection hereunder or may grant other temporary relief where strict enforcement would work an unnecessary hardship without corresponding public or private benefit.

13.051 REQUIRING ANNEXATION INTO THE CITY OF KIEL TO RECEIVE KIEL SEWER AND WATER SERVICES.

- (1) Individual real property owners not residing in the City of Kiel who are seeking to either use sewer services through the City of Kiel or water services through the City of Kiel shall be required to have the annexation of their real property into the City of Kiel before the City of Kiel shall provide any City of Kiel sewer service or City of Kiel water service to their real property. Nothing set forth in this section shall however require the City of Kiel to annex real property not in the City of Kiel into the City of Kiel.

13.052 CONNECTION TO PUBLIC SEWER AND WATER – ZERO LOT LINE DUPLEX.

- (1) Duplex Condominiums, Zero Lot Line Duplexes and Twindominiums are defined as a Zero Lot Line Duplex.
- (2) Public Sewer and water connections for a Zero Lot Line Duplex shall be separate laterals for each dwelling unit. A separate lateral is defined as a dedicated connection for each dwelling unit from the sewer and water mains. Separate laterals cannot cross a zero lot line to service a second dwelling unit.

13.06 COLLECTION OF UTILITY CHARGES.

- (1) Delinquent charges for electric service and water service delivered by the Municipal Utilities to commercial, industrial or residential customers and not paid for shall be collected as provided for in Section 66.0809(1), Wis. Stats. and any modifications or renumbering of said statute or regulation, which is incorporated herein by reference. Utilization of the procedures set forth in Section 66.0809(1), Wis. Stats. and any modifications or renumbering of said statute or regulation, for collection of delinquent charges for electric and water utility service shall not, however, preclude collection of such charges by any other means allowed by law.
- (2) Under Section 66.0809, Wis. Stats. and any modifications or renumbering of said statute or regulation, the Municipal Utilities shall provide notice on October 15 of each year to owners or occupants of all lots or parcels of real estate to which utility service has been furnished prior to October 1 for which there is payment owing and in arrears at the time of giving that notice. The list of arrearages shall be furnished to the City Treasurer, who shall give notice of arrearage in writing, stating the amount of the arrearage, including any penalty assessed pursuant to the rules of the Kiel Municipal Utilities, and shall state also that unless the same is paid by November 1, thereafter a penalty of 10% of the amount of the arrears will be added and that unless such arrears, with any added penalty, are paid by November 15, the amount owed will be levied as a tax against the lot or parcel of real estate to which the utility service was furnished and for which payment is delinquent. On November 16 the Municipal Utilities shall certify and file with the City Administrator a list of all lots or parcels of real estate, giving the legal description thereof, to the owners and occupants of which notice of arrears in payment were given and where arrears still remain unpaid, and stating the amount of such arrears together with the added penalty thereon. Each such delinquent amount, including the penalty, shall thereon become a lien upon the lot or parcel of

real estate to which the utility service was furnished and for which payment is delinquent, and the City Administrator shall insert said delinquency as a tax against such lot or parcel of real estate. If the arrearage is for utility service furnished and metered by the Municipal Utilities directly to a mobile home unit in a licensed mobile home park, the notice shall be given to the owner of the mobile home unit and the delinquent amount shall become a lien on the mobile home unit rather than a lien on the parcel of real estate on which the mobile home unit is located.

13.07 CONSTRUCTION OF WATER MAINS.

(1) CORNER LOT ASSESSMENTS.

- (a)** The cost of the water main, installation, including inspection, supervision and engineering fees shall be borne by the property owner on the lot side for which water service is provided. The cost of replacement of water mains in the street shall be borne by the City; however, the cost if installation of laterals from the water main to each abutting property shall be paid for by the abutting property owner. Abutting property owners shall pay for initial installation of the main, but thereafter replacement of mains shall be paid for by the City, and not charged to abutting property owners. This shall be true for both sewer mains and water mains.
- (b)** The cost of the sewer main, installation, including inspection, supervision and engineering fees shall be borne by the property owner on the lot side for which sewer service is provided.
- (c)** Where sewer mains larger than 10" and water mains larger than 8" are necessary to adequately serve the property, the additional cost of adequately sized mains shall be borne by the City.
- (d)** The initial water service lateral will be installed from the main through the curb stop and box and the initial sewer service lateral will be installed from the main to the property line by the utility. The owner of the property being serviced shall bear the cost of the lateral from the building being served by the lateral to the property line.

(2) WATER MAIN RECONSTRUCTION

- (a)** Where the City replaces or has replaced any lead lateral water service within the street or City right-of-way, the abutting property owner receiving water service shall replace any private water service not meeting State Plumbing Code, or other applicable rules and regulations of the City and State.
- (b)** The property owner shall have 18 months from the date of notification from the City of Kiel to conform to State Plumbing Code, or other applicable rules and regulations of the City and

State. Failure of the property owner to replace private nonconforming lateral following the 18month period shall result in a fee of \$50.00 per month thereafter until replaced.

13.08 PRIVATE WELLS BY PERMIT ONLY.

- (1) GENERAL. Effective December 31, 1987, only those private wells for which the City has granted a well operation permit shall be permitted to exist. All other private wells located on premises served by the City's public water system shall be filled and sealed according to the procedures set forth in Chapter NR 112, Wis. Adm. Code and any modifications or renumbering of said statute or regulation. In addition, the pump and piping for each such well shall be removed and the well checked for obstructions prior to being sealed. Any obstruction or well liner must be removed. All cost of required work and materials shall be paid by the owner of the property upon which the well is located.
- (2) REPORTS AND INSPECTIONS. A well abandonment report must be submitted by the well owner to the Department of Natural Resources on forms provided by that agency, such forms being available at the office of the Administrator. The report shall be submitted immediately upon completion of the filling and sealing of the well. The well filling and sealing must be observed by the Public Works Director of the City or his authorized agent.

13.09 WELL ABANDONMENT. [#370 4/9/91]

- (1) PURPOSE. To prevent contamination of groundwater and to protect public health, safety and welfare by assuring that unused, unsafe or noncom plying wells or wells which may serve as conduits for contamination or wells which may be illegally cross-connected to the municipal water system, are properly abandoned.
- (2) APPLICABILITY. This ordinance applies to all wells located on premises within the Kiel city limits.
- (3) DEFINITIONS.
 - (a) "Municipal water system" means any system for the provision to the public of piped water for human consumption when such system has at least 15 service connections or regularly serves at least 25 year-round residents and is owned or operated by city, village, county, town sanitary district, utility district or public institution, or a privately-owned water utility serving any of the above.
 - (b) "Noncom plying" means a well or pump installation which does not comply with the provisions of Chapter NR 112, Wis. Adm. Code and any modifications or renumbering of said statute or

regulation, in effect at the time the well was constructed, a contamination source was installed, the pump was installed or work was done on either the well or pump installation.

- (c) "Pump installation" means the pump and related equipment used for withdrawing water from a well including the discharge piping, the underground connections pitless adapters, pressure tanks, pits, sampling faucets and well seals or caps.
 - (d) "Unsafe" means a well or pump installation which produces water which is bacteriologically contaminated or contaminated with substances which exceed the standards of chapters NR 109 or 140, Wis. Adm. Code and any modifications or renumbering of said statutes or regulations, or for which a Health Advisory has been issued by the Department of Natural Resources.
 - (e) "Unused" means a well or pump installation which is not in use or does not have functional pumping system.
 - (f) "Well" means an excavation or opening into the ground made by digging, boring, drilling, driving, or other methods for the purpose of obtaining groundwater for consumption or other use.
 - (g) "Well Abandonment" means the filling and sealing of a well according to the provisions of Chapter NR 112, Wis. Adm. Code and any modifications or renumbering of said statute or regulation.
- (4) ABANDONMENT REQUIRED. All wells located on premises served by the municipal water system shall be abandoned in accordance with the terms of this ordinance and Chapter NR 112, Wis. Adm. Code and any modifications or renumbering of said statute or regulation, no later than 1 year from the date of connection to the municipal water system, unless a well operation permit has been obtained by the well owner from the City of Kiel.
- (5) WELL OPERATION PERMIT. The City of Kiel may grant a permit to a private well owner to operate a well for a period not to exceed 5 years providing the conditions of this section are met. An owner may request a well operation permit by submitting information verifying that conditions of this section are met. The City, or its agent, may conduct inspections or have water quality tests conducted at the applicant's expense to obtain or verify information necessary for consideration of a permit application or renewal. Permit applications and renewals shall be made on forms provided by the Director of Public Works. The following conditions must be met for issuance or renewal of a well operation permit:
- (a) The well and pump installation meet or are upgraded to meet the requirements of Chapter NR 112, Wis. Adm. Code and any modifications or renumbering of said statute or regulation.

- (b) The well construction and pump installation have a history of producing bacteriologically safe water as evidenced by at least 2 samplings taken a minimum of 2 weeks apart. No exception to this condition may be made for unsafe wells, unless the Department of Natural Resources approves, in writing, the continued use of the well.
- (c) There are no cross-connections between the well and pump installation and the municipal water system.
- (d) The proposed use of the well and pump installation can be justified as being necessary in addition to water provided by the municipal water system.

(6) ABANDONMENT PROCEDURE.

- (a) All wells abandoned under the jurisdiction of this ordinance or rule shall be abandoned according to the procedures and methods of Chapter NR 112, Wis. Adm. Code and any modifications or renumbering of said statute or regulation. All debris, pump, piping, unsealed lines and any other obstruction which may interfere with sealing operations shall be removed prior to abandonment.
- (b) The owner of the well, or the owner's agent, shall notify the Director of Public Works at least 48 hours prior to commencement of any well abandonment activities. The abandonment of the well shall be observed by a licensed well driller or plumber.
- (c) An abandonment report form, supplied by the Department of Natural Resources, shall be submitted by the well owner to the Director of Public Works and the Department of Natural Resources within 10 days of the completion of the well abandonment.

- (7) PENALTIES.** Any well owner who violates any provision of this ordinance shall upon conviction be punished by a forfeiture established in Section 25.04 of the City Code. Each 24-hour period during which a violation exists shall constitute a separate offense.

SEWER USE AND SEWER SERVICE CHARGES

13.10 RIGHT OF ENTRY, SAFETY AND IDENTIFICATION.

- (1) RIGHT OF ENTRY.** The Approving Authority or other duly authorized employee of the City bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation or testing, all in accordance with the provisions of this chapter. If entry is refused, the Approving Authority shall obtain a special inspection warrant under Section 66.0119, Wis. Stats. and any modifications or renumbering of said statute or regulation.

- (2) SAFETY. While performing the necessary work on private premises, the duly authorized City employees shall observe all safety rules applicable to the premises established by the person.
- (3) IDENTIFICATION: RIGHT TO ENTER EASEMENTS. The Approving Authority or their duly authorized employee of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds an easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewage works lying within the easement, all subject to the terms, if any, of such easement.

13.105 SEWER UTILITY. Sections 13.11-13.25 specifically apply to the sewer utility to include the sewer system and wastewater treatment facilities within the City of Kiel Municipal Utilities.

13.11 DEFINITIONS.

- (1) APPROVING AUTHORITY. The wastewater treatment plant superintendent or his authorized representatives.
- (2) BOD (DENOTING BIOCHEMICAL OXYGEN DEMAND). The quantity of oxygen utilized in the biochemical oxidation of organic matter in five (5) days at 20 degrees Celsius, expressed as milligrams per liter (mg/l). Quantitative determination of BOD shall be made in accordance with procedures set forth in "Standard Methods".
- (3) BUILDING DRAIN. That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer.
- (4) BUILDING SEWER. A sanitary sewer which begins immediately outside of the foundation wall of any building or structure being served and ends at its connection to the public sewer.
- (5) CATEGORY A. Those sanitary sewer users who discharge normal domestic strength wastewater with concentrations of BOD no greater than 300 mg/l, suspended solids no greater than 300 mg/l, phosphorus no greater than 10 mg/l and nitrogen no greater than 40 mg/l.
- (6) CATEGORY B. Those sanitary sewer users who discharge wastewater with pollutant concentrations in excess of 300 mg/l for BOD, 300 mg/l for suspended solids, 10 mg/l for phosphorus, and 40 mg/l for nitrogen. Users whose wastewater exceeds the concentration for any one of these parameters shall be in Category B.
- (7) CATEGORY C. Discharges of hauled wastewater.
- (8) CITY. The City of Kiel.

- (9) COMBINED SEWER. A sewer intended to receive both wastewater and storm or surface water.
- (10) CMOM. Capacity, Maintenance, Operation and Maintenance of sanitary sewer.
- (11) COMPATIBLE POLLUTANTS. BOD, suspended solids, phosphorus, nitrogen, pH, or fecal coliform bacteria, plus additional pollutants identified in the City's WPDES permit for its wastewater treatment facility; provided that such facility is designed to treat such additional pollutants and, in fact, does remove such pollutants to a substantial degree.
- (12) EASEMENT. An acquired legal right for the specified use of land owned by others.
- (13) FLOATABLE OIL. Oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. Wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the collection system.
- (14) GROUND GARBAGE. The residue from the preparation, cooking, dispensing, handling, storage and sale of food products and produce that has been shredded to such a degree that all particles will be carried freely in suspension under the flow conditions normally prevailing in public sewers with no particle greater than 1/2" in any dimension.
- (15) HAULED WASTEWATER. Wastewater from residential holding tanks, residential septic tanks, industrial and commercial holding tanks.
- (16) INCOMPATIBLE POLLUTANTS. Wastewater with pollutants that will adversely affect the wastewater collection and treatment facilities or disrupt the quality of wastewater treatment if discharged to the wastewater treatment facility.
- (17) INDUSTRIAL WASTE. Any solid, liquid or gaseous substance discharged or escaping from any industrial, manufacturing or commercial establishment. Such term includes any wastewater which is not sanitary sewage.
- (18) MUNICIPALITY. The City of Kiel.
- (19) NATURAL OUTLET. Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface water or groundwater.
- (20) NORMAL DOMESTIC STRENGTH WASTEWATER. Wastewater with concentrations of BOD no greater than 300 mg/l, suspended solids no greater than 300 mg/l, phosphorus no greater than 10 mg/l and nitrogen no greater than 40 mg/l.
- (21) OPERATION AND MAINTENANCE COSTS. Includes all costs associated with the operation and maintenance of the wastewater collection and treatment facilities, including administration and replacement costs, all as determined from time to time by the City.

- (22) PERSON. Any and all persons, including any individual, firm, partnership, company, municipal or private corporation, association, society, institution, enterprise, governmental agency or other entity.
- (23) pH. The logarithm the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen ions in grams per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen-ion concentration of 10^{-7} .
- (24) PHOSPHORUS. Phosphorus shall mean total phosphorus, which is all of the chemical element phosphorus present in a sample, regardless of form, expressed as milligrams per liter (mg/l) of P phosphorus. Quantitative determination of phosphorus shall be made in accordance with procedures set forth in "Standard Methods".
- (25) PRIVATE COLLECTION SEWER SYSTEM. Any private collection sewer system consisting of main sewer laterals discharging into a public sewer.
- (26) PUBLIC SEWER. Any publicly owned sewer, storm drain, and sanitary sewer or combined sewer.
- (27) REPLACEMENT COSTS. Expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the wastewater treatment facility to maintain the capacity and performance for which such facilities were designed and constructed. Operation and maintenance costs include replacement costs.
- (28) SANITARY SEWAGE. A combination of liquid and water-carried wastes discharged from toilets and sanitary plumbing facilities.
- (29) SANITARY SEWER. A sewer that carries sewage or wastewater.
- (30) SEWAGE. The spent water of a person or community. The preferred term is "wastewater".
- (31) SEWER. A pipe or conduit that carries wastewater or drainage water.
- (32) SEWER SERVICE CHARGE. A charge levied on users of the wastewater collection and treatment facilities for payment of operation and maintenance expenses, depreciation, return-on-investment and other expenses or obligations of such facilities.
- (33) SHALL is mandatory; MAY is permissible.
- (34) SLUG. Any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds, for any period of duration longer than 15 minutes, more than 5 times the average 24-hour concentration or flow.
- (35) STANDARD METHODS. The examination and analytical procedures set forth in the most recent edition of "Standard Methods for the Examination of Water and Wastewater" published jointly by the American Public Health Association, the American Water Works Association and the Water Environment Federation.

- (36) STORM SEWER OR DRAIN. A drain or sewer for conveying water, groundwater, subsurface water or unpolluted water from any source.
- (37) SUSPENDED SOLIDS. Suspended solids shall mean solids that either float on the surface of, or are in suspension in, water sewage or industrial waste and which are removable by laboratory filtering as prescribed in "Standard Methods" and referred to as non-filterable residue expressed as milligrams per liter (mg/l). Quantitative determination of suspended solids shall be made in accordance with procedures set forth in "Standard Methods".
- (38) UNPOLLUTED WATER. Water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities.
- (39) WASTEWATER. The spent water of a community or person. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and stormwater that may be present.
- (40) WASTEWATER COLLECTION FACILITIES (OR WASTEWATER COLLECTION SYSTEM). The structures and equipment required to collect and carry wastewater.
- (41) WASTEWATER TREATMENT FACILITY. An arrangement of devices and structures for treatment of wastewater and biosolids. Also referred to as wastewater treatment plant.
- (42) WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM (WPDES) PERMIT. A document issued by the Wisconsin State Department of Natural Resources which establishes effluent limitations and monitoring requirements for the municipal wastewater treatment facility. WPDES Permit No. WI-0020141 and modifications thereof pertain to the municipal wastewater treatment facility.

13.12 USE OF THE PUBLIC SEWERS.

- (1) SANITARY SEWERS. No person shall discharge or cause to be discharged any unpolluted waters such as storm water, groundwater, roof runoff, subsurface drainage or cooling water to any sanitary sewer.
- (2) STORM SEWERS. Storm water and all other unpolluted water shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the Approving Authority and other regulatory agencies. Unpolluted industrial cooling water or process waters may be discharged, on approval of the Approving Authority and other regulatory agencies, to a storm sewer, combined sewer or natural outlet.

- (3) PROHIBITIONS AND LIMITATIONS.** Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:
- (a)** Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
 - (b)** Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, that could injure or interfere with any waste treatment or biosolids disposal process, constitute a hazard to humans or animals or create a public nuisance in the receiving waters of the wastewater treatment facility.
 - (c)** Any waters or wastes having a pH lower than 5.0 or in excess of 9.0, or having any corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater collection and treatment facilities.
 - (d)** Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in public sewers or other interference with the proper operation of the wastewater collection and treatment facilities, such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshing, entrails, and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
 - (e)** The following described substances, materials, waters or waste shall be limited in discharges to sanitary sewer systems to concentrations or quantities which will not harm either the sanitary sewers, wastewater treatment process or equipment; will not have an adverse effect on the receiving stream; or will not otherwise endanger lives, limbs, or public property or constitute a nuisance. The Approving Authority may set limitations more stringent than those established below if more stringent limitations are necessary to meet the above objectives. The Approving Authority will give consideration to the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sanitary sewers, the wastewater treatment facility and other pertinent actors. Wastes or wastewaters discharged to the sanitary sewers shall not exceed the following limitations:
 - 1.** Wastewater having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius).
 - 2.** Wastewater containing more than 25 mg/l of petroleum oil, nonbiodegradable cutting oils or products of mineral oil origin.
 - 3.** Any water or waste containing fats, grease and wax, whether emulsified or not, in excess of 100mg/l or containing substances which may solidify or become viscous at temperatures between 32- and 150-degrees Fahrenheit (0-65 degrees Centigrade).

4. Solids or viscous substances in quantities or of such size capable of causing obstruction to flow in public sewers or other interference with the proper operation of the wastewater collection and treatment facilities, such as, but not limited to; ash, cinders, sand, mud, etc...
5. Any unground garbage. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.
6. Any waters or wastes containing iron, chromium, copper, zinc, cadmium and other toxic and nonconventional pollutants to such degree that the concentration exceeds levels specified by federal, state and local authorities.
7. Any waters or wastes containing odor-producing substances exceeding limits which may be established by the Approving Authority or limits established by any federal or state statute, rule or regulation.
8. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Approving Authority in compliance with applicable state or federal regulations.
9. Any waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment facility effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
10. Any water or wastes which, by interaction with other water or wastes in the sanitary sewer system, release obnoxious gases, form suspended solids which interfere with the collection system or create a condition deleterious to structures and treatment processes.
11. Materials which exert or cause:
 - a. Unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the wastewater treatment facility.
 - b. Unusual volume of flow or concentration of wastes constitutes "slugs" as defined herein.
 - c. Unusual concentrations of inert suspended solids (such as, but not limited to, fuller's earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium sulfate).
 - d. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

12. Incompatible pollutants in excess of the allowed limits as determined by City, State and federal laws and regulations in reference to pretreatment standards developed by the Environmental Protection Agency, and as contained in 40 CFR 403, as amended from time to time.
- (4) WPDES PERMIT. No person shall cause or permit a discharge into the sanitary sewers that would cause a violation of the City's WPDES permit and any modifications thereof.
- (5) SPECIAL ARRANGEMENTS. No statement contained in this chapter shall be construed as prohibiting any special agreement between the Approving Authority and any person whereby a waste of unusual strength or character may be admitted to the wastewater collection and treatment facilities, either before or after pretreatment, provided that there is no impairment of the functioning of the wastewater collection and treatment facilities by reason of the admission of such wastes, and no extra costs are incurred by the City without recompense by the person; and further provided that all rates and provisions set forth in this chapter are recognized and adhered to.
- (6) NEW CONNECTIONS. New connections to the City's sanitary sewer system will be allowed only if there is available capacity in all of the downstream wastewater collection and treatment facilities.
- (7) SUMP PUMP REQUIREMENT. Where during construction of a residential, commercial or industrial building, there is evidence of a high water table, or where the grade of the building is not sufficient to cause water to disperse promptly from said property, the building inspector shall in his discretion determine whether a sump pump shall be required in said building as a condition of the granting of a permit for construction of said building.

13.13 CONTROL OF INDUSTRIAL WASTES DIRECTED TO PUBLIC SEWERS.

- (1) SUBMISSION OF BASIC DATA. The Approving Authority may require each person who discharges or seeks to discharge industrial wastes to a public sewer to prepare and file with the Approving Authority, at such times as it determines, a report that shall include pertinent data relating to the quantity and characteristics of the wastes discharged to the wastewater collection and treatment facilities. In the case of a new connection, the Approving Authority may require that this report be prepared prior to making the connection to the public sewers.
- (2) INDUSTRIAL DISCHARGES. If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters or wastes contain substances or possess the characteristics enumerated in Section 13.12, and which in the judgment of the Approving Authority have a deleterious effect upon the wastewater collection and treatment facilities processes, equipment or

receiving waters, or which cause the City to violate its WPDES permit, or which otherwise create a hazard to life, health or constitute a public nuisance, the Approving Authority may:

- (a) Refuse to accept wastewater from the industry upon giving reasonable notice to the industry.
- (b) Require pretreatment to an acceptable condition for discharge to the public sewers.
- (c) Require control over the quantities and rates of discharge.
- (d) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of this chapter.

(3) CONTROL MANHOLES.

- (a) Each person discharging industrial wastes into a public sewer shall, at the discretion of the Approving Authority, construct and maintain one or more control manholes or access points to facilitate observation, measurements and sampling of wastes, including sanitary sewage.
- (b) Control manholes or access facilities shall be located and built in a manner acceptable to the Approving Authority. If measuring or sampling devices are to be permanently installed, they shall be of a type acceptable to the Approving Authority.
- (c) Control manholes, access facilities and related equipment shall be installed by the person discharging the waste, at the person's expense, and shall be maintained by the person so as to be in safe condition, accessible and in proper operating condition at all times. Plans for installation of the control manholes or access facilities and related equipment shall be approved by the Approving Authority prior to the beginning of construction.

(4) MEASUREMENT OF FLOW. The volume of flow used for computing sewer service charges shall be the metered water consumption of the person as shown in the records of meter readings maintained by the Water Department or Utility except as noted in sub. (5).

(5) METERING OF WASTE. Devices for measuring the volume of waste discharged may be required by the Approving Authority if this volume cannot otherwise be determined from the metered water consumption records. Metering devices for determining the volume of waste shall be installed, owned and maintained by the person discharging the wastewater. Following approval and installation, such meters may not be removed without the consent of the Approving Authority. All flow meters shall be calibrated on an annual basis by a certified testing facility, and a copy of the results of said calibration forwarded to the Approving Authority.

(6) WASTE SAMPLING.

- (a) Industrial wastes discharged into the public sewers shall be subject to periodic inspection and a determination of character and concentration of such wastes. The determination shall be

made as often as may be deemed necessary by the Approving Authority. Costs for all testing shall be borne by the discharger of said industrial wastes.

- (b) Samples shall be collected in such a manner as to be representative of the composition of the wastes. The sampling may be accomplished either manually or by the use of mechanical equipment acceptable to the Approving Authority.
- (c) Installation, operation and maintenance of the sampling facilities shall be the responsibility of the person discharging the waste and shall be subject to the approval of the Approving Authority. Access to sampling locations shall be granted to the Approving Authority or its duly authorized representative at all times. Every care shall be exercised in the collection of samples to ensure their preservation in a state comparable to that at the time the sample was taken.
- (7) PRETREATMENT. Persons discharging industrial wastes into any public sewer may be required to pretreat such wastes, if the Approving Authority determines pretreatment is necessary to protect the wastewater collection and treatment facilities or prevent the discharge of incompatible pollutants. If it is determined that pretreatment is necessary, such person shall provide at his expense such pretreatment or processing facilities as may be determined necessary to render wastes acceptable for admission to the sanitary sewers.
- (8) FAT, OIL, GREASE (FOG) AND SAND INTERCEPTORS. Trap/interceptors shall be referred to as traps from this point on, shall be required and installed at all food service, industrial and commercial facilities for the proper handling of liquid wastes containing grease, oil, flammable wastes, sand and other harmful ingredients.

 - (a) Individual exemptions from this requirement may be granted upon review by the Approving Authority.
 - (b) Private living quarters and dwelling units are exempt.
 - (c) All FOG and Sand traps shall be constructed in accordance with the Wisconsin Administration Code and shall be located as to be readily and easily accessible for easy cleaning and inspection. Exterior FOG and Sand traps must be constructed in such a manner as to protect trap from storm water runoff. A description of the FOG and Sand trap system, the manufacturer, dimensions and location thereof shall be submitted to the Approving Authority at the time of permit application.
- (9) FOG AND SAND TRAP PERMIT. Will be issued by the Approving Authority to comply with the City of Kiel Wastewater Utility CMOM program.

- (a) Permit shall contain the following. Facility name and owner, date of permit issuance, permit number, trap size and manufacturer, location, required frequency of maintenance.
- (b) All Permitted facilities must comply with Best Management Practices (BPMs) found in the City of Kiel CMOM Program for preventing introduction of FOG and Sand into the Sanitary Sewer and Storm Water Systems.
- (c) All FOG and Sand traps shall be maintained by the owner at his or her expense in continuing, efficient operation at all times. Disposal of trap contents shall be done in accordance with Department of Natural Resources standards.
- (d) Maintenance reports detailing all maintenance performed during the previous year shall be submitted to the Approving Authority annually, by January 31st. Forms are provided by the Approving Authority upon request. Any user delinquent in filing a maintenance report shall be notified of the delinquency and the penalty for failure to report. Any user who has not submitted the required annual maintenance report by March 1 shall be assessed a fee of \$50.00 per day, with each day constituting a separate fee. The fee shall be assessed from March 1 until the maintenance report has been received by the Approving Authority. The fee shall be placed on the account of the service address relating to the permit.
- (e) All permitted FOG and Sand trap are to be inspected biennial by the Approving Authority. If a failed inspection occurs, a Notice of Violation will be issued in five (5) working days. The permit holder has thirty (30) days to correct the failure. If the Notice of Violation is not corrected in thirty (30) days, then Failure of Compliance will be issued. If Failure of Compliance is not corrected in ninety (90) days, a fee of \$250.00 per day will be assessed, with each day constituting a separate fee. The fee shall be assessed until the Failure of Compliance has been corrected followed by an inspection from the Approving Authority. The fee shall be placed on the account of the service address relating to the permit.
- (f) Blockages downstream of a FOG and/or Sand Permitted Facilities shall be investigated. If investigation determines that an upstream FOG or Sand Permitted Facility caused interference or blockage in the sanitary system, then that FOG or Sand Permitted Facility shall reimburse the Kiel Wastewater Utility for all labor, equipment, supplies and disposal costs incurred in correcting interference or blockage.
- (g) No permitted facility shall push FOGS material down lateral at time of cleaning to public sewer main without prior approval from the Approving Authority.

(10) HAULED WASTEWATER.

- (a)** All sewer users having wastes hauled into the wastewater collection facilities for treatment need to be in conformance with the "Manual on Hauled-Waste Acceptance" published by the Water Environment Federation (WEF), as well as the "Hauled-Waste Manual" published jointly by the Wisconsin Department of Natural Resources (WDNR) and the Environmental Protection Agency (EPA).
- (b)** Hauled wastewater accepted by the wastewater collection facilities shall be sampled by the Approving Authority on an annual basis. Rate shall be calculated per Category C based on the average of six (6) most recent samples taken. Each sample shall be charged per 13.14 (10) of the City Code.
- (c)** Annual permit fee for hauled wastewater discharger shall be \$50.00; such permit fee shall be reviewed and, if necessary, adjusted annually.

(11) INSURANCE. Any person or party disposing of hauled wastewater shall agree to carry public liability insurance in an amount not less than \$1,000,000.00 to protect any and all persons or property from injury and damage caused in any way or manner by an act or the failure to act by any of his employees. The person shall furnish a certificate certifying such insurance will be in full force and effect. Any person disposing of such waste shall agree to indemnify and hold harmless the city from any and all liability and claims for damages arising out of or resulting from work and labor performed.

(12) ANALYSES.

- (a)** All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of "Standard Methods" and with the Federal Regulations 40 CFR 136 and any modifications or renumbering of said statute or regulation, "Guidelines Establishing Test Procedures for Analysis of Pollutants," as amended from time to time. Sampling methods, location, time, duration and frequencies are to be determined on an individual basis subject to approval by the Approving Authority.
- (b)** Determination of the character and concentration of the industrial wastes shall be made by the person discharging them, or the person's agent, as designated and required by the Approving Authority. The Approving Authority may also make its own analyses on the wastes, and these determinations shall be binding as a basis for sewer service charges.

(c) In the event of disagreement between the City and Land O' Lakes concerning the concentration of critical parameters established in an agreement between the City and Land O' Lakes, the parties will by mutual agreement engage a qualified independent laboratory to perform necessary analyses of discharge, metering and sampling results, and the analyses shall be binding upon both parties. The costs of such analyses shall be split equally between the City and Land O' Lakes.

(13) SUBMISSION OF INFORMATION. Plans, specifications and any other pertinent information relating to proposed flow equalization, pretreatment or grease and sand interceptor facilities shall be submitted for review and approval of the Approving Authority prior to the start of their construction if the effluent from such facilities is to be discharged into the public sewers. No construction of such facilities shall commence until approval has been granted.

13.14 AMOUNT OF SEWER SERVICE CHARGES.

(1) CATEGORY A SEWER SERVICE CHARGE. The sewer service charge for Category A sewer users is as follows:

Volume	\$4.42/100 cu. ft
Fixed Charge	Depends on water meter size [see Sub. (3)]

(2) CATEGORY B SEWER SERVICE CHARGE. When the sewage from any contributor does not exceed the strength limitations of 300 mg/l for B.O.D., 300 mg/l for suspended solids, 10 mg/l for phosphorus and 40 mg/l for nitrogen, the sewer bill shall be calculated at the Category A charge. Where the wastes of any contributor exceed the above strength, a periodic sampling shall be taken and the sewage analyzed to determine the strength of such waste, which will be billed at the following rates:

Monthly Fixed Charge	Depends on water meter size [see Sub. (3)]
Volume Charge:	
Volume	\$4.42/100 cu. Ft
BOD greater than 300 mg/l	\$.53/lb
Suspended solids greater than 300 mg/l	\$.66/lb
Phosphorus greater than 10 mg/l	\$10.52/lb

(b) CATEGORY B SEWER SERVICE CHARGE COMPUTATION: The sewer service charge for Category B shall be computed in accordance with the formula presented below:

$$T = FM + (V \times Cv) + (B \times Cb) + (S \times Cs) + (P \times Cp) + (N \times Cn) + (L \times Cl) + (A \times Ca) + (R \times Cr)$$

Where:

T=Total sewer service charge

FM=Fixed monthly charge

B=Concentration of BOD in mg/l in the wastewater minus 300 mg/l

S=Concentration of suspended solids in mg/l in the wastewater minus 300 mg/l

P=Concentration of phosphorus in mg/l in the wastewater minus 10 mg/l

N=Concentration of nitrogen in mg/l in the wastewater minus 40 mg/l

V= Wastewater volume in gal.

A=Gallons of acid added to achieve pH 9.0 or less

R=Number of report weeks

L=Number laboratory test

Cv=Volume charge per 1000 gal.

Cb=Surcharge per pound of BOD

Cs=Surcharge per pound of suspended solids

Cp=Surcharge per pound of phosphorus

Cn=Surcharge per pound of nitrogen

Ca=Surcharge per gallon of acid added

Cr=Surcharge report fee

Cl=Laboratory test fee

(3) CATEGORY A AND B FIXED MONTHLY CHARGES. Fixed monthly charges shall be based on the size of a customer's water meter. Water meter sizes and corresponding charges are as follows:

Water Meter Size (inches):	Fixed Monthly Charge:
5/8	\$27.92
3/4	\$27.92
1	\$33.33
1-1/2	\$37.50

2	\$42.50
3	\$56.67
4	\$77.92
6	\$127.50

(4) CATEGORY C SEWER SERVICE CHARGE.

- (a)** When the sewage from Land O' Lakes, Inc. does not exceed the strength limitations of 300 mg/l for B.O.D., 300 mg/l for suspended solids, 10 mg/l for phosphorus and 40 mg/l for nitrogen, the sewer bill shall be calculated at the Category C volume charge. Where the waste of Land O' Lakes, Inc. exceed the above strength, a periodic sampling shall be taken and the sewage analyzed to determine the strength of such waste, which will be billed at the following rates:

Monthly Fixed Charge	Depends on water meter size [see Sub.13.14(4)(c)]
Volume Charge:	
Volume	\$3.57/100 cu. Ft
BOD greater than 300 mg/l	\$.37/lb
Suspended solids greater than 300 mg/l	\$.49/lb
Phosphorus greater than 10 mg/l	\$4.87/lb

- (b) CATEGORY C SEWER SERVICE CHARGE COMPUTATION:** The sewer service charge for Category C shall be computed in accordance with the formula presented below:

$$T = (C_b \times BOD) + (C_s \times SS) + (C_p \times P)$$

Where:

T = Total Sewer Service Charge

C_b = Surcharge per pound of BOD

C_s = Surcharge per pound of suspended solids

C_p = Surcharge per pound of phosphorus

BOD = mg/l x 8.34 x MGD

SS = mg/l x 8.34 x MGD

P = mg/l x 8.34 x MGD

MGD = million gallons per day

(c) **FIXED MONTHLY CHARGES CATEGORY C.** Fixed monthly charges shall be based on the size of a customer's water meter. Water meter sizes and corresponding charges are as follows:

Water Meter Size (inches):	Fixed Monthly Charge:
5/8	\$17.64
3/4	\$17.64
5/8	\$17.64
1	\$20.93
1-1/2	\$23.92
2	\$26.91
3	\$35.88
4	\$49.33
6	\$80.72

(5) GENERAL SEWER SERVICE, UNMETERED. Service shall be billed at the rate of \$54.40 per month. This rate shall be applied only to single family residential and small commercial customers and approximates the cost for 600 cu. ft. per month discharged to the sewer system. If it is determined by the Utility that the user discharges more than 600 cu. ft. per month to the system, an additional charge of \$2.54/100 cu. ft. will be made for estimated additional usage.

(6) REASSIGNMENT OF SEWER USERS. The Approving Authority will reassign sewer users into appropriate sewer service charge categories if wastewater flow monitoring and sampling programs or other related information indicate a change of categories is necessary.

(7) OPERATION, MAINTENANCE AND REPLACEMENT FUND ACCOUNTS.

(a) All sewer service charge revenues collected for replacement costs shall be deposited in a separate and distinct fund to be used solely for replacement costs as defined in Section 13.10(22). All sewer service charge revenues collected for other operation and maintenance expenses shall also be deposited in a separate and distinct fund.

(b) All revenues for the replacement fund and for operation and maintenance of the wastewater collection and treatment facilities must be used solely for the replacement fund and operation and maintenance of the wastewater collection and treatment facilities.

(8) CHARGE FOR TOXIC POLLUTANTS. Any person discharging toxic pollutants which cause an increase in the cost of managing the effluent or sludge from the City's wastewater treatment facility shall pay for such increased costs, as may be determined by the City Council.

- (9) CHARGE FOR LABORATORY ANALYSIS. The Approving Authority shall charge a daily laboratory analysis fee of \$30.00.

13.15 BASIS FOR SEWER SERVICE CHARGES.

- (1) SEWER USERS SERVED BY WATER UTILITY WATER METERS. The City shall levy and assess upon each lot, parcel of land, building or premises having a connection with the wastewater collection system and being served with water solely by the Water Utility, a sewer service charge based, in part, on the quantity of water used, as measured by the Water Utility water meter used upon the premises.

(2) SEWER USERS SERVED BY PRIVATE WELLS.

(a) If any person discharging waste water into the sanitary sewers procures any part of all of his water from sources other than the Water Utility, all or part of which is discharged into the sanitary sewers, the person shall have water meters installed by the Water Utility at his expense for the purpose of determining the volume of water obtained from these sources. Where sewer meters are already installed for determining the wastewater volume discharged, water meters will not be required. The water meters shall be furnished by the Water Utility and installed under its supervision, all costs being at the expense of the person requiring the meter.

(b) The water Utility will charge for each meter a rental charge set by the Water Utility to compensate for the cost of furnishing and servicing the meter. The rental charge shall be billed at the time the sewer service charge is billed.

- (3) DEDUCT METERS. If a person feels that a significant amount of metered water does not reach the sanitary sewer, he can at his own expense, with approval of the Approving Authority, install such additional meters or metered services as are necessary to calculate the volume of water not discharged to the sanitary sewer. Metered water not discharged to the sanitary sewers shall not be subject to sewer service charges. Requests to install additional meters shall be made in writing to the Approving Authority.

13.16 BILLING PRACTICE.

- (1) CALCULATION OF SEWER SERVICE CHARGES. Sewer service charges shall be computed according to the rates and formula presented in this chapter.

(2) BILLING AND PAYMENT. Sewer service charges shall be billed by the City to the sewer users on a monthly basis. Those persons billed shall pay such charges by the date fixed for final payment.

(3) DELINQUENT PAYMENTS. A penalty of 1.5% per month shall be added to all bills not paid by the date fixed for final payment.

(4) REMEDIES FOR FAILURE TO MAKE PAYMENTS.

(a) Suit. Sewer service charges or other charges due from any person or user shall be deemed to be debt due to the City from that person or user. If sewer service charges or other charges are not paid when due, the City may commence an action in a court of competent jurisdiction and recover from such person or user the amount of charges or fees, and damages, if any, sustained by the City as a result of such failure to pay, together with such costs and expenses as may be allowed by law.

(b) Lien on Property. As an alternative to the above, the City may direct that unpaid sewer service charges or other charges due from any person or user shall be collected and taxed and shall be a lien upon the property served in the manner provided for in Section 66.0821, Wis. Stats. and any modifications or renumbering of said statute or regulation, as amended from time to time.

(5) OBLIGATION FOR PAYMENT. While the obligation for payment of the bills in case the user is a non-property owner shall be that of the user, if the bill is not paid, the property owner shall be liable for the bill and the unpaid bill shall remain a lien against the property serviced until paid in accordance with this chapter. To the end that there may be attempts at avoidance of payment of these bills by the tenants, and to overcome the same, the City may send the bill for a user who is a tenant in care of the property owner, who shall thereupon determine the method in which the payment shall be assured.

13.17 SEWER CONSTRUCTION AND CONNECTIONS.

(1) WORK AUTHORIZED. No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb the public sewers or appurtenances thereof without first obtaining a written permit from the Approving Authority or the Director of Public Works.

(2) COST OF SEWER CONNECTION. The person making the connection of the building sewer shall pay for the cost of the connection.

(3) USE OF OLD BUILDING SEWERS. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Approving Authority or the Director of Public Works, to meet all requirements for this chapter.

(4) MATERIALS AND METHODS OF CONSTRUCTION. The size, slope, alignment, and materials of construction of a building sewer and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench shall conform to the requirements of the City's Building

and Plumbing Codes or other applicable rules and regulations of the City and State. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the STM and WPCF Manual of Practice No. 9 shall apply.

- (5) BUILDING SEWER GRADE. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer. All costs related to the installation, connection, operation and maintenance of such lifting device shall be borne by the person making the building sewer connection.
- (6) STORMWATER AND GROUND WATER. Stormwater and groundwater drain connections are prohibited as follows:
- (a) No person shall allow the discharge or cause to be discharged into any sanitary sewer any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling waste or unpolluted industrial process waters. All stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water and all other unpolluted drainage and clear water shall be discharged into such sewers as are designated as storm sewers whenever reasonably available; further provided that if no storm sewer is available, in no event shall any such waters be discharged into any sanitary sewer.
 - (b) All sump pumps installed for the purpose of discharging clear waters from foundation drains, basement drains and ground infiltration shall discharge into a storm sewer whenever available, and, if no storm sewer is available shall discharge into an underground conduit leading to a drainage ditch, drywell or onto the ground at a point which is not less than three feet from the building and is above permanent grade. No sump pump is allowed to flow on or across a public sidewalk.
 - (c) In carrying out the provisions of this chapter, Approving Authority or the Director of Public Works shall have the authority to enter upon private premises at reasonable times to determine whether any of the water drainage hereinabove described exists thereon and whether such drainage complies with the provisions of this chapter. No person shall refuse to permit the Approving Authority or the Director of Public Works to enter upon any premises at reasonable times to exercise their duties under this article.
 - (d) It shall be rebuttably presumed that clear water is being discharged in a sanitary sewer if it is shown that existing sump pumps or other means of clear water discharge have or can be readily

connected to drains, pipes or other mechanisms of discharge connected to the sanitary sewer drain within the premises.

- (e) Disconnection time frame; exception. All existing downspouts or groundwater drains, etc., connected directly or indirectly to a sanitary sewer must be disconnected within 60 days of the date of an official written notice from the Approving Authority. Exceptions to this subsection may be made by the Approving Authority.
- (f) Stormwater and groundwater failure to correct fee. A \$50.00 monthly fee is also hereby imposed for failure to correct stormwater and groundwater connection found not conforming to specifications in section 13.17 of this code. This fee will be imposed beginning 60 days following notice by the city to the owner that corrective action is required and has not been completed on schedule and will continue until corrective action by the owner has been taken (new 13.26-13.30)
- (7) CONFORMANCE TO PLUMBING CODES. The connection of the building sewer into the sanitary sewer shall conform to the requirements of the Building and Plumbing Codes, or other applicable rules and regulations of the City or State or the procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials shall be approved by the Building Inspector before installation.
- (8) INSPECTION OF CONNECTION. The person making a connection to a public sewer shall notify the Approving Authority or the Director of Public Works when the building sewer is ready for inspection and connection to the public sewer. The connection shall be inspected and approved by the Approving Authority or the Director of Public Works.
- (9) BARRICADES: RESTORATION. All excavations for the building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Approving Authority or the Director of Public Works.

13.18 APPEALS. Any user, permit applicant or permit holder affected by any decision, action or determination, including cease and desist orders, made by the Approving Authority interpreting or implementing the provisions of this chapter or in any permit issued herein, may file with the Approving Authority a written request for reconsideration within 10 days of the date of such decision, action or determination, setting forth in detail the facts supporting the user's request for reconsideration. The

Approving Authority shall render a decision on the request for reconsideration to the user, permit applicant or permit holder in writing within 15 days of receipt of request. If the ruling on the request for reconsideration made by the Approving Authority is unsatisfactory to the person, the person requesting reconsideration may, within 10 days after notification of the action, file a written appeal with the City Council. The written appeal shall be heard by the City Council within 45 days from the date of filing and the City Council shall make a final ruling on the appeal within 60 days from the date of filing.

13.19 VALIDITY. The sewer service charge system shall take precedence over any terms or conditions of preexisting agreements or contracts between the Municipality and any person, which are inconsistent with Section 204(b)(1)(A) and 40 CFR 35, Subpart E of the Clean Water Act and any modifications or renumbering of said statute or regulation.

13.20 AUDIT, NOTIFICATION AND RECORDS.

- (1) **BIENNIAL AUDIT.** The City shall review, at least every 2 years, the wastewater contribution of its sewer users, the operation and maintenance expenses of the wastewater collection and treatment facilities and the sewer service charge system. Based on this review, the City shall revise the sewer service charge system, if necessary, to accomplish the following:
 - (a) Maintain a proportionate distribution of operation and maintenance expenses among sewer users based on the wastewater volume and pollutant loadings discharged by the users.
 - (b) Generate sufficient revenues to pay the operation and maintenance expenses of the wastewater collection and treatment facilities.
- (2) **ANNUAL NOTIFICATION.** The City shall notify its sewer users annually about the sewer service charge rates. The notification shall show what portion of the rates are attributable to the operation and maintenance expenses, and the depreciation and return-on-investment cost of the wastewater collection and treatment facilities. The notification shall occur in conjunction with a regular bill.
- (3) **RECORDS.** The City shall maintain records regarding wastewater flows and loadings, costs of the wastewater collection and treatment facilities, sampling programs and other information which is necessary to document compliance with 40 CFR 35, Subpart E of the Clean Water Act and any modifications or renumbering of said statute or regulation.

13.21 VIOLATIONS AND PENALTIES.

- (1) WRITTEN NOTICE OF VIOLATIONS. Any person found to be violating any provision of this subchapter shall be declared to be creating a public nuisance and shall be served by the City with a written notice stating the nature of the violation and providing a reasonable time for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
- (2) ABATEMENT OF NUISANCE WITHOUT NOTICE. If the Approving Authority determines that a public nuisance exists within the City and that there is great and immediate danger to the wastewater collection and treatment facilities or the public health, safety, peace, morals or decency, the Approving Authority may cause the same to be abated and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance.
- (3) ACCIDENTAL DISCHARGE. Any person found to be responsible for accidentally allowing a deleterious discharge into the sewer system which causes damage to the wastewater collection and treatment facility or receiving body of water shall, in addition to a forfeiture, pay an amount to cover any damages, both values to be established by the City Council.
- (4) CONTINUED VIOLATIONS. Any person who shall continue any violation beyond the noticed time limit provided shall upon conviction thereof forfeit not more than \$1000 together with the costs of prosecution. In default of payment of such forfeiture and costs, the violator shall be imprisoned in the County jail for a period not to exceed 30 days. Each day in which violation is continued beyond the noticed time limit shall be deemed a separate offense.
- (5) LIABILITY TO MUNICIPALITY FOR LOSSES. Any person violating any provision of this subchapter shall become liable to the City for any expense, loss or damage occasioned by reason of such violation which the City may suffer as a result thereof.

13.25 PENALTY. Except as otherwise provided, any person who shall violate any provision of this chapter or any order, rule or regulation made hereunder shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

13.26 SUMP PUMPS

- (1) INSPECTIONS. It shall be the duty of the utility to cause surveys to be made of all properties serviced by the utility. Surveys shall be made on a ten (10) year interval, or at the time of sale of property. All sump pumps shall conform to the specifications in section 13.17 of this code.

13.27 SYSTEM RECONSTRUCTION. The City of Kiel has undertaken the systematic reconstruction of the public sanitary sewer system. The presence of an abnormal amount of clear water entry into the sanitary sewer system has been indicated. The presence of this clear water reduces available capacity to all systems users, causes system overloads that may manifest themselves as basement flooding, causes a financial burden on the citizens of the City, and is a potential source of severe health hazards. The City recognizes that its public sewer system has a finite life and in many cases has exceeded the useful life of the system. The City also recognizes that private building sewers possess many of the same characteristics as the public system.

- (1)** The City shall inspect all private connections to the public mains at the time of reconstruction of the public system.
 - (a)** Any existing private connection not meeting the requirements of this section shall be considered illegal.
 - (b)** Prior to actual reconstruction, each property owner shall be given written notice of the project. Such notices shall be made no less than 30 days prior to commencement of the actual work.
- (2)** Prior to the commencement of the reconstruction, the City shall inspect each private sewer connection for conformance with this section.
 - (a)** In the event that the private system meets the requirements of this section, the City shall reconnect the private system to the public system at an appropriate point near the right of way line at time of reconstruction.
 - (b)** In the event that the private sewer is found not to meet the requirements of this section, the City shall notify the property owner of the determined deficiency(ies).
- (3)** The owner shall, at the owners expense, make the necessary repairs to correct the deficiency(ies). In all cases, the City shall supply an appropriate connection point as part of its work. The owner may elect to:
 - (a)** Make the repair(s). In doing so the owner recognizes that all work must be done in strict conformance with all applicable local and state codes and in such a manner to correct the noted deficiency(ies). All work needed to accomplish the repair shall be done at the expense of the owner.
 - (b)** Contract with licensed contractor to complete the repair. All work needed to accomplish the repair shall be done at the expense of the owner.

(c) Have City contractors, if available, complete the repair. The City agrees, as part of any project, to request unit prices that will allow for the calculation of cost of making the appropriate repair to the private sewer.

1. Should the owner select this option, the owner will be charged the entire cost making the repair.
2. The owner may elect to pay the entire amount upon completion of the work, or the owner may request that he be billed in the form of a special assessment on the owner's tax bill.

13.28 SYSTEM REQUIREMENTS.

(1) All sanitary sewer mains and laterals, both public and private, shall be constructed and maintained in such a fashion that the effects of clear water on the system are held to an absolute minimum.

(2) All work, construction technique, and materials incorporated into the project shall be in strict conformance with state and local codes, or the American Society for Testing and Materials (ASTM) and Water Pollution Control Federation (WPCF) Manual of Practice No. 9 Design and Construction of Sanitary and Storm Sewers.

(a) Permitted Materials. Permitted materials are specified in the City of Kiel Wastewater Utility Capacity, Maintenance, Operation and Management (CMOM) guidance.

(b) Defects Requiring Repair

1. Any visible leak.
2. Open, improperly formed, or root intruded joints.
3. Improper materials such as soil or orangeburg pipe.
4. Visible crack.
5. Improper connections such as a palmer valve.
6. Any defect determined by the City of Kiel to require repair to comply with the system standards identified herein.

13.29 BACKWATER VALVES.

(1) Backwater valves shall be required on all building sewers new or reconstructed at a location approved by the approving authority.

(2) When in the best interest of the City, require the installation of a backwater valve in building sewers servicing buildings not listed in this subsection.

- (3) Continue to encourage the installation of floor drain backflow preventors in one- and two-family buildings without backwater valves.

13.30 SANITARY SEWER LATERAL FEES

- (1) SEWER LATERAL FEES. The following fees are hereby created and imposed, each fee separately at the rate of \$50.00 per month, payable in monthly installments and billed with the regular monthly billing for City of Kiel Utility services:

(a) Televising refusal fee. A \$50.00 monthly fee is hereby imposed for connection of sewer laterals against every property connected to the City of Kiel sanitary sewerage system, in the utility, which owner refuses to consent to televising of the sewer lateral by the city. This fee will be imposed beginning 30 days after request has been made by the city for permission to televise the owner's sewer lateral. This fee will continue until the property owner consents to televising by the city.

(b) Failure to correct fee. A \$50.00 monthly fee is also hereby imposed for connection of sewer laterals against every property connected to the sanitary sewerage system, in the utility, which owner fails to take corrective action upon request by the city to repair sewer laterals leaking freshwater into the sewerage system. This fee will be imposed beginning 30 days following notice by the city to the owner that corrective action is required and has not been completed on schedule and will continue until corrective action by the owner has been taken.

- (2) FEE EXEMPTIONS. The following are the exemptions and procedures from lateral fees:

(a) Televising exemption. Upon request by the City of Kiel Wastewater Utility to televise a sewer lateral connected to a sewer main, in the utility, the property owner may grant consent to televise the lateral by signing a consent form approved by the city. Upon receipt of such signed consent form, the city is authorized to access the private sewer lateral and adjacent property for purposes of televising the lateral. Owners complying with this section are exempt from the televising refusal fee.

(b) Corrective fee exemption. Each owner that repairs all laterals determined by the city to be leaking freshwater into the sewerage system shall be exempt from the failure to correct fee beginning at such time that verification of corrective action has been provided by the owner to the city.

CHAPTER 14
BUILDING CODE

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14.01 BUILDING INSPECTOR. The Building Inspector shall enforce this chapter and all other ordinances, laws and orders of the State which relate to building construction, plumbing and electrical installations and for these purposes he shall have the right at all reasonable times to enter buildings and premises. With the consent of the City Council he may appoint one or more city employees or officials as deputy building inspectors, and may delegate to them the powers and duties above; but such appointment shall not carry with it any increase in salary or wages.

14.02 BUILDING PERMITS AND INSPECTION.

- (1) **PERMIT REQUIRED.** No building or any part thereof shall be erected or ground broken for the same, within the City, except as hereinafter provided, until a permit therefor shall first have been obtained by the owner, or his authorized agent, from the Building Inspector. "Building" as used in this section includes any building or structure and any enlargement, alteration, improvement, heating, ventilation or refrigeration installation, insulating, siding or roofing, moving or demolishing, or anything affecting the fire hazards or safety of any building or structure.
- (2) **APPLICATION.** An application for a building permit shall be made in writing upon a form furnished by the Building Inspector and shall state the name and address of the owner of the land, and also of the owner of the building, if different, and the legal description of the land upon which the building is to be located, and shall contain such other information as the Building Inspector shall require.
- (3) **PLANS.** With such application there shall be submitted one complete set of plans and specifications, including a plot plan showing the location of the proposed building with respect to the adjoining streets, alleys, lot lines and buildings. Plans for buildings required to comply with the State Building Code shall bear a stamp of approval from the State Department of Commerce. All other plans and specifications shall be signed by the designer. The Building Inspector shall verify whether state-approved plans are required.
- (4) **WAIVER OF PLANS.** If the Building Inspector finds that the character of the work is sufficiently described in the application, he may waive the filing of plans for alterations, repairs or moving, provided the cost of such work does not exceed \$500.
- (5) **APPROVAL OF PLANS.** If the Building Inspector determines that the proposed building will comply with all ordinances of the City and all applicable laws and orders of the State, he shall officially approve and stamp the set of plans and return it to the owner, and shall issue a building permit therefor which shall be kept and displayed at the site of the proposed building. After being

approved, the plans and specifications shall not be altered in any respect which involves any of the above-mentioned ordinances, laws and orders, or which involves the safety of the building or occupants, except with the written consent of the Building Inspector. If adequate plans are presented for part of the building only, the Building Inspector may, at his discretion, issue a permit for a part of the building before receiving the plans and specifications for the entire building.

- (6) MINOR REPAIRS. The Building Inspector may authorize minor repairs or alterations valued at less than \$500 which do not change the occupancy, area, structural strength, fire protection, exits, light or ventilation of the building without requiring a building permit to be issued, except where a building permit is required under Sections 14.03(2) and 14.04(2).
- (7) FEES. Fees for building permits shall be as set from time to time by the City Council and a copy of such fees shall be on file in the offices of the Administrator and Building Inspector.
- (8) INSPECTION OF BUILDINGS. The Building Inspector shall inspect the buildings from time to time during construction and after completion. He shall be notified of completion and make a final inspection of all buildings and alterations.
- (9) WAITING PERIOD. No construction may begin until the building inspector has approved and signed the building permit.
- (10) ROOFS. No permit shall be required for roof replacement or repair valued at less than \$500.00.
- (11) DRAIN TILE. Three-inch drain tile shall be installed on the outside of basement footings.
- (12) PERMIT EXPIRATION. A permit issued under this section shall expire one year from the date of issuance. Permits that are expired for less than six months will be reactivated at fifty percent of the building permit fee.

14.03 ELECTRICAL PERMITS AND INSPECTION.

- (1) STATE CODE APPLIES. All electrical work, including the placing of wires and other equipment, shall conform to the State Electrical Code, SPS 316, Wis. Adm. Code, which is adopted by reference as part of this section. A copy of such code shall be kept on file in the office of the Building Inspector.
- (2) PERMIT. Except for existing industrial and manufacturing facilities, no electrical wiring or other equipment shall be installed or altered without first securing a permit therefor from the Building Inspector, except that repairs or replacements of broken or defective sockets, switches or base receptacles may be made without a permit. The application for such permit shall be on a form furnished by the Building Inspector and shall state clearly the work planned, alterations to be made,

and equipment and materials to be used, and all later deviation from such plan shall be submitted to and approved by the Building Inspector.

- (3) INSPECTION OF WORK. After roughing in the wiring of any building and before any such work is covered up, or upon completion of any outside wiring construction work, the person doing such work shall notify the Building Inspector, who shall inspect the same in a timely manner. Upon completion of such wiring, the Inspector shall be notified and shall inspect finished work.

14.04 PLUMBING AND INSPECTION.

- (1) STATE CODE APPLIES. The construction, reconstruction, installation and alteration of all plumbing, drainage and plumbing ventilation shall conform to the State Plumbing Code, Chapters Comm 82-87, Wis. Adm. Code, which is adopted by reference as a part of this section. A copy of such code shall be kept on file in the office of the Building Inspector.
- (2) PERMIT. No plumbing or drainage shall be installed or altered, except that leakage or stoppage repairs may be made, without first securing a permit therefor from the Building Inspector. The application for such permit shall be on a form furnished by the Building Inspector and shall state clearly the work planned, alterations to be made, and equipment and materials to be used. All later deviations from such plan shall be submitted to and approved by the Building Inspector.
- (3) PLUMBER'S REPORTS. All plumbers shall make a full and complete report of the plumbing fixtures, such as water closets, bathtubs, general faucets, lawn sprinklers, etc., to the Director of Public Works within 2 days after the completion of such work.
- (4) INSPECTION OF WORK. Upon completion of the plumbing work on any premises, the person doing such work shall notify the Building Inspector before such work is covered up and the Building Inspector shall inspect the work in a timely manner.

14.05 ISSUANCE OF PERMITS.

- (1) PAYMENT OF FEES. All fees shall be paid to the Administrator.
- (2) PERMIT LAPSES. A building, electrical or plumbing permit shall lapse and be void unless operations under the permit are commenced within 6 months from the date of issuance thereof.
- (3) REVOCATION. If the Building Inspector shall find at any time that the above-mentioned ordinances, laws, orders, plans and specifications are not being complied with, and that the holder of the permit refuses to conform after a written warning or instruction has been issued to him, he shall revoke the building, electrical or plumbing permit by written notice posted at the site of the work. When

any such permit is revoked, no further work thereunder shall be done until the permit is reissued, except such work as the Building Inspector may order to be done as a condition precedent to the reissuance of the permit, or as he may require for the preservation of human life and safety.

- (4) REPORT OF VIOLATIONS. All police officers shall report at once to the Building Inspector any building, electrical or plumbing work which is being carried on without a permit as required by this chapter.
- (5) RECORDS. The Building Inspector shall keep a record of all permits, fees and inspections under this chapter and shall make an annual report thereon to the City Council.

14.06 FLAMMABLE LIQUIDS. The State Flammable and Combustible Liquids Code (Comm 10, Wis. Adm. Code), is adopted as part of this chapter and the Building Inspector shall enforce the provisions thereof.

14.07 UNSAFE BUILDINGS. Whenever the Building Inspector finds any building or part thereof within the City to be, in his judgment, so old, dilapidated or out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation, occupancy or use, and so that it would be unreasonable to repair the same, he shall order the owner to raze and remove such building or part thereof, or if it can be made safe by repairs, to repair and make safe and sanitary or to raze and remove at the owner's option. Such order and proceedings shall be as provided in Section 66.0413, Wis. Stats. If the cost of repairs would exceed 50% of the assessed value to the recommended value as last published by the State Supervisor of Assessments for the City, such repairs shall be presumed unreasonable.

14.08 STATE FIRE CODE APPLICATION. [#357 1/23/90] Every building hereafter erected, enlarged or moved within the limits of the City of Kiel shall comply in its construction with the requirements of the State Fire Code, as set forth in the Wisconsin Statutes and the Wisconsin Administrative Code of the State of Wisconsin. The standards applied to buildings hereby shall be the same as those standards established for the City under Section 5.01(1) which specifically refers to and incorporates the "State Code" with respect to fire prevention.

14.09 ONE AND TWO FAMILY DWELLING CODE.

- (1) TITLE. This section shall be known as the One- and Two-Family Dwelling Code of the City.
- (2) PURPOSE. The purpose and intent of this section is to:

- (a) Exercise jurisdiction over the construction and inspection of new one and 2 family dwellings and additions to existing one and 2 family dwellings.
 - (b) Provide plan review and on-site inspections of one and 2 family dwellings by inspectors certified by the Department of Commerce.
 - (c) Establish and collect fees to defray administrative and enforcement costs.
 - (d) Establish remedies and penalties for violations.
 - (e) Establish use of the Wisconsin Uniform Building Permit as prescribed by the Department of Commerce.
- (3) STATE UNIFORM DWELLING CODE ADOPTED.** The Administrative Code provisions describing and defining regulations with respect to one- and two-family dwellings, currently set forth in Chapters Comm 20-25, Wis. Adm. Code, which were adopted effective June 1, 1980, are hereby adopted and by reference made a part of this Section as if fully set forth herein. Any act required to be performed or prohibited by an Administrative Code provision incorporated herein by reference is required or prohibited by this section. Any future amendments, revisions or modifications of the Administrative Code provisions incorporated herein are intended to be made part of this section to secure uniform Statewide regulation of one and 2 family dwellings. A copy of these Administrative Code provisions and any future amendments shall be kept on file in the Building Inspector's office.
- (4) DEFINITIONS.** The following terms shall have the meaning indicated.
- (a) Addition. New construction performed on a dwelling which increases the outside dimensions of the dwelling.
 - (b) Alteration. Substantial change or modification other than an addition or minor repair to a dwelling or to systems involved within a dwelling.
 - (c) Department. The Department of Commerce.
 - (d) Dwelling.
 1. Any building, the initial construction of which is commenced on or after May 9, 1980, which contains one or 2 dwelling units.
 2. An existing structure, or that part of an existing structure, which is used or intended to be used as a one or 2 family dwelling.
 - (e) Minor Repair. Repair performed for maintenance or replacement purposes on any existing one or 2 family dwelling which does not affect room arrangement, light and ventilation, access to or efficiency of any exit stairways or exits, fire protection or exterior aesthetic appearance, and which does not increase a given occupancy and use. No building permit is required for work

to be performed which is deemed minor repair, that being less than \$500 in materials and labor, except where a building permit is required under Section 14.03(2) and 14.04(2).

- (f) One- or Two-Family Dwelling. A building structure which contains one or two separate households intended to be used as a home, residence or sleeping place by an individual or by 2 or more individuals maintaining a common household, to the exclusion of all others.
- (g) Person. An individual, partnership, firm, company or corporation.
- (h) Uniform Dwelling Code. Those Administrative Code provisions, and any future amendments, revisions, or modifications thereto, contained in the following chapters of the Wisconsin Administrative Code.

Comm 20 - Administration and Enforcement.

Comm 21 - Construction Standards.

Comm 22 - Energy Conservation Standards.

Comm 23 - Heating, Ventilating and Air Conditioning Standards.

Comm 24 - Electrical Standards.

Comm 25 - Plumbing and Potable Water Standards.

- (5) BUILDING INSPECTOR. The Building Inspector shall be certified for inspection purposes by the Department in each of the categories specified in the Wisconsin Administrative Code and by the Department of Health and Family Services in the category of plumbing.
 - (a) Subordinates. The Building Inspector may appoint, as necessary, subordinates, which appointments shall be subject to confirmation by the Council. Any subordinate hired to inspect buildings shall be certified for inspection purposes by the Department as set forth in the Wisconsin Administrative Code.
 - (b) Duties. The Building Inspector shall administer and enforce all provisions of this section and the Uniform Dwelling Code.
 - (c) Powers. The Building Inspector or an authorized certified agent may at all reasonable hours enter upon any public or private premises for inspection purposes and may require the production of the permit for any building, plumbing, electrical or heating work. No person shall interfere with or refuse to permit access to any such premises to the Building Inspector or his agent while in the performance of his duties.

(d) Records. The Building Inspector shall perform all administrative tasks required by the Department under the Uniform Dwelling Code. In addition, the Inspector shall keep a record of all applications for building permits in a book for such purpose and shall regularly number each permit in the order of its issue. Also, a record showing the number, description and size of all buildings erected indicating the kind of materials used and the cost of each building and aggregate cost of all one- and two-family dwellings shall be kept. The Building Inspector shall make a written annual report to the Council relative to these matters.

(6) BUILDING PERMITS.

(a) Required. No one or two-family dwelling of which initial construction shall be commenced after May 9, 1980, shall be built, enlarged, altered or repaired unless a building permit for that work shall first be obtained by the owner, or his agent, from the Building Inspector. Application for a building permit shall be made in writing upon that form designated as the Wisconsin Uniform Dwelling Permit Application furnished by the Department of Commerce.

(b) Repairs and Additions Requiring Permit. No addition, alteration or repair to an existing one or 2 family dwelling not deemed minor repair by the Building Inspector, that being less than \$500 in materials and labor, shall be undertaken unless a building permit for this work shall first be obtained by the owner, or his agent, from the Inspector. However, no addition, alteration or repair shall be undertaken even if less than \$500 in materials and labor if Section 14.03(2) and 14.04(2) require that a building permit be obtained.

(c) Submission of Plans. The applicant shall submit 3 sets of plans for all new, or repairs or additions to existing, one or 2 family dwellings at the time that the building permit application is filed.

(d) Issuance of Permits. If the Building Inspector finds that the proposed building or repair or addition complies with all City ordinances and the Uniform Dwelling Code, the Inspector shall officially approve the application and a building permit shall be subsequently issued to the applicant. The issued building permit shall be posted in a conspicuous place at the building site. A copy of any issued building permit shall be kept on file with the Administrator.

(e) Drain Tile Required. A 3" drain tile shall be required around the outside of the foundation of a new one or 2 family dwelling.

(7) FEES FOR BUILDING PERMITS AND INSPECTIONS. At the time the application for a building permit is filed, the applicant shall pay the fees prescribed by the City Council from time to time and on file in the offices of the Administrator and Building Inspector.

(8) VIOLATION AND PENALTIES.

- (a) No person shall erect, use, occupy or maintain any one or 2 family dwelling in violation of any provision of this section or the Uniform Dwelling Code or cause to permit any such violation to be committed. Any person violating any of the provisions of this section shall, upon conviction, be subject to a forfeiture as provided in Section 25.04 of this Municipal Code.
 - (b) If an inspection reveals a noncompliance with this section or the Uniform Dwelling Code, the Building Inspector shall notify the applicant and the owner, in writing, of the violation to be corrected. All cited violations shall be corrected within 30 days after written notification unless an extension of time is granted pursuant to Section Comm 20.10(1)(c), Wis. Adm. Code.
 - (c) If, after written notification, the violation is not corrected within 30 days, a stop work order may be served on the owner or his representative and a copy thereof shall be posted at the construction site. Such stop work order shall not be removed except by written notice of the Building Inspector after satisfactory evidence has been supplied that the cited violation has been corrected.
 - (d) Each day a violation continues after the 30-day written notice period has run shall constitute a separate offense. Nothing in this section shall preclude the City from maintaining any appropriate action to prevent or remove a violation of any provision of this section or the Uniform Dwelling Code.
 - (e) If any construction or work governed by the provisions of this section or the Uniform Dwelling Code is commenced prior to the issuance of a permit, double fees shall be charged.
- (9) APPEAL. Any person aggrieved by an order or determination of the Building Inspector may appeal as provided in Chapter 24 of this Municipal Code.
- (10) LIABILITY FOR DAMAGES. This section shall not be construed as an assumption of liability by the City for damages because of injuries sustained or property destroyed by any defect in any dwelling or equipment.

14.10 FENCES.

- (1) A building permit shall be required for the construction of a fence of any value, a \$10 charge or fee for the building permit if the cost of the fence is less than \$500.00. The property owner is responsible to provide verification of the lot lines, prior to beginning construction.
- (2) A. All fences, other than decorative or ornamental fences, shall be set back from the front lot line a minimum of 25' and all fences should be at least 2' off the side and back-lines. No fence shall exceed 6' in height.

- (3) Fences may not be placed on a berm or retaining wall, or similarly constructed so as to raise the fence height more than 6' above the final average lot elevation.
- (4) Within residential districts, the finish side of any fence shall be oriented towards the adjacent property.
- (5) Any fencing that is determined to be decorative or ornamental will not be subject to the set back requirements, provided the fence does not exceed 42" in height and does not obstruct the view for vehicular traffic.
- (6) A decorative or ornamental fence shall be defined as a fence which is determined by the building inspector and the director of public works to be a fence whose only purpose is to decorate, accent or frame a feature of the landscape. Such decorative or ornamental fence may be used to identify a lot corner or lot line, frame a driveway, walkway or planting bed. A decorative or ornamental fence is a fence that has more than 50% of its surface area open for free passage of light and air and may be constructed of picket, rail or wrought iron type or similar material. Cyclone fences will not be considered decorative or ornamental fencing and shall be subject to the set back restrictions contained herein.
- (7) All fences constructed hereafter shall be reasonably attractive and shall be required to be maintained as to the original appearance at the time of initial installation. If, at the time of application for a building permit to construct a fence the building inspector determines that a fence is not reasonably attractive, the building inspector may deny the building permit for the construction of such fence. Within residential districts, the finish side of any fence shall be oriented towards the adjacent property.
- (8) Any retaining wall at the front of a property or used as a fence will require approval of the building inspector and the director of public works.
- (9) A permit for decorative or ornamental fencing that will not be subject to the setback requirements shall be submitted to the building inspector for issuance of the building permit but in any event shall be additionally submitted to the Chief of Police for a determination as to whether the proposed fence may obstruct the view for vehicular traffic; in the event that the Police Chief proposes that the proposed decorative or ornamental fence may obstruct the view for vehicular traffic, the building inspector on the recommendation of the Police Chief, shall deny the building permit but provide for modification to avoid the issue of obstruction of the view for vehicular traffic.

14.11 OUTDOOR SWIMMING POOL REGULATION

(1) PERMIT REQUIRED. No construction or installation of an outdoor swimming pool, or alteration, enlargement, or replacement of an existing swimming pool, which means an out-of-doors pool used for swimming purposes only, shall begin unless a permit has been paid. The application for such a permit shall be accompanied by a site plan showing the size, location, and description of the property. No permit shall be required for construction of a wading pool, which is a pool used principally for non-swimming children.

(2) SETBACK AND STRUCTURAL REQUIREMENTS.

(a) Setbacks. Permanent above- or in-ground pools shall maintain a minimum rear and side yard setback of three (3) feet from adjoining property. In determining this setback for above-ground pools with permanent fencing or decks, any deck, walkway, or similar structure shall be considered part of the pool.

(b) Fencing. All fences under this subsection shall be constructed in such a manner as to comply with the requirements of Section 14.10, or variance therefrom, and the requirements of this subsection. These fences shall also comply with the following standards:

1. The fence must be able to withstand one hundred (100) pounds force in any direction.
2. The fence shall be constructed and designed so as to prevent penetration of an object greater than four (4) inches in diameter.
3. All such fences shall be constructed with a latch door or gate at least thirty (30) inches above ground, which complies with all other height and structural requirements of this section, which shall be latched when not in use in such a way that it cannot be opened from the outside.

(c) Safety Pool Cover. For the purposes of this section, a swimming pool cover providing a degree of protection equivalent to that of the fencing described in this section may be used in lieu of fencing. Such pool covers shall also comply with the following standards:

1. The swimming pool cover must meet all performance standards of the American Society for Testing and Materials (ASTM), in compliance with standard ASTM F1346-91.
2. The swimming pool cover shall be completely drawn so as to cover the entire pool and must be fixed securely in place at all times when the pool is not in actual use and shall provide a continuous connection between the cover and the deck, so as to prohibit access to the pool when the pool is not in actual use.

- (d) Permanent In-Ground Pools. Permanent in-ground pools, subject to Section 14.10 of this Code, shall be surrounded by a free-standing fence not less than forty-two (42) inches from the ground level with the fencing also to be in compliance with Section 14.11(2)(b) or equipped with an ASTM F1346-91 compliant pool cover with the pool cover also to be in compliance with Section 14.11(2)(c). The fence and/or pool cover must be able to withstand one hundred (100) pounds of force in any direction.
- (e) Above-Ground Pools. Above-ground pools with walls that are at least forty-two (42) inches high at all points around said pool or have platforms and railings which are forty-two (42) inches or more in height above the ground are not required to be enclosed as provided in Subsections (2)(b), (2)(c), and (2)(d) but the ladders and stairways providing access to said pools shall be adequately secured so that children cannot stray into the pool whenever the pool is not in use.
- (f) Portable Pools. Portable pools over one (1) foot deep shall be drained, fenced, or covered in such a manner as to provide public safety after each day's use.
- (g) Conforming Present Pools to Code. Any fence or swimming pool cover which exists prior to the effective date of this section, but which does not conform to the requirements of those sections, shall not be altered, enlarged, or replaced without making the entire structure conform with the provisions of this section and any other applicable City ordinances. The Mayor shall appoint a Swimming Pool Inspection Committee whose task it shall be to inspect all outdoor residential swimming pools in the City. Said Committee shall report on its inspection to the Mayor and Common Council and recommend to them which pools not complying with the standards established in this section should be grandfathered and in what respects. The Plan Commission shall then review said recommendations and recommend their acceptance or rejection to the Common Council, which shall thereafter, after a public hearing on the subject, decide the terms of the grandfathering for each pool referred to in the said recommendations.

(3) OPERATION OF RESIDENTIAL SWIMMING POOLS.

(a) Definitions.

1. Residential Swimming Pool. A residential swimming pool is a swimming pool constructed appurtenant to a dwelling and used or intended to be used solely by the owner or lessee thereof and his or her family and friends for recreation without financial gain.
2. Public Swimming Pool. A public swimming pool is an outdoor or indoor pool that is entirely man-made, excepting those serving less than 3 individual residential quarters such as homes or apartments. Public pools include those serving or installed for the State or any political

subdivision thereof, including school districts; those serving or installed at motels, hotels, resorts, camps, clubs, associations, housing developments, schools, religious, charitable, or youth organizations; institutions or similar establishments. Included are buildings, equipment and appurtenances, whether or not a fee is charged for the use thereof.

- (b) Public Swimming Pools Prohibited in Residential Areas. No person shall operate a public swimming pool on any premises zoned residential. The operation of a public swimming pool on residential premises is a public nuisance.
- (c) Interference With Enjoyment of Property Rights Prohibited. No residential swimming pool shall be located, designed, operated, or maintained so as to interfere unduly with the enjoyment of their property rights by owners of property adjoining the swimming pool or located in the neighborhood.
- (d) Shielding Lights. Lights used to illuminate any residential swimming pool shall be so arranged and shaded as to reflect light away from adjoining premises.

14.12 OUTDOOR BURNING FURNACES.

- (1) Description: Includes an accessory structure or appliance designed for a location ordinarily outside the principal structure and used to transfer or provide heat via liquid or other means, by burning wood or other solid fuels, for heating any principal or accessory structure on the premises. Does not include fire pits, barbecues, fryers or chimneys.
- (2) Outdoor Burning Furnaces are prohibited in all districts.

14.15 PENALTY. If any construction or work governed by the provision of this ordinance or the Uniform Dwelling Code is commenced prior to the issuance of a permit, double fees shall be charged.

CHAPTER 15
GAS CODE

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15.01 TITLE. This Chapter shall be known as the "Standard Gas Code".

15.02 SCOPE. This Chapter shall promote the health, safety, and welfare of the public and safeguard property by regulating the minimum requirements for gas appliances, the installation of gas piping and the installation, alteration, maintenance and use of gas equipment connected thereto.

15.03 PROVISIONS REGULATING THE SALE OF GAS APPLIANCES.

- (1) All gas appliances and accessories hereafter installed, sold or offered for sale shall conform to reasonable standards of safety.
- (2) The presence on a gas appliance or accessory of a safety seal or label of a nationally recognized testing agency or a certificate or letter of approval from such agency or the inclusion of an appliance or accessory in an approved listing by such agency shall be prima facie evidence that such appliance or accessory conforms to reasonable standards of safety. Such nationally recognized testing agency shall be one qualified and equipped to perform and one that does perform periodic inspections of current models of gas appliances and accessories.

15.04 PROVISIONS REGULATING THE INSTALLATION OF APPLIANCES.

- (1) All gas appliances, accessories and piping systems shall be installed to conform to reasonable standards of safety.
- (2) Installation of appliances, accessories, and piping that complies with the standards recommended by the American National Standards Institute in its manual entitled "National Fuel Gas Code, Z223.1-1980," and as to current installation, the most current edition of said manual, shall be considered prima facie as conforming to reasonable standards of safety.
- (3) No person except an authorized agent or employee of the gas supplier shall turn on or reconnect gas service in or on any premises where and when gas service is not at the time being rendered. This shall not prohibit an installer from turning on the supply of gas temporarily for the purpose of testing the installation made by him or from turning on gas that he had temporarily turned off for the purpose of connecting an appliance or making repairs.

15.05 ENFORCEMENT.

- (1) No person shall sell or offer for sale or install any gas appliance, equipment or accessory or gas piping system if the same, when installed for use, would be in violation of any of the provisions of this chapter or would be unsafe or dangerous.
- (2) The department having jurisdiction may disconnect or order disconnection of any gas appliance, equipment or accessory, or gas piping which does not conform to the requirements of this chapter or which may be found defective and in such condition as to endanger life or property. Where such disconnection has been made, a notice shall be attached to such appliance, equipment or accessory or gas piping which shall state that it has been disconnected and the reasons therefor, and such notice shall not be removed nor shall the appliance, accessory or gas piping be reconnected until it shall have been made to conform with the requirements of this chapter and its reconnection authorized by the department having jurisdiction.

15.10 PENALTY. Any person who shall violate any provision of this chapter, or any order, rule or regulation made hereunder, upon conviction, shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

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HEALTH AND WELFARE

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16.01 RULES AND REGULATIONS. The City Council may make reasonable and general rules for the enforcement of the provisions of this chapter and for the prevention of the creation of health nuisances and the protection of the public health and welfare and may, where appropriate, require the issuance of licenses and permits. All such regulations shall have the same effect as ordinances and any person violating any of such regulations and any lawful order of the Council shall be subject to a penalty as provided in Section 25.04 of this Code.

16.02 MILK AND MILK PRODUCTS. No person shall sell, offer or expose for sale within the City any milk or milk product other than Grade A pasteurized milk or milk products as defined in Chapter Ag. 80, Wis. Adm. Code.

16.03 SALE OF ADULTERATED MEAT PROHIBITED. No person shall slaughter any sick or diseased animal for the purpose of sale or shall sell or offer for sale any adulterated meat.

16.04 SLAUGHTERHOUSES PROHIBITED. No person shall operate a slaughterhouse within the City.

16.05 NO FEEDING WATERFOWL. – It shall be unlawful for any person to

- (1) Feed any migratory waterfowl on any property in the City of Kiel
- (2) Create any condition, which results in a congregation of migratory waterfowl on any property.
 - (a) Results in an accumulation of waterfowl feces or dropping;
 - (b) Results in damage to flora, fauna or public property or safety or welfare;
 - (c) Results in a threat or nuisance to the public health, safety or welfare or;
 - (d) Results in a threat to the health, safety or welfare of the migratory waterfowl.

16.15 PENALTY. Any person who shall violate any provision of this chapter, or any order, rule or regulation made hereunder, shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

CHAPTER 17
ZONING CODE

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17.01 SHORT TITLE. This chapter shall be known as the "Kiel Zoning Code."

17.02 DEFINITIONS.

- (1) **ACCESSORY USE, BUILDING OR STRUCTURE.** A use, building or structure on the same lot with and of a nature customarily incidental and subordinate to the principal use, building or structure.
- (2) **ALLEY.** A public way affording secondary means of access to abutting property.
- (3) **APARTMENT.** A room or suite with cooking facilities available which is occupied as a residence; includes dwelling unit and efficiency unit.
- (4) **BASEMENT OR CELLAR.** A story partly underground with at least 1/2 of its height below the average level of the adjoining ground.
- (5) **BOARDING OR ROOMING HOUSE.** Any dwelling in which unrelated persons are housed or lodged for compensation with or without meals, having not more than 10 sleeping rooms and without separate kitchen facilities.
- (6) **BUILDING.** Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of persons, animals or personal property.
- (7) **BUILDING HEIGHT.** The vertical distance from the average elevation of the adjoining ground level, or the property line grade, whichever is lower, to the top of the cornice of a flat roof, to the deck line of a mansard roof, to a point of the roof directly above the highest wall of a shed roof, to the uppermost point on a round or other arch type roof, to the mean distance of the highest gable on a pitched or hip roof.
- (8) **BUILDING, PRINCIPAL.** The main structure on a lot which houses the primary use of the premises.
- (9) **CARPORT.** An open-sided, roofed automobile shelter, usually formed by extension of the roof from the side of a building.
- (10) **DWELLING UNIT.** A building or portion thereof, designed or used exclusively as the living quarters for one or more persons living, sleeping, cooking and eating on the same premises as a housekeeping unit.
- (11) **ESSENTIAL SERVICES.** The erection, construction, alteration or maintenance by public utilities or municipal departments of underground, surface or overhead gas, communications, electrical, steam, fuel or water transmission or distribution systems, collections, supply or disposal systems, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories in connection therewith, but not including buildings

which are necessary for the furnishing of adequate service by such utility or municipal departments for the general public health, safety, convenience or welfare.

- (12) FAMILY DAY CARE HOME. A home which is a dwelling licensed as a day care center by the Department of Health and Family Services under Section 48.65, Wis. Stats., where care is provided for not more than 8 children.
- (13) FENCE. A barrier made of wood, metal, stone or other material.
- (14) FLOOR AREA. The sum of the gross areas of the building floor, exclusive of porches, balconies, garages and basements. Measurements shall be made from the inside of the exterior walls to the center of the interior walls.
- (15) GARAGE, PRIVATE. A detached accessory building or portion of the principal building, including a carport, which is used primarily for storing of vehicles.
- (16) GENERAL FLOOR PLAN. A graphic representation of the anticipated utilization of the floor area within a building or structure, to include height and width dimensions, but not necessarily as detailed as construction plans.
- (17) GRADE ESTABLISHED. The elevation of the centerline of the streets as officially established by the City.
- (18) HEDGE. A thicket of bushes planted as a boundary.
- (19) HOME OCCUPATION. Any gainful occupation or profession engaged in by the occupants of the dwelling, where the following conditions are met:
 - (a) It is conducted within the dwelling or attached accessory building or upon a parcel of land containing the dwelling unit.
 - (b) Except for gardening, evidence of the occupation shall not be visible from any City street.
 - (c) The use does not adversely affect the character of the uses permitted in the district in which it is located by causing excessive traffic, noise or electrical interference.
 - (d) No person other than a member of the immediate family which occupies such dwelling unit shall be employed in the home occupation.
 - (e) No more than 25% of the area of any dwelling unit plus accessory buildings shall be devoted to the home occupation, except that rooms rented to lodgers shall not be subject to this limitation.
 - (f) No outside storage of equipment or materials used in the home occupation shall be permitted.
- (20) HOTEL. A building containing 5 or more guest rooms in which lodging is provided with or without meals for compensation and which is open to transient or permanent guests or both, and where

no provision is made for cooking in any guest room, and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge.

- (21) JUNK YARD. An area where used, waste, discarded or salvaged materials are bought, sold, exchanged, stored, baled, cleaned, packed, disassembled or handled, including, but not limited to, scrap iron, other metals, paper, rags, rubber products, plastic products, bottles and lumber. Storage of such material in conjunction with a permitted manufacturing process on the lot when within an enclosed area or building shall not be included.
- (22) LOT OF RECORD. A lot which is shown in the records of the County Register of Deeds.
- (23) LOT, CORNER. A lot situated at the junction of, and abutting on, 2 or more intersecting streets.
- (24) LOT, DEPTH. The mean horizontal distance between the front lot line and the rear lot line of a lot.
- (25) LOT LINE, FRONT. That boundary of the lot which abuts an existing or dedicated public street.
- (26) LOT LINE, REAR. That boundary of a lot which is opposite the front lot line. If the rear lot line is less than 10' in length, or if the lot forms a point at the rear, the rear lot line shall be a line 10' in length within the lot, parallel to and at the maximum distance from the front lot line.
- (27) LOT LINE, SIDE. Any boundary of a lot which is not a front lot line or a rear lot line.
- (28) LOT WIDTH. The maximum horizontal distance between the side lot lines of a lot measured parallel to the front lot line and within the building area of the lot.
- (29) MOTEL. A place, other than a hotel, in which sleeping accommodations are offered for pay to transients in 5 or more rooms.
- (30) MOTOR FREIGHT TERMINAL. A building or area in which freight brought by motor truck is transferred or stored from movement in intrastate or interstate shipment by motor truck.
- (31) MOTOR FUEL STATION. A retail place of business engaged primarily in the sale of motor fuels, but also may be engaged in supplying goods and services generally required in the operation and maintenance of motor vehicles. These may include sale of petroleum products, sale and servicing of tires, batteries, automotive accessories and replacement items, washing and lubrication services and the performance of minor automotive maintenance and repair.
- (32) MOTOR FUEL CONVENIENCE STORE. Any store operated in conjunction with a motor fuel station or truck stop for the purpose of offering for sale goods not essential to the motoring public.
- (33) MULTI-FAMILY DWELLING. The term "multi-family dwelling" shall mean any building designed or used exclusively as the living quarters for three or more families.

- (34) NONCONFORMING STRUCTURE. Any structure which is existing upon the effective date of this chapter, which would not conform to the applicable regulations if the structure were to be erected under the provisions of this chapter.
- (35) NONCONFORMING USE. Use of land, buildings or structures existing at the time of adoption of this chapter, which does not comply with all the regulations of this chapter or any amendments hereto governing the zoning district in which such use is located; except that a lot existing before April 17, 2001, which meets the size requirements for a lot to be built upon prior to April 17, 2001 may be built upon provided the present building code requirements are followed.
- (36) PARKING SPACE. The area required for parking one automobile, which in this chapter is held to be an area 10' wide and 18' long, not including drive or passageways.
- (37) PLAN COMMISSION. Within this chapter, the term "Plan Commission" shall refer to the Plan Commission of the City of Kiel.
- (38) PLAT. A map or chart of land.
- (39) PROFESSIONAL OFFICE. The office of a recognized profession, including the offices of doctors, physicians, dentists, optometrists, ministers, architects, professional engineers, lawyers and such other similar professional occupations.
- (40) PROPERTY LINE GRADE. The elevation of the property line in front of a building measured at the center of such building shall be as established by the City. Where no property line grade has been established, the mean elevation of the finished lot grade at the property line shall be considered the "existing" property line grade.
- (41) RESIDENCE. A building designed or used exclusively as permanent living quarters.
- (42) SETBACK. The minimum horizontal distance between the front line of the building, including porches, and the street right-of-way line.
- (43) SIGN. Any written announcement, declaration, demonstration, display, illustration, insignia or illumination used to advertise or promote the interest of any person when the same is displayed or placed out of doors in view of the general public and shall include every detached sign.
- (44) SIGN, ADVERTISING (BILLBOARD). A sign which directs attention to a business, community service or entertainment. Only such signs as are related to the premises where they are located shall be permitted.
- (45) SIGN, BUSINESS. A sign which directs attention to a business or profession conducted or to a commodity, service or entertainment sold or offered on the premises on which such sign is located.

- (46) SIGN, FLASHING. An illuminated sign on which the artificial light is not maintained constant in intensity and color at all times in which such sign is in use.
- (47) SIGN, NAMEPLATE. Any sign which states the name or address or both of the business or occupant of the lot where the sign is placed or may be a directory listing the names, address and business or occupants.
- (48) SIGN, GROSS AREA OF. The area of the sign shall be calculated by measuring the total surface area on a square footage basis. If letters or graphics are mounted without a frame, the gross area shall be the area bounded by straight lines 6" beyond the periphery of such letters or graphics. Each surface utilized to display a message or to attract attention shall be measured as a separate sign. However, only one side of a double-faced sign shall be measured in computing the gross area thereof.
- (49) SIGN, ILLUMINATED. Any sign which has characters, letters, figures, designs or outline illuminated by electric lights or luminous tubes as a part of the sign proper.
- (50) STORY. That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, the space between such floor and the ceiling next above it.
- (51) STORY, HALF. That portion of a building in the R-1, R-2 or R-3 residential districts, between the eaves and ridge lines of a pitched roof, which may or may not be used for tenant purposes.
- (52) STREET. A public thoroughfare affording access to abutting property.
- (53) STRUCTURAL ALTERATION. Any change in the supporting members of a building such as bearing walls, columns, beams or girders or any substantial change in the roof structure or exterior walls.
- (54) STRUCTURE. Anything constructed or erected which requires permanent location on the ground or attachment to something having such location.
- (55) USE, PRINCIPAL. The main use of land or buildings as distinguished from subordinate or accessory uses.
- (56) YARD. A required open space on a lot, which is unoccupied and unobstructed by a structure from its lowest ground level to the sky, except as expressly permitted in this chapter. A yard shall extend along a lot line and at right angles to such lot line to a depth or width specified in the yard regulations for the district in which such lot is located.
- (57) YARD, FRONT. A yard extending across the full width of the lot and lying between the front line of the lot and the nearest point of the principal building.

(58) YARD, REAR. A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest point of the principal building.

(59) YARD, SIDE. A yard extending from the front yard to the rear yard, extending between the side lot line and the nearest point of the principal building.

17.03 DISTRICTS. The City is divided into 9 zoning districts as follows:

- I-1 General Industrial District
- I-2 Limited Industrial District
- B-1 Fremont Commercial District
- B-2 Commercial Service District
- C-1 Conservancy District
- R-1 Residential District
- R-2 Residential District
- R-3 Multiple Residential District
- M-1 Mobile Home Park District

17.04 ZONING MAP. The boundaries of the zoning districts are shown upon the Official Zoning Map of the City on file in the office of the Administrator, and all notations, references and other information shown thereon are a part of this chapter and have the same force and effect as if fully set forth or described herein.

17.05 INTERPRETATION OF DISTRICT BOUNDARIES.

(1) STREET LINES. Where district boundaries are indicated as approximately following the centerlines of streets or highways, street lines or highway right-of-way lines, such centerlines, street lines or highway right-of-way lines shall be construed to be such boundaries.

(2) LOT LINES. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be the boundaries.

(3) PARALLEL TO STREET LINES. Where district boundaries are so indicated that they are approximately parallel to the centerlines of streets, or the centerlines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as

indicated on the zoning map. If no distance is given, such dimension shall be determined by the use of the scale shown on the zoning map.

- (4) RAILROAD LINES. Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located in the middle of the main tracks of such railroad line.
- (5) RESOLVING QUESTIONS. Questions concerning the exact location of district boundary lines shall be determined by the Plan Commission.

17.06 CONFORMITY WITH REGULATIONS REQUIRED. No building or land shall hereafter be used or occupied, and no building shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which it is located.

17.07 HEIGHT, DENSITY, LOT AREA AND YARDS. No building shall hereafter be erected or altered:

- (1) To exceed the height;
- (2) To accommodate or house a greater number of families;
- (3) To occupy a greater percentage of lot area; or
- (4) To have narrower or smaller rear yards, front yards, inner or outer courts than are specified herein for the district in which such building is located.

17.08 OCCUPANCY OF YARDS. No part of a yard or open space about any building required for the purpose of complying with the provisions of this chapter shall be included as a part of a yard or other open space similarly required for another building. A one-story bay window may project not more than 3' beyond the front line of the building.

17.09 SUBSTANDARD LOTS. Any lot in a single ownership, which ownership was of record on May 18, 1965, that does not meet the requirements of this chapter for yards, courts or other areas of open space, may be utilized for single residence purposes, provided the requirements for such yard or court area, width, depth or open space are within 75% of that required by this chapter. The purpose of this provision is to permit utilization of recorded lots which lack adequate width or depth as long as reasonable living standards can be provided.

17.10 FRONTAGE. Every building shall front upon a public street, which street shall have a minimum width of 60'.

17.11 VISIBILITY. No wall, fence or shrubbery shall be erected, maintained or planted on any lot which unreasonably obstructs or interferes with traffic visibility on a curve or at any street intersection.

17.12 DWELLINGS IN NONRESIDENTIAL DISTRICTS. No dwelling shall be erected in the I-1 General Industrial District or I-2 Limited Industrial District. However, the sleeping quarters of a watchman or a caretaker may be permitted.

17.13 FLOOR AREA. Homes constructed in the City of Kiel shall contain a minimum ground floor square feet of living space, exclusive of garages, breezeways, open porches or covered patios, as follows:

- (1) For a 1-story dwelling, 1200 square feet;
- (2) For a split-level dwelling, 1000 square feet on the ground floor;
- (3) For a 2-story and 1 1/2-story dwelling, 900 square feet on the first floor and 600 square feet on the second floor.
- (4) With respect to a 2-family residence, or duplex, there shall be a minimum of 900 square feet per dwelling unit. With respect to multi-family housing, there shall be a minimum of 700 square foot per dwelling unit. The 700 square foot per dwelling multi-family dwelling unit shall apply for any multiple family residence or residence converted to multiple family use, exclusive of basements, cellars and unfinished attics.

17.14 BUILDING GRADES. Any building requiring yard space shall be locate at such an elevation that a sloping grade shall be maintained to cause the flow of surface water to run away from the walls of the building. When a new building is constructed on a vacant lot between 2 existing buildings or adjacent to an existing building, the existing established grade shall be used in determining the grade around the new building and the yard around the new building shall be graded in such a manner as to meet existing grades and not permit runoff of surface water to flow onto adjacent properties. Grades shall be approved by the Building Inspector.

17.15 MOVING BUILDINGS.

- (1) No building or structure which has been wholly or partially erected on any premises located either within or outside of this City shall be moved to and be placed upon any other premises in this City until a permit for such removal shall have been secured. Any such building or structure shall fully conform to all provisions of this chapter in the same manner as a new building or structure.

(2) Before a permit may be issued for moving a building or structure, the Building Inspector shall inspect same and determine if it is in a safe condition to be moved, whether it may be conditioned to comply with the Building Code and other City requirements for the use and occupancy for which it is to be used, and whether it will be of similar character with the buildings in the area where it is to be moved. In addition, the person applying for the permit for moving a building or structure shall provide the Building Inspector at the time of making application with an insurance binder indicating a minimum of \$1,000,000 per person and \$2,000,000 per incident liability insurance coverage or a performance bond in the said amounts. If these conditions can be complied with, a permit shall be issued for the moving of the building or structure.

17.16 EXCAVATIONS OR HOLES. The construction, maintenance or existence within the City of any unprotected, unbarricaded, open or dangerous excavations, holes, pits or wells, or of any excavations, holes or pits which constitute a danger or menace to the public health, safety or welfare, are hereby prohibited. However, this section shall not prevent any excavation under a permit issued pursuant to this chapter or the Building Code where such excavations are properly protected and warning signs posted in such manner as may be approved by the Building Inspector. Nor shall this section apply to lakes, streams or other natural bodies of water, or to ditches, streams, reservoirs or other major bodies of water created or existing by authority of any government agency.

17.17 REMOVAL OF SOIL, SAND OR OTHER MATERIAL. The use of land for the removal of topsoil, sand, gravel or other material from the land is not permitted in any district, except under a temporary certificate from the Building Inspector issued upon approval of the Plan Commission and on condition that such removal of soil will not be below the normal building grade as established from the nearest existing or proposed street when such building grade has been established and approved by the City's consulting engineer. A temporary certificate may be issued in appropriate cases upon the filing of an application accompanied by a suitable agreement or bond that such removal will not cause stagnant water to collect or leave the surface of the land at the expiration of such permit in an unstable condition or unfit for the growing of turf or for other land uses permitted in the district in which such removal occurs. This regulation shall not prohibit the normal removal of soil for the construction of an approved building or structure when such plans have been approved by the Building Inspector and a building permit has been issued and a contract let for such building development.

17.18 STORAGE, DUMPING OF WASTE, JUNK, GARBAGE, ETC. The use of land for the storage, collection or accumulation of used lumber and other used materials, or for the dumping, disposal or salvage of automobile scrap iron, junk, garbage, rubbish or other refuse or of ashes, slag or other industrial wastes or by-products shall not be permitted in any district, except as specifically permitted in Section 17.24. The dumping of dirt, sand, rock or other material excavated from the earth is permitted in any district, provided the surface of such material is graded within a reasonable time in a manner preventing the collection of stagnant water, and which leaves the ground surface in a condition suitable for the growing of turf or for other land uses permitted in the district.

17.19 BULK STORAGE OF GASOLINE PROHIBITED. Storage of gasoline in quantities of more than 10 gallons is prohibited in the R-1, R-2, R-3, C-1 and M-1 Districts, except gasoline contained in gas tanks of internal combustion engines and supply tanks connected to appliances used primarily for household needs. This section shall not prohibit the parking or driving of gasoline supply trucks in such districts.

17.20 APPROVAL OF PLATS. No proposed plat of a new subdivision shall hereafter be approved by either the City Council or the Plan Commission unless the lots within such plat equal or exceed the minimum size and width requirements set forth in the various districts of this chapter and unless such plat fully conforms with the Wisconsin Statutes and the ordinances of the City.

17.21 ESSENTIAL SERVICES. Essential services authorized under any franchise or regulated by any State law or City ordinance shall be permitted, it being the intention to exempt such essential services from the application of this chapter.

17.22 GENERAL INDUSTRIAL DISTRICT (I-1).

- (1) **GENERAL.** The intent and purpose of establishing the I-1 General Industrial District is to provide for regulation of zoning for manufacturing and industrial operations which, because of their physical and operational characteristics, may be objectionable to non-residential, non-manufacturing businesses and to residences. It is further intended that the location of these uses be reviewed by the City Plan Commission to insure compatibility with adjacent land uses.
- (2) **SPECIFIC USES NOT PERMITTED.** Land shall be used and buildings or structures shall be erected, altered, enlarged or used for purposes other than any of the following, which shall not be permitted in this District:

- (a) Uses which are permitted in the R-1, R-2 and R-3 Residential Districts, in the B-1 Fremont Commercial District and B-2 Commercial Service District, in the M-1 Mobile Home District and in the C-1 Conservancy District.
 - (b) Acid manufacture.
 - (c) Cement, lime, gypsum or plaster of paris manufacture.
 - (d) Fireworks, explosive or match manufacture.
 - (e) Garbage, offal or dead animal reduction or dumping, except by the City or its agents.
 - (f) Glue manufacture, fat rendering or distillation of bones.
 - (g) Residences.
 - (h) Schools, hospitals, clinics and other institutions for human care.
- (3) SPECIAL USES PERMITTED. Land shall be used and buildings or structures shall be erected, altered, enlarged or used only for one or more of the following uses, subject to the provisions of this section and those of other applicable sections of the Zoning Code:
- (a) Any use permitted in the I-2 Limited Industrial District.
 - (b) Brick, concrete products, tile or terra cotta manufacture.
 - (c) Foundries and coke ovens.
 - (d) Furniture manufacture.
 - (e) Machinery and heavy equipment manufacture.
 - (f) Paint, oil, shellac, turpentine or varnish manufacture.
 - (g) Paper and pulp manufacture.
 - (h) Milk and cheese processing and packing operations.
 - (i) Rolling mill.
 - (j) Sawmill.
 - (k) Soaps and detergents manufacture.
- (4) CONDITIONAL USES PERMITTED. The following uses, because of the danger of explosion or fire, excessive smoke, noise, odor, dust or vibration, health hazards or limitation of the use of abutting property, are permitted at approved locations as provided by special permit granted by the Common Council after review by the City Plan Commission. Prior to Plan Commission action all abutting or fronting property owners shall be notified in writing of the time and place where the Plan Commission will deliberate on the recommendation regarding the issuance of a special permit. In acting upon any application for a permitted use hereunder, the Plan Commission and the Common Council shall consider whether the requested use is reasonably necessary for the

convenience and welfare of the public, is in harmony with the character of the surrounding area, and will have a minimal or no effect on surrounding property values. The Common Council may attach conditions to a special permit granted hereunder in order to assure that the requested use will remain in conformity with these standards. The uses for which a special permit in this District may be issued are:

- (a) Acetylene and other gas manufacture and storage.
 - (b) Asphalt manufacturing or refining.
 - (c) Automobile wrecking, dismantling and storage of motor vehicle parts.
 - (d) Coal yards, including the processing of coal and coal products.
 - (e) Drop forge industries.
 - (f) Fertilizer manufacture and potash refining.
 - (g) Incinerators, public or commercial.
 - (h) Junk yard or shop for the storage, salvage, sale, handling, baling, reclaiming, or remaking of scrap iron or other metals, bottles, rags, rubber, or other second-hand materials.
 - (i) Production, refining or bulk storage of petroleum or other inflammable liquids.
 - (j) Rubber manufacture or treatment.
 - (k) Smelting of tin, copper, zinc or iron ore.
 - (l) Smelting or refining of salvaged metal.
 - (m) Stock yards, slaughter houses, meat packing or processing.
 - (n) Stone mill or quarry, sand, gravel or crushed stone mining, washing, grading or manufacture.
 - (o) Tanning, curing or storage of raw hides.
 - (p) Vinegar manufacture.
- (5) HEIGHT. No building or structure shall be erected to a height exceeding 5 stories or 60'.
- (6) AREA. Not more than 40% of the area of the lot shall be covered by buildings or structures.
- (7) YARDS.
- (a) Wherever the I-1 District abuts upon any other use district, every building or industrial use of the property in the I-1 district shall be set back from the property line of such other district a minimum of 50'.
 - (b) Each lot shall have a depth of not less than 50' per front yard, 8' per side yard and 25' per rear yard. On corner lots the side yard adjacent to the street shall be not less than 25'.
- (8) CUL DE SACS. With respect to lot size for cul de sacs, the lot must be a minimum of 90 feet in width at the 50-foot front yard setback line; at the street line the minimum width must be 60 feet.

17.23 LIMITED INDUSTRIAL DISTRICT (I-2).

- (1) **GENERAL.** The intent and purpose of the Limited Industrial District (I-2) is to provide for any manufacturing, industrial or commercial operations which, because of their actual physical and operational characteristics, would not be detrimental to the surrounding area or to the community as a whole by reason of noise, dust, smoke, odor, traffic, physical appearance or other similar factors; and subject to such regulatory controls as will reasonably insure compatibility in this respect.
- (2) **SPECIFIC USES PERMITTED.** Land shall be used and buildings or structures shall be erected, altered, enlarged or used only for one or more of the following purposes, subject to the provisions of this section and other applicable sections of the Zoning Code, and provided that no residential use shall be permitted in this District.
- (a) Any non-residential use permitted in the B-1 Fremont Commercial District and B-2 Commercial Service District.
 - (b) Artificial flower manufacture.
 - (c) Artificial limb manufacture.
 - (d) Bag cleaning.
 - (e) Bakery.
 - (f) Billboard.
 - (g) Blacksmith.
 - (h) Box manufacture--wood, paper, fiberboard or sheet metal.
 - (i) Broom manufacture.
 - (j) Brush--wire or bristle--manufacture.
 - (k) Carpet and rug cleaning or manufacture.
 - (l) Clothing manufacture, including gloves.
 - (m) Coffin and grave vault manufacture.
 - (n) Construction materials and equipment sales.
 - (o) Cosmetics, shampoos or barber supplies manufacture.
 - (p) Dying and shrinking of fabrics.
 - (q) Electric sign manufacture.
 - (r) Enameling and painting, except fire-glazed enameling.
 - (s) Engraving.
 - (t) Envelope manufacture.

- (u)** Express depot or distribution station.
- (v)** Food processing or manufacture, but not including the slaughter of animals.
- (w)** Furniture (household, office or store) manufacture or supply.
- (x)** Furniture polish and floor wax manufacture.
- (y)** Garage for storage, sale, service or repair of automobiles, trucks, tractors and accessory equipment.
- (z)** Glass, storage, cutting and distribution.
- (aa)** Grain elevator, cleaning, grading and storage of grain.
- (ab)** Gymnasium equipment, playground apparatus and athletic goods manufacture.
- (ac)** Heating, ventilating, ducts, flues and piping fabrication, repair and cleaning.
- (ad)** Hosiery manufacture.
- (ae)** House moving establishment.
- (af)** Ice manufacture and/or storage.
- (ag)** Ironwork--ornamental, hand-forged, but not structural.
- (ah)** Knitting mill.
- (ai)** Laboratory, testing or manufacturing.
- (aj)** Laundry.
- (ak)** Machine shop, not using heavy punch press or drop forge.
- (al)** Mirror manufacture and resilvering.
- (am)** Mover of household goods.
- (an)** Musical instrument manufacture.
- (ao)** Optical goods manufacture.
- (ap)** Paint shop.
- (aq)** Paper products manufacture.
- (ar)** Pattern shop.
- (as)** Phonograph and radio manufacture.
- (at)** Plating by electrochemical process.
- (au)** Plumbing fixture storage and distribution.
- (av)** Printing.
- (aw)** Rag cleaning and wiper cloth manufacture.
- (ax)** Rug and carpet cleaning.
- (ay)** Sail and canvas goods manufacture.

- (az) Scientific instrument and laboratory apparatus manufacture.
 - (ba) Secondhand wearing apparel, household equipment, store fixtures and office furniture storage, reconditioning and sale. Junk shops not included.
 - (bb) Seed cleaning, packaging, storage and sale.
 - (bc) Sheet metal fabrication.
 - (bd) Shoe manufacture.
 - (be) Soda water and soft drink manufacture, bottling and distribution.
 - (bf) Sporting goods manufacturing.
 - (bg) Stonecutting of monuments, headstones or statuary, but not building stone or architectural trim.
 - (bh) Storage warehouse.
 - (bi) Store fixture and equipment manufacture.
 - (bj) Substation for electric power and light.
 - (bk) Tinsmith shop.
 - (bl) Tobacco and tobacco products manufacture.
 - (bm) Tractor and tractor accessory sale, service and repair.
 - (bn) Trucking, distribution and load assembly depot.
 - (bo) Upholstery supplies manufacture and wholesale.
 - (bp) Wallpaper manufacture.
 - (bq) Watch or clock manufacture.
 - (br) Weaving of textiles.
 - (bs) Window shade or curtain manufacture.
 - (bt) Wire brush manufacture.
 - (bu) Woodworking, carpentry and cabinet shops.
- (3) CONDITIONAL USES PERMITTED. The following uses are permitted after review of the City Plan Commission and approval of the Common Council following a written notification to owners of all abutting and fronting properties and providing there is compliance with the area and height regulations of the I-2 District indicated below. In acting upon any application for a permitted use hereunder, the Plan Commission and Council shall consider whether the requested use is reasonably necessary for the convenience and welfare of the public, is in harmony with the character of the surrounding area, and will have a minimal or no effect on surrounding property values. The Common Council may attach conditions to a special permit granted hereunder in order to assure

that the requested use will remain in conformity with these standards. The uses for which a special permit in this district may be issued are:

- (a) Kennels.
 - (b) Storage in bulk of chemicals used in a production process, and of petroleum-based products, provided the storage premises are enclosed by a wall or type of fence of sturdy construction and uniform color, or an evergreen hedge of not less than 6' in height, to completely sight screen said storage.
 - (c) Other uses not specifically listed above but which are similar to the above permitted uses.
- (4) HEIGHT. No building or structure shall be erected to a height exceeding 5 stories or 60'.
- (5) AREA. Not more than 40% of the area of the lot shall be covered by buildings or structures.
- (6) YARDS.
- (a) Wherever the I-2 District abuts upon any other use district, every building or industrial use of the property in the I-2 District shall be set back from the property line of such other district a minimum of 50'.
 - (b) Each lot shall have a depth of not less than 25' per front yard, 8' per side yard and 25' per rear yard. On corner lots the side yard adjacent to the street shall be not less than 25'.
- (7) CUL DE SACS. With respect to lot size for cul de sacs, the lot must be a minimum of 90 feet in width at the 25-foot front yard setback line; at the street line the minimum width must be 60 feet.

17.24 FREMONT COMMERCIAL DISTRICT (B-1).

- (1) GENERAL. The Fremont Commercial District is distinguished in the present Zoning Code by virtue of its being a long-existing and developed commercial district, where yard setback and other similar requirements are in many cases not met by buildings and structures which have existed in this district for many years, and the change in which would not now be reasonably feasible.
- (2) SPECIFIC USES PERMITTED. Land shall be used and buildings or structures shall be erected, altered, enlarged or used only for one or more of the following purposes:
- (a) All uses permitted in the Multiple Residential (R-3) District, except those uses permitted in the R-3 District which are also permitted in the R-2 District.
 - (b) Stores and shops for the conducting of any retail business.
 - (c) Banks, offices, studios, theaters, restaurants, taverns, bowling alleys, hotels, motels and similar community services.
 - (d) Railway or bus passenger stations, telegraph or express offices.

- (e) Garages, filling stations and convenience stores.
 - (f) Funeral parlors and mortuaries.
 - (g) Newspapers offices and printing plants.
 - (h) Plumbers and plumbing shops.
 - (i) Public utility buildings, telephone exchange buildings, electric transformer stations and substations, water and sewage pumping stations.
 - (j) Meeting places of lodges, clubs and organizations.
 - (k) Buildings and uses accessory to the specific uses permitted shall also be permitted.
- (3) CONDITIONAL USES PERMITTED.** The following uses are permitted after review of the City Plan Commission and approval of the Common Council following written notification of the owners of all abutting and fronting properties and providing there is compliance with the area and height regulations of the B-1 District indicated below. In acting upon any application for a permitted use hereunder, the Plan Commission and Council shall consider whether the requested use is reasonably necessary for the convenience and welfare of the public, is in harmony with the character of the surrounding area, and will have a minimal or no effect on surrounding property values. The Common Council may attach conditions to a special permit granted hereunder in order to assure that the requested use will remain in conformity with these standards. The uses for which a special permit in this district may be issued are:
- (a) Automobile showrooms and outdoor sales lots, after approval of the site plan by the Plan Commission.
 - (b) Light industrial assembly operations, with said operations only to be permitted on a temporary basis by conditional use permit for a limited term to be determined by the City Council on a case-by-case basis after reviewing a recommendation thereon from the Plan Commission. Factors to be taken into account by the Plan Commission and the City Council in approving or disapproving each light industrial assembly operation permit shall include the following:
 1. The length of time for which the assembly operations are proposed to be conducted on the property in the B-1 district;
 2. The probable effects of the proposed assembly operations upon neighboring properties, including estimated effect on property values;
 3. The numbers of people proposed to be employed in the assembly operations and the probable extent of traffic created by said operations; and

4. The industrial wastes or noise produced in the assembly operations and the probable effect upon the environment of said assembly operations.

(c) Child day care centers.

(4) HEIGHT. No building or structure shall be erected or structurally altered to exceed a height of 2 stories or 30'.

(5) YARDS. No front or side yards shall be required, except that when a building or group of buildings abuts a residential district, a side yard shall be provided on the side of the lot abutting the residential district, and such yard shall have a width of not less than 25'. There shall be a rear yard with a depth of not less than 25% of the depth of the lot, except that the depth of the rear yard need not be greater than 25'. The rear yard may be used for off street parking and unloading as provided by Section 17.31.

17.25 COMMERCIAL SERVICE DISTRICT (B-2).

(1) GENERAL. This district is intended to be governed by standards established by the Plan Commission and the Common Council to provide for the best development and most functional commercial service district, taking into account that the Fremont Commercial District in many respects cannot reasonably feasibly be altered from its current status, but the purpose of the present regulations for this district are that the best possible standards be recognized for other commercial districts in the City. This district is intended to accommodate the heavy service industries at locations directly accessible to the City's arterial and transportation systems where they can conveniently serve the business and industrial areas of the City.

(2) SPECIFIC USES PERMITTED. Land shall be used and buildings or structures shall be erected, altered, enlarged or used only for one or more of the following uses, subject to the provisions of this section and other applicable sections of the Zoning Code:

(a) All uses permitted in the Multiple Residential (R-3) District, except those uses permitted in the R-3 District which are also permitted in the R-2 District.

(b) Stores and shops for the conducting of any retail business.

(c) Banks, offices, studios, theaters, restaurants, taverns, bowling alleys, hotels, motels and similar community services.

(d) Railway or bus passenger stations, telegraph or express offices.

(e) Garages, filling stations or convenience stores.

(f) Funeral parlors and mortuaries.

- (g) Newspaper offices and printing plants.
 - (h) Plumbers and plumbing shops.
 - (i) Public utility buildings, telephone exchange buildings, electric transformer stations and substations, water and sewage pumping stations.
 - (j) Meeting places of lodges, clubs and organizations.
 - (k) Mini-warehouses.
 - (l) Buildings and uses accessory to the specific uses permitted shall also be permitted.
- (3) CONDITIONAL USES PERMITTED. The following uses are permitted after review of the City Plan Commission and approval of the Common Council following a written notification to owners of all abutting and fronting properties and providing there is compliance with the area and height regulations of the B-2 District indicated below. In acting upon any application for a permitted use hereunder, the Plan Commission and Council shall consider whether the requested use is reasonably necessary for the convenience and welfare of the public, is in harmony with the character of the surrounding area, and will have a minimal or no effect on surrounding property values. The Common Council may attach conditions to a special permit granted hereunder in order to assure that the requested use will remain in conformity with these standards. The uses for which a special permit in this district may be issued are:
- (a) Automobile show rooms and outdoor used automobile sales lots, after approval of the site plan by the Plan Commission.
 - (b) Other uses not specifically listed above but which are similar to the above permitted uses.
 - (c) Child day care centers.
- (4) HEIGHT. No building or structure shall be erected or structurally altered to exceed a height of 2 stories or 30'.
- (5) YARDS.
- (a) No building shall be less than 50' distant from the boundary line of any residential district.
 - (b) Each lot shall have a depth of not less than 25' per front yard, 8' per side yard and 25' per rear yard. On corner lots the side yard adjacent to the street shall be not less than 25'.
- (6) CUL DE SACS. With respect to lot size for cul de sacs, the lot must be a minimum of 90 feet in width at the 25-foot front yard setback line; at the street line the minimum width must be 60 feet.

17.26 CONSERVANCY DISTRICT (C-1).

- (1) **GENERAL.** The intent and purpose of establishing the Conservancy (C-1) District is to provide for certain open land uses, to preserve natural water courses, to prevent premature and uneconomical subdivision and development of land and to provide a reserve of land for the future orderly development of the City.
- (2) **SPECIFIC USES PERMITTED.** Land shall be used and buildings or structures shall be erected, altered, enlarged or used only for one or more of the following purposes, subject to the provisions of this section and other applicable sections of the Zoning Code:
- (a) Churches.
 - (b) Cemeteries.
 - (c) Schools--public, private, or parochial.
 - (d) Hospitals, other than animal hospitals.
 - (e) Parks, parkways and other recreational uses.
 - (f) Fraternal organizations.
 - (g) Public buildings.
- (3) **CONDITIONAL USES PERMITTED.** The following uses are permitted, after review of the City Plan Commission and approval of the Common Council, following written notification of the owners of all abutting and fronting properties and provided there is compliance with the area and height regulations of the C-1 District indicated below. In acting upon any application for a permitted use hereunder, the Plan Commission and Common Council shall consider whether the proposed use or structure is in accordance with the purpose and intent of this Chapter and will not be hazardous, harmful, offensive or otherwise adverse to the environment or the value of neighborhood or community. The Common Council may attach conditions to a special permit granted hereunder in order to assure that the requested use will remain in conformity with these standards. The uses for which a special permit in this district may be issued are:
- (a) Non-animal farming.
- (4) **HEIGHT.** No building or structure shall be erected to a height exceeding 5 stories or 60'.
- (5) **AREA.** Each lot area shall have a minimum area of one acre and a minimum average width of 120'.
- (6) **YARDS.**
- (a) No building shall be less than 50' distant from the boundary line of any residential district.
 - (b) Each lot shall have a depth of not less than 25' per front yard, 8' per side yard and 25' per rear yard.

(c) On corner lots the side yard adjacent to the street shall be not less than 25’.

(7) CUL DE SACS. With respect to lot size for cul de sacs, the lot must be a minimum of 90 feet in width at the 25-foot front yard setback line; at the street line the minimum width must be 60 feet.

(8) SIDEWALKS. The City Council may determine that sidewalks shall not be required in all or part of a Conservancy District in accordance with Section 8.02(2)(d).

17.27 RESIDENTIAL DISTRICT (R-1).

(1) SPECIFIC USES PERMITTED. Land shall be used and buildings and structures shall be erected, altered, enlarged or used only for one or more of the following purposes, subject to the provisions of this section and other applicable sections of the Zoning Code:

- (a) Single family dwellings, accessory buildings and uses.
- (b) Churches and public, private or parochial schools.
- (c) Public parks, playgrounds and recreation areas.
- (d) Public buildings and public utility buildings subject to the approval of the Plan Commission.
- (e) Railroad rights-of-way not including yards.
- (f) Swimming pools, private.
- (g) Temporary real estate signs, not to exceed 25 square feet in area.
- (h) Home occupations.
- (i) Family day care homes.
- (j) Community living arrangements, as defined in Section 62.23(7)(i), Wis. Stats.

(2) CONDITIONAL USES PERMITTED. The following uses are permitted, after review of the City Plan Commission, and approval of the Common Council, following written notification of the owners of all abutting and fronting properties and provided there is compliance with the area and height regulations of the R-1 District indicated below. In acting upon any application for a permitted use hereunder, the Plan Commission and Common Council shall consider whether the proposed use or structure is in accordance with the purpose and intent of this Chapter and will not be hazardous, harmful, offensive or otherwise adverse to the environment or the value of neighborhood or community. The Common Council may attach conditions to a special permit granted hereunder in order to assure that the requested use will remain in conformity with these standards. The uses for which a special permit in this district may be issued are:

- (a) Bed and breakfast establishments meeting all State statutory and local ordinance requirements.
- (b) Professional offices.
- (c) Funeral parlors and mortuaries.

- (d) Child day care centers.
- (e) Wellness and fitness center.
- (3) HEIGHT. No dwelling shall be erected or structurally altered to exceed a height of 35' or 2 1/2 stories.
- (4) LOT COVERAGE. The ground area occupied by the principal and accessory buildings shall not exceed 40% of the total area of the lot. In determining lot size requirements under this subsection, the footprint of the principal building and accessory building shall be used.
- (5) LOT AREA. Each lot shall have a minimum area of 9,000 square feet and a minimum width of 90', except where a lot is smaller in area or width but was a lot of record on May 18, 1965, such lot may be occupied by a single family dwelling, provided the lot is not less than 5,400 square feet in area; and excepting that where a lot was smaller in area than 7,200 square feet, or less than 90' in width, but was a lot of record on April 17, 2001, such lot may be occupied by a single family dwelling provided the lot is not less than 7,200 square feet in area.
- (6) FRONT YARD. There shall be a front yard of not less than 25'.
- (7) REAR YARD. There shall be a rear yard of not less than 25' in depth.
- (8) SIDE YARDS. Each lot shall have 2 side yards not less than 8' each. On corner lots the side yard adjacent to the street shall be not less than 25'.
- (9) CUL DE SACS. With respect to lot size for cul de sacs, the lot must be a minimum of 90 feet in width at the 25-foot front yard setback line; at the street line the minimum width must be 60 feet.

17.28 RESIDENTIAL DISTRICT (R-2).

- (1) SPECIFIC USES PERMITTED. Land shall be used and buildings and structures shall be erected, altered, enlarged or used only for one or more of the following purposes, subject to the provisions of this section and other applicable sections of the Zoning Code:
 - (a) Any use permitted in the R-1 Residential District.
 - (b) Two family dwellings, accessory buildings and uses.
- (2) CONDITIONAL USES PERMITTED. The following uses are permitted, after review of the City Plan Commission and approval of the Common Council, following written notification of the owners of all abutting and fronting properties and provided there is compliance with the area and height regulations of the R-2 District indicated below. In acting upon any application for a permitted use hereunder, the Plan Commission and Common Council shall consider whether the proposed use or structure is in accordance with the purpose and intent of this Chapter and will not be hazardous,

harmful, offensive or otherwise adverse to the environment or the value of neighborhood or community. The Common Council may attach conditions to a special permit granted hereunder in order to assure that the requested use will remain in conformity with these standards. The uses for which a special permit in this district may be issued are:

- (a) Rooming and boarding houses.
 - (b) Bed and breakfast establishments meeting all state statutory and local ordinance requirements.
 - (c) Professional offices.
 - (d) Funeral parlors and mortuaries.
 - (e) Child day care centers.
 - (f) Wellness and fitness center.
- (3) HEIGHT. No dwelling shall be erected or structurally altered to exceed a height of 35' or 2 1/2 stories.
- (4) LOT COVERAGE. The ground area occupied by the principal and accessory buildings shall not exceed 40% of the total area of the lot. In determining lot size requirements under this subsection, the footprint of the principal building and accessory building shall be used.
- (5) LOT AREA. Each lot shall have a minimum area of 9,000 square feet, and a minimum width of 90', and a minimum lot area per dwelling for a 2-family dwelling of 4,500 square feet except where a lot is smaller in area or width but was a lot of record on May 18, 1965, such lot may be occupied by a single family dwelling, provided the lot is not less than 5,400 square feet in area; and excepting that where a lot was smaller in area than 7,200 square feet, or less than 90' in width, but was a lot of record on April 17, 2001, such lot may be occupied by a single family dwelling provided the lot is not less than 7,200 square feet in area.
- (6) FRONT YARD. There shall be a front yard of not less than 25'.
- (7) REAR YARD. There shall be a rear yard of not less than 25' in depth.
- (8) SIDE YARDS. Each lot shall have 2 side yards not less than 8' each. On corner lots the side yard adjacent to the street shall be not less than 25'.
- (9) CUL DE SACS. With respect to lot size for cul de sacs, the lot must be a minimum of 90 feet in width at the 25-foot front yard setback line; at the street line the minimum width must be 60 feet.

17.29 MULTIPLE RESIDENTIAL DISTRICT (R-3).

- (1) SPECIFIC USES PERMITTED. Land shall be used and buildings and structures shall be erected, altered, enlarged or used only for one or more of the following uses, subject to the provisions of this section and other applicable sections of the Zoning Code:
- (a) Any use permitted in the R-2 Residential District.
 - (b) Multiple family dwellings, accessory buildings and uses.
- (2) CONDITIONAL USES PERMITTED. The following uses are permitted, after review of the City Plan Commission, and approval of the Common Council, following written notification of the owners of all abutting and fronting properties. In acting upon any application for a permitted use hereunder, the Plan Commission and Common Council shall consider whether the proposed use or structure is in accordance with the purpose and intent of this Chapter and will not be hazardous, harmful, offensive or otherwise adverse to the environment or the value of neighborhood or community. The Common Council may attach conditions to a special permit granted hereunder in order to assure that the requested use will remain in conformity with these standards. The uses for which a special permit in this district may be issued are:
- (a) Nursing homes and homes for the elderly.
 - (b) Hospitals.
 - (c) Private clubs.
 - (d) Planned Unit Developments (PUD's).
 - (e) Child day care centers.
 - (f) Wellness and fitness center.
- (3) HEIGHT. No dwelling shall be erected or structurally altered to exceed a height of 35' or 2 1/2 stories.
- (4) LOT COVERAGE. The ground area occupied by the principal and accessory buildings shall not exceed 50% of the total area of the lot. In determining lot size requirements under this subsection, the footprint of the principal building and accessory building shall be used.
- (5) LOT AREA. Each lot shall have a minimum area of 9,900 square feet, a minimum width of 90' and a minimum lot area per dwelling for a 2-family dwelling of 4,500 square feet and for a 3-family dwelling of 3,000 square feet; except where a lot was smaller in area or width but was a lot of record on May 18, 1965, such lot may be occupied by a single family dwelling provided that the lot is not less than 5,400 square feet in area; and excepting that where a lot was smaller in area than 7,200 square feet, or less than 90' in width, but was a lot of record on April 17, 2001, such lot

may be occupied by a single family dwelling provided the lot is not less than 7,200 square feet in area.

- (6) FRONT YARD. There shall be a front yard of not less than 25’.
- (7) REAR YARD. There shall be a rear yard of not less than 25’ in depth.
- (8) SIDE YARDS. Each lot shall have 2 side yards not less than 8’ each. On corner lots the side yard adjacent to the street shall be not less than 25’.
- (9) CUL DE SACS. With respect to lot size for cul de sacs, the lot must be a minimum of 90 feet in width at the 25-foot front yard setback line; at the street line the minimum width must be 60 feet.

17.30 MOBILE HOME PARK DISTRICT (M-1). See Section 12.04(6) of this Municipal Code.

17.301 TOURIST LODGING.

- (1) PURPOSE. The purpose of this Section is to ensure that the quality of tourist lodging within the City of Kiel is adequate for protecting public health, safety, and general welfare, including minimum standards of space for human occupancy and for an adequate level of maintenance; determining the responsibilities of owners, operators, and property managers offering these properties for tourists, to protect character and stability of all areas within the City of Kiel; to provide minimum standards necessary for the health and safety of persons occupying or using buildings, structures, or premises; and provisions for the administration and enforcement.
- (2) DEFINITIONS. The following terms shall be defined as follows:
 - (a) Bathroom. Full bath.
 - (b) Clerk-Treasurer. City of Kiel Clerk-Treasurer or designee.
 - (c) Lodging Marketplace. An entity that provides a platform through which an unaffiliated third party offers to rent a short-term rental to an occupant and collects the consideration for the rental from the occupant.
 - (d) Operator. An Owner or Property Manager who is responsible for compliance with this Section, collection of rent, and payment of taxes.
 - (e) Owner. A person who owns a tourist lodging unit.
 - (f) Person. Shall include a corporation, firm, partnership, association, organization and any other group acting as a unit as well as individuals, including a personal representative, receiver or other representative appointed according to law. Whenever the word person is used in any section of this section prescribing a penalty or fine, as to partnerships or associations, the word

shall include the partners or members hereof, and as to corporations, shall include the officers, agents or members thereof who are responsible for any violation of such section.

- (g)** Private Boarding or Rooming House. A private boarding or rooming establishment, ordinarily conducted as such, not accommodating tourists or transients with occupancies exceeding six (6) days.
- (h)** Property Manager. Any person, other than Owner, operating a tourist lodging establishment or providing management services.
- (i)** Resident Agent. Any person appointed by the Owner to act as an agent on behalf of the Owner, as permitted in this Section.
- (j)** Short-Term Rental. A resident dwelling that if offered for rent for a fee and for fewer than 29 consecutive days.
- (k)** Tourist Lodging. Any place offered for rent to tourists or transients for sleeping accommodations including, but not limited to, hotels, motels, tourist rooming houses, cabins, cottages, or short-term rentals.
- (l)** Tourist Lodging Unit. A structure or part of a structure that is used for sleeping and/ or living accommodations by one tourist or a group of tourists.
- (3)** TOURIST LODGING PERMIT REQUIRED. No tourist lodging unit may be offered to the public for rent by an owner or property manager without a tourist lodging permit.
- (4)** STANDARDS FOR TOURIST LODGING. Each tourist lodging unit subject to this Section shall comply with all applicable City, county, state, and federal laws, and the following minimum requirements:
 - (a)** Not less than one (1) bathroom for every six (6) occupants.
 - (b)** Not less than one hundred fifty (150) square feet of floor space for the first occupant thereof and at least an additional one hundred (100) square feet of floor space for every additional occupant thereof; the floor space shall be calculated on the basis of total habitable room area. Floor space is determined using interior measurements of each room. Floor space does not include kitchens, bathrooms, closets, garages, or rooms not meeting Uniform Dwelling Code requirements for occupancy. The maximum occupancy for any premises without a separate enclosed bedroom is two (2) people.
 - (c)** Not less than one and one quarter (1 ¼) onsite off-street parking spaces for every four (4) occupants based upon maximum occupancy.
 - (d)** Each unit shall have a safe, unobstructed means of egress continuously maintained free of all obstructions or impediments to full and instant use in the case of fire or other emergency. Each

area and room designated or used for sleeping shall have at least one (1) means of exit to the exterior, by door or egress window. An egress window shall meet the requirements of section SPS 321.03(6) of the Administrative Code. If a room does not meet these qualifications, a sign shall be posted notifying occupants that the room shall not be used for sleeping due to lack of safe egress. Escape routes shall be posted unless the room has a direct exit to the outside.

- (e)** Functional smoke detectors and carbon monoxide detectors in accordance with the requirements of Chapter SPS 328 of the Wisconsin Administrative Code, and all other safety devices and/or systems required by law.
- (f)** Shall not have a wood or solid fuel burning stove or fireplace unless the Owner provides a certificate from a licensed commercial building inspector, fire inspector, or a verified statement from a reputable stove or fireplace sales/installer entity, dated not more than thirty (30) days prior to submission, certifying that the fireplace and chimney have been inspected and are in compliance with National Fire Prevention Association Fire Code Chapter 211 Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances. Instructions for use of the stove or fireplace must be prominently displayed. A stove or fireplace not meeting the requirements of this section shall be blocked from access to the satisfaction of the City of Kiel Building Inspector.
- (g)** A minimum of one (1) 2A 10:BC fire extinguisher shall be available and maintained on an annual basis. If the extinguisher is not readily visible, one or more signs shall be posted indicating the location of the extinguisher.
- (h)** Shall not have a hibachi, gas-fired grill, charcoal grill, or other similar devices used for cooking, heating, or any other purpose on any balcony, deck, or under any overhanging structure or within ten (10) feet of any structure.
- (i)** Shall have insurance against claims of personal injury and property damage for tourist rooming house rentals.
- (j)** All agreements with Lodging Marketplaces shall indicate the City of Kiel as the taxing jurisdiction.
- (k)** Neither the applicant nor the property that is the subject to the application has outstanding taxes, fees, penalties or forfeitures owed to the County or room tax due and owing to any local governmental entity.
- (l)** The following licenses and permits are required:

- a. Manitowoc or Calumet County Health Department permit issued under Chapter 72 of the Administrative Code for the Wisconsin Department of Agriculture, Trade, and Consumer Protection, and inspection report.
- b. Seller's Permit for Premier Resort Tax issued by Wisconsin Department of Revenue and State Sales Tax Seller's Permit.
- c. City of Kiel Conditional Use Permit, if applicable.
- d. Room Tax Permit.

- 1. If operated by a non-resident Owner or Property Manager, have a Resident Agent licensed under this Section.

(5) LICENSE. No person shall operate a tourist rooming house without first obtaining a non-prorated license from the city. Such licenses shall expire on June 30 of each year following their issuance except that licenses initially issued during the period beginning on April 1 and ending June 30 shall expire June 30 of the following year. The license shall not be transferable to a location other than the one for which it was issued, nor shall a license be transferred from one operator to another. The license must be on display at all times in a conspicuous public place.

(6) ROOM TAX. The owner and operator of tourist lodging shall comply with the room tax reporting requirements per municipal code.

(7) VIOLATIONS.

- (a) Except as otherwise provided, the penalty for violation of this chapter shall be as provided in Section 25.04 of this Municipal Code.
- (b) The operation of tourist lodging without a license renders the property ineligible to operate as tourist lodging for a period of twelve (12) months from the date of entry of judgment.
- (c) Failure to timely pay room tax may result in suspension or revocation of a license.
- (d) The City may seek all other remedies available at law for violations of this Section. The City shall also be entitled to all costs of enforcement of the provisions of this Section.

(8) FEES.

(a) Tourist Rooming House License

- 1. Initial - \$50
- 2. Renewal - \$25

(b) Resident Agent License

- 1. Initial - \$50
- 2. Renewal - \$25

(c) Late Fees

1. Late applications and renewals are subject to double the fee.

(d) Inspection Fees

- (e) Inspection fees shall be as established from time to time by the City of Kiel Building Inspector.

17.31 OFF STREET PARKING AND LOADING.

- (1) SURFACING AND DRAINAGE. Off street parking and loading areas shall be improved with a bituminous or equally durable and dustless surface. Such areas shall be so graded and drained as to dispose of all surface water accumulation within the area by use of catch basins and storm sewers. No surface water shall be discharged onto adjoining property. These requirements shall also apply to open sales lots for cars, trucks and other equipment.
- (2) LOCATION. All accessory off street parking facilities required herein shall be located as follows:
 - (a) Spaces accessory to one and 2 family dwellings on same lot as the principal use served.
 - (b) Spaces accessory to multiple family dwellings on the same lot as the principal use served or within 250' of the main entrance to the principal building served.
 - (c) Spaces accessory to uses located in a business or industrial district, within 800' of an entrance to the principal building served.
 - (d) There shall be no off-street parking space within 5' of any street right-of-way in business and industrial districts.
 - (e) There shall be no off-street parking space in the front yards in residential districts.
 - (f) No off-street parking area containing more than 4 parking spaces shall be located closer than 15' from an adjacent lot zoned for residential purposes.
- (3) DETERMINATION OF AREAS. The design of off-street parking areas shall conform to the standards as set forth in the publication, Parking Guide for Cities, U.S. Department of Commerce, Bureau of Public Roads (latest edition).
- (4) TRUCK PARKING IN RESIDENTIAL AREAS. No motor vehicle over 2-1/2 ton rated capacity bearing a commercial licensed trailer shall be parked or stored in a platted residential district except when loading, unloading or rendering a service.
- (5) SIGNS. Signs located in parking areas necessary for orderly operation of traffic movement shall be permitted in addition to others permitted in this chapter.
- (6) LIGHTING. Lighting used to illuminate off street parking shall have no direct source of light visible from a street or adjacent land.

- (7) REQUIRED PARKING SPACES.** The off-street parking requirements listed below are the minimum required under this section. These requirements do not guarantee the owner or operator that the number of spaces will be adequate for operation of the facility.
- (a)** Single Family Dwellings. One space per lot.
 - (b)** Multiple Dwellings. 1 1/2 spaces per dwelling unit.
 - (c)** Motels or Hotels. At least one parking space for each guest room or unit provided in the design of the building, plus one for each employee, plus spaces as required for supplemental uses such as bars, ballrooms or nightclub facilities.
 - (d)** Schools. At least one parking space for each 7 students based on design capacity, plus one for each 3 classrooms.
 - (e)** Churches, Auditoriums, Funeral Homes. At least one parking space for each 3 1/2 seats based on the design capacity of the main assembly hall.
 - (f)** Theaters, Athletic Fields. At least one parking space for 6 seats of design capacity.
 - (g)** Community Center, Post Office, YMCA, YWCA, Physical or Cultural Studios, Pool Halls, Libraries, Private Clubs, Lodges, Health Clubs, or Museums. Ten spaces plus one for each 300 square feet of floor area in excess of 2,000 square feet of floor area in the principal structure.
 - (h)** Hospitals. At least one parking space for each 3 hospital beds.
 - (i)** Golf Courses, Country Clubs, Tennis Clubs, Public Swimming Pools. Twenty spaces plus one for each 300 square feet in excess of 1,000 square feet of floor space in the principal structure, plus spaces as required for supplemental uses such as bars, ballrooms or nightclub facilities.
 - (j)** Day Nurseries. Four spaces plus one for each 500 square feet in excess of 1,000 square feet of floor space in the principal structure.
 - (k)** Office Buildings and Professional Offices. At least one parking space for each 300 square feet of floor area.
 - (l)** Drive-in Establishments. At least one parking space for each 15 square feet of floor area in the building.
 - (m)** Bowling Alleys. At least 5 parking spaces for each alley.
 - (n)** Motor Fuel Stations and Motor Fuel Station Convenience Stores. A minimum of 4 outside parking spaces plus 3 additional outside parking spaces for each enclosed service stall shall be provided. One additional outside parking space shall be provided for each 200 square feet of floor space devoted to retail sales in a motor fuel station convenience store.

- (o) Retail Sales and Service Establishments. At least one off-street parking space for each 200 square feet of new floor area.
 - (p) Restaurants, Cafes, Bars, Taverns, Nightclubs. At least one parking space for each 80 square feet of public floor area or one space for each 4 customer seats within the building, whichever produces more spaces.
 - (q) Furniture Stores, Appliance Stores, Warehouses Under 15,000 Square Feet of Floor Area, Auto Sales, Grain Houses, Kennels and Studios. At least one parking space for each 500 square feet or fraction thereof.
 - (r) Auto Repair Facilities-Major, Bus Terminals, Taxi Terminals, Boat and Marine Sales, Bottling Companies, Shops for Trade Employing Six People or Less, Garden Supply Stores, Building Material Sales. At least 8 off-street parking spaces, plus one additional space for each 800 square feet of floor area over 1,000 square feet
 - (s) Skating Rinks, Dance Halls, Public Auction Houses, Golf Driving Ranges, Miniature Golf Courses, Trampoline Centers and Similar Uses. At least 15 off-street parking spaces, plus one additional space for each 200 square feet of floor area over 2,000 square feet
 - (t) Facilities for Manufacturing, Fabrication or Processing of a Product or Material. At least 4 off-street parking spaces, plus one additional space for each 800 square feet of building. One additional off-street parking space shall be provided for each 2,500 square feet or fraction thereof of land devoted to outside storage, plus additional space as shall be required for customers and users in the conduct of the enterprise.
 - (u) Warehouses Over 15,000 Square Feet of Floor Area, Facilities for Storage and Handling of Bulk Goods. At least one off-street parking space for each 2 employees, plus additional customer space as deemed necessary for operation.
 - (v) Uses not Specifically Noted Above, Including Public Uses. Parking space requirements shall be determined by the City Council upon advice from the Plan Commission.
- (8) OFF-STREET LOADING. The regulations and requirements set forth in this section shall apply to the required and nonrequired loading and unloading facilities in all districts. If, in the application of the requirements of this section, a fractional number is obtained, one loading space shall be provided for a fraction of 1/2 or more and no loading space shall be required for a fraction of less than 1/2.

17.32 ACCESSORY USES AND STRUCTURES. [#412 2/10/98]

- (1) An accessory use or structure in any zoning district shall not be established prior to the principal use or structure being present or under construction. Any accessory use or structure shall conform to the applicable regulations of the district in which it is located, except as specifically otherwise provided.
- (2) Accessory structures in R-1, R-2 and R-3 districts are subject to the following regulations:
- (a) Residences With Attached Garages:
1. One (1) attached garage per dwelling unit shall be permitted, and the measurement of said garage shall be as follows:
 - a. The maximum square feet of floor area shall be limited to the smaller of one thousand two hundred (1200) square feet or the first floor dwelling unit area in the case of a single family residence.
 - b. The maximum square feet of floor area shall be limited to the smaller of six hundred (600) square feet or the first floor dwelling unit area in the case of a duplex or 2-family dwelling or multi-family dwelling.
 - c. Minimum yards shall be the same size as that required for the principal structure.
 2. One (1) detached accessory structure per dwelling unit shall be permitted, provided the combined area of the attached garage and accessory structure does not exceed the maximum limits set forth in Subsection 1 hereinabove, and complies with the location and height regulations for detached garages as provided hereinbelow, except where subdivision covenants provide otherwise.
- (b) Residences With Detached Garages.
1. One (1) detached garage per lot shall be permitted, with the following size limitations:
 - a. The maximum square feet of floor area shall be limited to the smaller of one thousand two hundred (1200) square feet, the first floor dwelling unit area of the principal structure, or thirty-five percent (35%) of the rear yard.
 - b. When located to the rear of the principal dwelling unit, the structure, including any overhang shall be a minimum of three (3) feet from the rear and side lot lines; if located in a side yard, the structure shall be a minimum of eight (8) feet from the side property line. In either event, the structure shall be a minimum of eight (8) feet from the dwelling unit, and shall not be located in a required front or street side yard for a corner lot.

- c. A detached garage shall have a maximum sidewall height of ten (10) feet with the pitch of the detached structure roof not greater than the pitch of the principal dwelling roof.
- 2. One (1) additional accessory structure per lot shall be permitted, provided the combined floor area of the two detached structures shall not exceed the area permitted for a detached garage as set forth in this Subsection, and provided it complies with all applicable height and location requirements for detached garages.
- (3) No detached garages or other accessory buildings shall be located nearer the front lot line than the principal building on that lot.
- (4) No basement, tent, trailer or accessory building shall at any time be used as an occupied dwelling.
- (5) No accessory building or structure, unless an integral part of the principal building, shall be erected, altered or moved within 8' of the principal building.
- (6) When accessory buildings are attached to the principal building by a breezeway, passageway or similar means, they become part of the principal building and shall comply in all respects with the yard requirements and local Building Code of the principal building.
- (7) The minimum yard requirements also apply to accessory buildings. However, where the rear lot abuts an alley, accessory buildings not attached to the principal building shall be located so as to be not closer than 6' to the rear lot line.

17.33 SIGNS. Signs are permitted in all districts, subject to the following regulations:

- (1) The following general rules for placement, appearance, and size shall be followed:
 - (a) No sign shall be created within the city until a permit has been obtained by the owner or their authorized agent from the Building Inspector. Applications shall be made in writing on a form furnished by the Building Inspector. There is no fee unless the cost of the exceeds \$200. If the cost exceeds \$200, the permit fee will follow the building permit fee schedule.
 - (b) All signs shall be reasonably attractive and the judge of the attractiveness of such signs is the Building Inspector. If the Building Inspector judges a sign not to be reasonably attractive, they will deny a permit for the installation of the sign.
 - (c) The area of the sign shall be calculated by measuring the total surface area on a square footage basis. If letters or graphics are mounted directly on a wall or fascia or in such a way as to be without a frame, the dimensions for calculating the square footage shall be the area extending 6 inches beyond the periphery around such letters or graphics. Each surface used to display a message or to attract attention shall be measured as a separate sign. Symbols, flags, pictures,

wording, figures or other forms of graphics which are painted on or attached to windows, walls, awnings, or freestanding structures, or which are suspended by balloons or kites or on persons, animals or vehicles, shall be considered to be signs.

- (d) Symbols, statues, sculptures and integrated architectural features on nonresidential buildings may be illuminated by floodlights, provided the direct source of the light is not visible from the public right-of-way or adjacent residential district.
 - (e) Signs or clocks attached to a building shall project not more than 6 feet from the face of such building and not extend below a height 10 feet above the sidewalk, street or alley.
 - (f) The word "banner" shall mean a piece of cloth, plastic, or paper attached by the edge, originally on a side, to a pole or staff, or directly to a building, and used to advertise an event or occurrence, or any commercial subject. No banner shall be displayed on a public or private building or property within the city for more than thirty (30) days in any one-year period, and if the sign is referencing an event, it shall be removed within five days after the event.
 - (g) Signs are prohibited on public property without the written consent of the City Administrator. Generally, signs on public property are related to city department activities or government functions.
 - (h) If a sign consists of multiple types of signs (e.g. real estate and political and campaign sign), the building inspector will determine the primary purpose of the sign and apply the relevant code restrictions accordingly.
- (2) Real estate sales signs shall comply with the following requirements:
- (a) For the purpose of selling, renting or leasing property, a sign not in excess of 25 square feet per surface may be placed within the front yard of such property to be sold or leased. Such signs shall not be placed in the right-of-way of an abutting street.
 - (b) For the purpose of selling or promoting a residential project of 6 or more dwelling units, a commercial area of 3 acres or more or an industrial area of 10 acres or more, one sign not to exceed 100 square feet of advertising surface may be erected upon the project site. Such sign shall not remain after 90% of the project is developed.
- (3) Political and Campaign Signs. Political and campaign signs on behalf of candidates for public office or measures on election ballots are allowed subject to the following regulations:
- (a) Said signs may be erected not earlier than the commencement of the election campaign, as defined in Wis. Stat. § 12.04(1)(a), and shall be removed within 5 days following the applicable election.

- (b) Signs shall not exceed 11 square feet in all zoning districts.
- (c) No sign shall be located within 15 feet of a public right-of-way at a street intersection, nor within the public right-of-way or vision clearance.
- (4) The following signs are prohibited within the city:
 - (a) Private signs are prohibited within the public right-of-way or easements.
 - (b) Illuminated signs or devices giving off an intermittent steady or rotating beam consisting of a collection or concentration of rays of light shall not be permitted in any district.
 - (c) There shall be no flashing or revolving sign in the front setback area or within 125 feet of a street intersection.
 - (d) No sign shall be permitted which, by reason of position, size, shape, form or color, would resemble, imitate or approximate, or interfere in any way with the proper functioning or purposes of, a traffic or railroad sign, signal or device or impede visibility to motor vehicle traffic.
 - (e) There shall be no use of revolving beacons, beamed lights or similar devices that would so distract automobile traffic as to constitute a safety hazard.
 - (f) Signs shall not be painted directly on the outside wall of a building or a trailer or other vehicle used just for display purposes. Signs shall not be painted on a fence, rock or similar structure or feature in any district. Paper and similar signs shall not be attached directly to a building wall by an adhesive or similar means.
 - (g) Signs which advertise goods, products or facilities or services not conducted or sold on the premises where the sign is located or which direct persons to a different location from where the sign is located are not allowed in the City of Kiel. This prohibition includes changeable commercial signs commonly known as "billboards".
 - (h) No person shall park any vehicle or trailer on a public right-of-way or public property or private road so as to be seen from a public right-of-way, which has attached thereto or located thereon any sign or advertising device for the basic purpose of providing advertisement or directing people to a business activity located on the same or nearby property or any other premises.
 - 1. This subsection shall not prohibit a "For Sale" sign on a vehicle for sale provided the vehicle is not parked on a public right-of-way.
 - (i) All free-standing signs out-of-doors for advertising cigarettes or other tobacco products within 500 feet of any school, playground, public park, public library, church, or other place where minors may congregate.

- (j) All free-standing signs out-of-doors for advertising alcohol beverages, within 500 feet of any school, playground, public park, public library, church, or other place where minors may congregate.
- (5) No advertising sign shall be permitted within seventy-five (75) feet of any residential district boundary line unless said sign is completely screened from said residential district by a building, solid fence, or an evergreen planting, which planting shall be not more than two (2) feet shorter than the height of the sign at the time said evergreens are planted; said evergreens shall be spaced not more than one-half (1/2) the height of the tree for regular varieties and one-third (1/3) the height of the tree for columnar varieties of trees; said evergreen planting shall be continuously maintained.
- (6) Construction and maintenance regulations for signs shall be the following:
 - (a) All signs shall be properly secured, supported and braced and shall be kept in reasonably good structural condition and shall be kept clean and well painted at all times. Bolts or screws shall not be fastened to window frames. Every sign and its framework, braces, anchors and other supports shall be constructed of such material and with such workmanship as to be safe and satisfactory to the Building Inspector.
 - (b) No sign shall be erected so that any portion of the sign or its supports attach to or interfere with the free use of any fire escape, exit, any required stairway, door, ventilator or window; and no sign shall be erected that will interfere with, obstruct, confuse, or mislead traffic.
 - (c) All signs and other advertising structures shall be designed and constructed to withstand a wind pressure of not less than thirty (30) pounds per square foot of area; and shall be constructed to receive dead loads as required in the building code or other ordinances.
- (7) Violations for dangerous and abandoned signs shall be the following:
 - (a) All signs shall be removed by the owner or lessee of the premises upon which the sign is located when a business which it advertises has not been conducted for a period of six (6) months or when, in the judgment of the Building Inspector, such sign is so old, dilapidated or has become so out of repair as to be dangerous or unsafe, whichever occurs first. If the owner or lessee fails to remove it, the Building Inspector may cause the sign to be removed at the cost of the owner, following reasonable written advance notice. The owner may appeal the Building Inspector's decision to the Board of Appeals.
 - (b) Any sign which was erected before the adoption of this sign ordinance shall not be rebuilt or relocated without conforming to all of the requirements of this ordinance.

(c) All signs constructed or maintained in violation of any of the provisions of this Ordinance are hereby declared public nuisances within the meaning of this Code of Ordinances. In addition to the above penalty provisions for violation of this chapter, the Common Council or Building Inspector may bring an action to abate the nuisance in the manner set forth in the Wisconsin Statutes.

(8) SIGNS IN RESIDENTIAL (R) DISTRICTS. Within the "R" districts, the following signs are permitted, subject to the following regulations:

(a) In the R-1 and R-2 districts, one nameplate sign shall be permitted for each dwelling, and such sign shall not exceed 4 square feet in area per surface; if the sign identifies a permitted home occupation, not more than 50% of its surface area shall be devoted to said home occupation; and such sign shall be so constructed as to have not more than 2 surfaces for advertising purposes.

(b) Illuminated flashing signs shall not be permitted within "R" districts.

(c) In R-3 districts, one nameplate sign of 2 square feet per unit shall be permitted for each dwelling group up to a maximum of 12 square feet and such sign shall be so constructed as to have not more than 2 surfaces for advertising purposes.

(9) SIGNS IN COMMERCIAL (B) DISTRICTS. Within the "B" districts, nameplate and business signs are permitted subject to the following regulations:

(a) The aggregate square footage of sign space per lot shall not exceed the sum of 3 square feet for each front foot of building.

(b) No individual sign shall exceed 200 square feet in area per surface.

(10) SIGNS IN INDUSTRIAL (I) DISTRICTS. Within the "I" districts, nameplate, business and advertising signs shall be permitted subject to the following regulations:

(a) The aggregate square footage of sign space per lot shall not exceed the sum of 4 square feet per front foot of building, plus one square foot per front foot of property not occupied by a building.

(b) No individual sign surface shall exceed 250 square feet of surface and shall be counted toward square footage permitted.

(11) SIGNS IN CONSERVANCY (C) DISTRICTS. Within the "C" districts, nameplate signs are permitted subject to the following regulations:

(a) One nameplate shall be permitted for each public building for identification purposes, for each park for identification purposes, or for community services. Such sign shall not exceed the sum

of 3 square feet for each front foot of building it is identifying. No individual sign shall exceed 200 square feet in area per surface.

(b) Variances or exceptions to these sign regulations may be granted by the Board of Appeals.

(12) The following rules shall apply to nonconforming signs.

(a) Any sign located within the city limits on the date of adoption of this chapter or located in an area annexed to the City of Kiel hereafter which does not conform with the provisions of this chapter shall be classified as a legal nonconforming sign and shall be permitted, provided it also meets the following requirements:

1. The sign was covered by a proper sign or building permit prior to the date of adoption of this ordinance.
2. If no permit was required under the applicable law for the sign in question, the sign was in all respects in compliance with applicable law on the date of adoption of this ordinance.

(b) A sign loses its nonconforming status if one or more of the following listed events occurs. The sign shall be immediately brought into compliance with this ordinance or shall be removed on the date of occurrence of any of the said events, which are the following:

1. The sign is structurally altered in any way, except for normal maintenance or repair, which tends to or does make the sign less in compliance with requirements of this ordinance than it was before alteration;
2. The sign is relocated;
3. The sign fails to conform to the city's requirements regarding maintenance and repair, abandonment or dangerous or defective signs.

(c) Nothing in this ordinance shall relieve the owner or user of a legal nonconforming sign or the owner of the property on which the sign is located from the provisions of this ordinance regarding safety, maintenance and repair of signs.

(13) A violation of any of the provisions of this chapter shall be enforced by the Building Inspector. The penalty for any violation shall be as set forth in Section 25.04 of the Kiel Code of Ordinances.

17.34 PATIO SLABS, DRIVEWAYS AND SIDEWALKS. Patio slabs, driveways and sidewalks on a lot may be extended to 1' from the lot line. All driveway entrances and street sidewalks shall be constructed in accordance with the specifications prescribed by the Director of Public Works under Chapter 8 of this Municipal Code.

17.35 REGULATION OF DELIVERY BOXES.

- (1) **BOX LIMITATIONS.** Any property owner in a residential area of the City may erect one post and not more than two boxes thereupon for the purpose of receiving mail, newspapers, shoppers and flyers. Any box that is set up to receive mail from the United States Postal Service shall meet the requirements established by the Postal Service for such boxes. In areas where there is delivery by the Postal Service through direct delivery by non-motorized mail carriers, the said delivery box must be located on the property owned by the resident. It need not be mounted on a post. In no case shall there be more than two delivery boxes, one to receive mail from the United States Postal Service and the other to receive newspapers, shoppers, flyers and other similar types of publications. Where there is motorized mail delivery, these said boxes shall be mounted on a single support post. Boxes for mail delivery shall be located on the same side of the road as the direction of the mail carrier's line of travel, except that either side is permissible on one-way streets. Boxes for mail delivery shall be located on the far side of the driveway in relation to the direction of the mail carrier's line of travel.
- (2) **EXCEPTIONS.** Exceptions to the above requirements for the placement of mailboxes and other delivery boxes may be granted by the Director of Public Works in circumstances where in his opinion literal compliance with the above requirements would create a hardship to the property owner or a safety hazard or interfere with drainage. In no case shall the City be responsible for damage to any box or supporting post, other than cases in which negligence of City officers, employees or agents causes said damage.
- (3) **CHANGE IN LOCATION OR CONSTRUCTION.** The Director of Public Works may order a change in the location or manner of construction of any mailbox or other delivery box or supporting post which is installed in violation of this ordinance or which creates a safety hazard. If the property owner who is required to make the change fails or refuses to make said change within thirty (30) days, a citation for violation of this ordinance may be issued by the Director of Public Works.
- (4) **PENALTY PROVISIONS.** The penalty provisions set forth in Section 25.04 of the Kiel Ordinances shall apply for any violations of the provisions of this ordinance with respect to location, construction and maintenance of mailboxes and other delivery boxes.

17.36 SATELLITE DISHES.

- (1) **DEFINITION.** Satellite earth stations are dish shaped antennas designed to receive television broadcasts relayed by microwave signals from earth orbiting communication satellites.

(2) SATELLITE STATIONS. Satellite earth stations shall be regulated in all zoning districts in the following manner:

- (a)** Not more than one satellite earth station may be allowed per individual recorded residential lot.
- (b)** [#395 4/18/95] Satellite earth stations shall be allowed in rear and side yards only, and may be mounted upon buildings; in no event shall satellite earth stations be allowed in front yards.
- (c)** Satellite earth stations shall not exceed 12' in diameter.
- (d)** Rear yard setbacks shall be equal to or greater than the required rear yard setbacks for accessory buildings or structures within the respective zoning district, but not less than the total vertical height of the satellite earth station.
- (e)** Satellite earth stations shall not be attached to the wall or roof of any principal or accessory structure, except in commercial and industrial districts, subject to engineering calculations prepared by a registered professional engineer certifying that the proposed satellite earth station is structurally sound and shall not exceed the maximum height regulation of the zoning district in which it is located.
- (f)** Ground mounted satellite earth stations shall meet the height requirement for accessory structures in the zoning district in which they are located.
- (g)** All satellite earth stations shall be permanently mounted in accordance with the manufacturer's specifications for installation. All installations shall meet a minimum wind load design velocity of 80 mph.
- (h)** All installations shall be kept reasonably attractive.
- (i)** No form of advertising or identification is allowed on the dish or framework other than the customary manufacturer's identification plates.
- (j)** Portable or trailer-mounted satellite earth stations are not allowed. As an exception, however, for periods not to exceed five (5) days, temporary installations for on-site testing and demonstration purposes may be allowed.
- (k)** Electrical installation in connection with earth satellite receiving stations including grounding of the system shall be in accordance with the National Electrical Code Standards.
- (l)** All cable used to conduct current or signals from the satellite earth station to the receivers shall be installed underground.

- (m) Satellite earth stations that cause any harmful interference with radio and/or television broadcasting or reception on adjacent properties shall be governed in accordance with the Federal Communication Standards.
- (n) [#395 4/18/95] No satellite earth station with a diameter of more than 36 inches shall be erected within the City without a satellite earth station permit. The owner of the property where the installation of the station is proposed shall first obtain approval from the Building Inspector. Upon obtaining such approval, the proposed installation shall be reviewed by the Plan Commission at a public hearing. Upon approval by the Plan Commission, a satellite earth station permit shall be issued by the Building Inspector.
- (o) Applications for a permit shall be accompanied by sufficient information to allow the Building Inspector adequate review of the proposed installation to ensure compliance with this section.
- (p) The fee for a satellite earth station permit shall be \$15 or such other sum as the City Council may set from time to time. A copy of the fee schedule shall be on file in the offices of the Administrator and Building Inspector.
- (q) [#395 4/18/95] Failure to comply with the terms of this ordinance shall be enforceable through a forfeiture under Section 25.04 of the Kiel Municipal Code.

17.37 ADMINISTRATION AND ENFORCEMENT.

- (1) BUILDING PERMIT REQUIRED. No person shall commence excavation for or construction of any building or structure, or structural changes in any existing building or structure without first obtaining a building permit from the Building Inspector. No permit shall be issued for the construction, alteration or remodeling of any building or structure until application has been submitted in accordance with this chapter, showing that the construction proposed is in compliance with this chapter and other regulations of the City.
- (2) ADMINISTRATIVE OFFICIALS DESIGNATED. Except as otherwise provided in this chapter , the Building Inspector shall administer and enforce the provisions hereof, including the receiving of applications, the inspection of premises and the issuing of building permits. In cases of violation of the provisions of this chapter, the Inspector shall notify the City Attorney who shall issue warrants or such other legal proceedings as are necessary.

17.38 NONCONFORMING BUILDINGS AND USES. The lawful use of a building or premises existing on April 17, 2001, may be continued although such use does not conform with the provisions of this

chapter. The total structural repairs or alterations on such a nonconforming building shall not, during its life, exceed 50% of the fair market value of the building unless permanently changed to a conforming use. If such nonconforming existing use is discontinued for a period of 12 months, any future use of the building and premises shall conform to this chapter.

17.39 BOARD OF APPEALS.

- (1) CREATION, APPOINTMENT AND ORGANIZATION.** A Board of Appeals is hereby created having the powers authorized in Section 62.23, Wis. Stats. The Board shall consist of 5 members, appointed by the Mayor subject to confirmation of the City Council, for terms of 3 years. Vacancies shall be filled for the remainder of the unexpired term only. All members of the Board shall serve without compensation.
- (2) PROCEDURE, RULES, MEETINGS, AND MINUTES.** The Chairman of the Board shall be designated by the Mayor. The Board shall adopt its own rules of procedure deemed necessary to carry out the provisions of this section. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question. The presence of 4 members shall be necessary to constitute a quorum.
- (3) APPEAL.** Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board or commission of the City affected by any decision or ruling of the Building Inspector made under this chapter. Such appeal shall be taken within 15 days after the decision or ruling of the Building Inspector by filing with the Building Inspector and with the Board a notice of appeal specifying the grounds of the appeal and a nonrefundable fee of \$450. Upon receipt of the grounds of appeal and payment, the Building Inspector shall transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.

 - (a) Stay of Proceedings.** An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the Building Inspector certifies to the Board of Appeals, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of

Appeals or by a court of record on application, on notice to the Building Inspector from whom the appeal was taken.

- (b) Hearings.** The Board of Appeals shall fix a reasonable time for the hearing of the appeal, or other matter referred to it, and give due notice thereof. The Board shall hear and decide the appeal within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.
- (c) Powers of Board.** The Boards of Appeals shall have the following powers:
 - 1.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.
 - 2.** To hear and decide special exception to the terms of the chapter upon which such Board is required to pass under such chapter.
 - 3.** To authorize upon appeal in specific cases such variance from the terms of the chapter as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the chapter will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done. The Board may permit, in appropriate cases and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the chapter, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.
- (d) Decisions of the Board.** In exercising the above-mentioned powers, the Board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue the permit. The concurring vote of 4 members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector, or to decide in favor of the applicant on any matter upon being brought before the Board as required by this chapter. The grounds of every such determination shall be stated.

17.40 CONDITIONAL USE PERMIT. [#358 3/13/90]

- (1) AUTHORIZATION. The Common Council, after review of the City Plan Commission, may authorize the Building Inspector to issue a conditional use permit for conditional uses after review and a public hearing, provided that such additional uses or structures are in accordance with the purpose and intent of this chapter and are found not to be hazardous, harmful, offensive or otherwise adverse to the environment or the value of the neighborhood or community.
- (2) APPLICATION. Application for a conditional use permit shall be made in duplicate to the Building Inspector on forms provided by his office. The Building Inspector shall forward to the Plan Commission a copy of any such application. Such applications shall include the following:
- (a) THE NAMES AND ADDRESSES of the applicant, owner of the site, architect, professional engineer, contractor and all opposite and abutting property owners of record.
 - (b) A DESCRIPTION OF THE SUBJECT SITE by lot, block and recorded subdivision or by metes and bounds; address of the subject site; type of structures; proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site lies.
 - (c) A PLAT OF SURVEY prepared by a registered land surveyor showing all of the information required for a building permit and existing and proposed landscaping.
 - (d) ALL ADDITIONAL INFORMATION required by the Plan Commission, City Engineer or Building Inspector.
 - (e) A FEE RECEIPT from the City Treasurer in the amount of Twenty-five Dollars (\$25.00).
- (3) REVIEW AND APPROVAL.
- (a) The Plan Commission shall review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems and the proposed operation.
 - (b) The Plan Commission shall hold a public hearing on the proposed conditional use. Notice of time and place of such hearing shall be published not less than fifteen (15) nor more than thirty (30) days preceding said hearing and at least once in one or more newspapers of general circulation in the City. The City Administrator shall notify all abutting or opposite property owners, as listed by the developer in the original application, of the time, date and subject matter of the hearing. Failure to comply with this provision shall not, however, invalidate any previous or subsequent action on the application.

- (c) Any development within five hundred (500) feet of the existing or proposed rights-of-way of highways and within fifteen hundred (1500) feet of their existing or proposed interchange or turning lane rights-of-way shall be specifically reviewed by the highway agency that has jurisdiction over the highway. The Plan Commission shall request such review and await the highway agency's recommendations for a period not to exceed sixty (60) days before taking final action.
- (d) After review of the proposed conditional use by the Plan Commission the Common Council of the City shall approve or reject the proposed conditional use, and if it approves the use, shall authorize the Building Inspector to issue a conditional use permit.

(4) STANDARDS.

- (a) No conditional use shall be recommended by the Plan Commission unless the Commission shall find:
 1. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health or safety, or interfere with or undermine the general welfare.
 2. That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
 3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
 4. That adequate utilities, access road, drainage and/or necessary facilities have been or are being provided.
 5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
 6. That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.
- (b) Required Conditions. Conditions such as landscaping, architectural design, type of construction, commencement and completion dates of construction, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements may be required by the

Commission upon its finding that these are necessary to fulfill the purpose and intent of this Section.

17.41 PLANNED UNIT DEVELOPMENT (PUD) DISTRICT.

- (1) **INTENT.** The PUD provisions of the Kiel Municipal Code are intended to promote creativity and flexibility in site plan design, while at the same time preserving the health, safety, order, and general welfare of the City. PUD's may contain one use or any combination of residential, commercial, or agricultural uses, so long as they are planned and developed in an orderly and compatible way. Mixed uses may occur among or within buildings as long as the uses are compatible with each other and with the planned and existing uses of areas adjacent to the PUD. Any use of land not clearly designated by type on the approved final development plan shall be permitted in a PUD only upon issuance of a Special Use Permit.
- (2) **PUD STANDARDS.** The PUD standards shall be as follows:
- (a) **Access.** All land uses shall abut on a public street or have adequate access to a public street by means of a private drive. All streets and drives must tie in effectively with the City's existing street system and with those arterial and collector streets proposed in the City's future land use plan.
 - (b) **Architectural Style.** The architectural style of the individual structures within the PUD shall be compatible with other structures in the PUD, as well as with the overall site design and with land uses of abutting lands.
 - (c) **Common Open Space.** As far as possible, common open space shall be linked to the open space areas of surrounding developments. A common open space in a PUD shall be of an adequate size, and appropriate shape, location, and usability, to suit its proposed purpose.
 - (d) **Density.** A residential PUD may provide up to a 25% increase in the number of units per acre over other residential zoning districts if the PUD provides substantially more site amenities than are found in a conventional residential development. Approval of any increase in density in a residential PUD shall be at the discretion of the City Council, which shall in considering whether the proposed density is to be permitted in the particular PUD take into account the character, use of existing landscape, design variation and environmental concerns of the PUD. Where the land proposed for a PUD lies in an area which has already been included in a zoning district by the City, density shall be computed based on the established standards for density in such zone. Where no zone exists or where changes in zoning are proposed, the developer who

proposes to develop a PUD in the particular zone shall prepare and present to the City Plan Commission and the City Council a preliminary zoning request and sketch plan.

- (e) **Determining Standards.** Standards for lot area, coverage, setbacks, parking, screening and density shall be governed by the standards of the zoning district most similar in function to the proposed PUD use, as determined by the Plan Commission. Deviation from those standards may be permitted by the Plan Commission or the City Council only if such deviation is consistent with the total design of the proposed development, encourages a desirable living environment, and is not likely to be detrimental to the welfare of the City.
- (f) **Exterior Boundary Setback.** No principal building shall be set back less than 25 feet or the height of the building, whichever is greater, from the exterior of a PUD or a public street right-of-way. No commercial or industrial structure shall be nearer than 100 feet to its side or rear property lines where such side or rear property lines abut a single-family use.
- (g) **Property Owners Association.** All owners of property within the PUD shall be required to be members of a property owners association consisting of the owners of all properties in the PUD. The property owners' association shall own and maintain all common open space and private interior drives.
- (h) **Designation of Recreational Trails.** When possible, trails should be integrated into the PUD. Trails within a PUD will be encouraged to connect to existing or future exterior trail systems. A PUD not conventionally platted must include at least 10% common open space.
- (i) **Minimum PUD Development Area.** A minimum PUD development area shall be at least 2 acres of land in single ownership or control. A land use of less than 2 acres may qualify if one or more of the following conditions exist:
 1. Natural features of land are such that development under standard zoning regulations would not adequately conserve such features;
 2. The land is adjacent to or across the street from property which has been developed as a PUD and is to be developed in relationship to such prior development;
 3. Flexible design is needed to address detrimental site features affecting the development potential of a site, such as heavily used highways, railroad tracks traversing a property, rock outcroppings, adjacent incompatible land uses, or similar site constraints; or
 4. The site is surrounded by existing development or environmental features that prevent full public access.

(3) PRELIMINARY DEVELOPMENT PLAN APPLICATION. The Preliminary Plan shall include the following:

- (a) Existing wooded areas, streams, marshes and other predominant natural features;
- (b) Phasing schedule stating the geographical phasing and approximate construction timing of the PUD or portions thereof;
- (c) Preliminary drainage plan;
- (d) Preliminary utility plan for all public utilities;
- (e) Site plan showing the lot lines, building locations, public or private street system, parking spaces, drives, common open space areas, trails, recreational improvements and structures;
- (f) Summary sheet indicating the area of land in each land use, number of units proposed, density of development, percentage of land in usable open space, number of acres of common recreational open space and number of parking spaces provided; and
- (g) A vicinity map showing a sufficient amount of the area surrounding the proposed PUD to demonstrate the relationship of the proposed PUD development to the adjacent land uses and street system.

(4) PROCEDURE FOR REVIEW OF A PRELIMINARY PLANNED UNIT DEVELOPMENT.

- (a) The proposed PUD developer shall submit six (6) copies of an application with development plan along with the items listed below to the City Administrator, who shall transmit copies to the Plan Commission, the Building Inspector, the Public Works Director, the Park Board, and any other agencies which he may feel would appropriately have a copy of the application with development plan. The application shall include a written explanation of the character and purpose of the proposed planned development, including the type and density of any housing proposed, the nature and purpose of any non-residential development; the proposed method for preserving and maintaining open space, streets and parking areas; and a general statement of proposed financing for the project. Each proposal for a PUD shall be accompanied by a schedule showing the times within which each phase or segment of the PUD will be completed. The City Council shall review the proposed time schedule for completion of each phase or segment of the proposed PUD and may suggest changes in the said time schedule. After a specific time schedule has been approved by the City Council, in the event that any portion of such time schedule is not met, the City Council may, upon written request of the PUD developer for an extension of time, delivered to the City Administrator at least 20 days prior to the expiration of the completion date for which such extension is requested, for good cause, extend the said completion date. If the PUD developer fails to meet satisfactorily any phase or segment of the completion schedule within 20 days of the expiration date thereof, or within 30 days of

any denial by the City Council for an extension thereof, the City Council may in its discretion declare the Special Use Permit for all of the tract of land subject to the PUD or any portion thereof to be null and void. The City in its discretion may also require the PUD developer to post a performance bond in an amount to be determined by the City. If the City Council approves a final development plan and the PUD developer thereafter wishes to abandon the plan, the developer shall so notify the City in writing. The City may then, in its discretion, retain a portion of the required security posted by the developer to complete improvements to terminate the development or the phase of the development in an orderly manner.

- (b)** Within 45 days from receipt of the proposed PUD plan, the Plan Commission shall make a recommendation to the City Council to approve, approve with modifications, or disapprove the proposal.
 - (c)** After receipt from the Plan Commission of its report on the proposed PUD development, the City Council shall hold a public hearing on the proposed development. Within 10 days after such public hearing, the City Council shall either approve, approve conditionally, or disapprove the proposed PUD. Conditional approval shall be valid for one year and shall be subject to acceptance by the City Council of a final plan for all or for a portion of the PUD. The final plan shall incorporate all conditions and modifications imposed by the City Council.
 - (d)** Upon approval of the final plans by the City Council, the Building Inspector shall issue a Special Use Permit. When construction is completed according to the final plans as approved by the City Council, and so certified in writing by the Building Inspector, a Certificate of Occupancy for such completed portion shall be issued by the Building Inspector.
 - (e)** After a Certificate of Occupancy has been issued by the Building Inspector, no changes may be made in any part of the completed development except pursuant to a public hearing before the Plan Commission and approval by the City Council as set forth in Sec. 17.30(8).
 - (f)** If part of the PUD involves the subdivision of land into parcels for sale to individual owners, the site plan review required pursuant to this chapter shall suffice for Plan Commission review in accordance with City subdivision regulations and the public hearing held by the City Council shall suffice for a public hearing on the subdivision.
- (5) ENVIRONMENTAL REVIEW STANDARDS AND DESIGN STANDARDS.** In reviewing a proposed planned development, the Plan Commission shall apply the following standards and it shall recommend approval of the PUD only when it determines that the standards have been reasonably satisfied:

- (a) The proposal shall demonstrate an effective and unified treatment of the development possibilities of the project site, making appropriate provision for the preservation of scenic features and physical amenities of the site and of the surrounding areas.
- (b) The project shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the project site.
- (c) The individual buildings in the proposed PUD shall be related to each other in design, mass, placement and connection to provide a visually and physically integrated development.
- (d) Treatment of the sides and rear of all buildings within the project shall be comparable in amenity and appearance to the treatment given to street frontage of these same buildings.
- (e) All buildings shall be so arranged as to be accessible to service and emergency vehicles.
- (f) Landscape treatment for open spaces, roads, paths, service and parking areas shall be designed as an integral part of a coordinated landscape design for the entire project area, except lands donated to the City for park or trail development.
- (g) The primary landscape treatment shall consist of shrubs, ground cover and street trees, and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Whenever possible, existing trees shall be conserved and integrated into the landscape design plan.
- (h) All streets bordering the project area shall be planted at regular intervals with street trees.
- (i) There shall be an adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways, off-street parking and loading space, trash removal facilities and outdoor storage areas. All such facilities shall be designed to City specifications.
- (j) The design and the materials of construction of paving, lighting fixtures, retaining walls, fences, curbs, and benches and other associated apparatus and equipment, shall be of good appearance, easily maintained, and indicative of their function.
- (k) Parking facilities shall be designed with careful regard to orderly arrangement, topography, landscaping, and ease of access, and shall be developed as an integral part of the overall site design. To reduce unsightliness and the visual monotony of parked cars such facilities shall be screened from public view.
- (l) Any above-grade loading facility shall be screened from public view to the extent necessary to reduce unsightliness.
- (m) Any waterfront improvements, including bulkheads, or access to docks or floating platforms shall be subject to DNR regulations.

- (6) ACTION BY THE CITY COUNCIL. The City Council shall review the decision of the Plan Commission at its first regularly scheduled meeting subsequent to receipt of the report of the Plan Commission on the proposed PUD. The review of the proposed PUD by the City Council shall be made at a public hearing held during the said City Council meeting pursuant to public notice in the form normally provided by the City Council for matters to be reviewed at its regular Council meeting.
- (7) APPLICATION FOR FINAL DEVELOPMENT PLAN APPROVAL. Application Content. The application for final development plan approval for a PUD shall include the following items:
- (a) A definite timetable for the start of construction and the approximate amount of time to complete building of the project;
 - (b) A final site plan, with all pertinent dimensions shown to the nearest foot;
 - (c) Final grading, drainage, utility, lighting and landscape plans;
 - (d) A sign plan specifying the design, height, location, size and illumination in the proposed PUD;
 - (e) Deed restrictions and instruments dedicating all rights-of-way, easements, and public lands drafted to the satisfaction of the City Attorney, and insuring the preservation and maintenance of the common open space areas;
 - (f) By-laws of the proposed property owners' association for the PUD;
 - (g) Building elevation drawings, including specifications, except for detached single family dwellings meeting required standards for R-1or R-2 districts. This requirement may be waived by the City Council upon recommendation of the Plan Commission.
 - (h) A performance bond from the developer acceptable to the City, in an amount equal to 150% of the estimated cost of public utilities and infrastructure in accordance with the City Ordinances regulating subdivisions, paved parking, landscaping, walkways, recreational equipment and lighting in accordance with final development plans. The said bond shall be posted for each phase as it is proposed for development. The estimated cost for termination of each phase shall be retained by the City until subsequent phases are under construction.
 - (i) Such other information as may be requested by the Plan Commission or the City Council to represent fully the intent of the development plan or to determine if the plan meets the conditions for approval set forth above.
- (8) FINAL DEVELOPMENT PLAN APPROVAL. Within 60 days after the final development plan is submitted by the developer to the Plan Commission, the Plan Commission shall make a recommendation to the City Council on the said plan, indicating its conformity or lack of conformity with the preliminary development plan, the plan's fulfillment of all required items and continued

compliance with findings required for preliminary development plan approval. Upon receiving the Plan Commission's recommendation, the City Council shall set for public hearing at the next regularly scheduled City Council meeting the proposed final development plan approval. After the said public hearing has been held, the City Council shall either grant, grant subject to conditions, or deny the final development plan. If the City Council grants approval of the plan, the Building Inspector shall issue a Planned Unit Development permit to the developer, which said permit shall contain any conditions attached by the City Council to its approval of the proposed PUD.

- (9) FILING OF FINAL DEVELOPMENT PLAN.** Upon approval of the final development plan by the City Council, the City Administrator shall certify two copies of such plan and file them. Such plan shall be drawn to a scale of 40 feet to one inch or larger. The dimensions of such plan shall not exceed three feet by six feet. In case of a large plan, two or more sheets may be required. The City Administrator shall see that, after approval, the PUD is designated on the City's Official Zoning Map.
- (10) FINAL DEVELOPMENT PLAN CHANGES.** Any significant changes in the approved final development plan may be made only after consideration by the Plan Commission, and a public hearing and subsequent approval by the City Council. No changes in the final development plan may be made unless they are shown by the developer to be required by changes in conditions or circumstances not foreseen at the time of the approval of the final development plan by the City Council. Any changes must first be reviewed by the Plan Commission and thereafter approved by the City Council. In the event that any portion of such time schedule in the approved final development plan is not met, the developer may submit a written request for an extension of time, delivered to the City Administrator, at least 20 days prior to the expiration of the building completion date. The City Council may, for good cause, extend the previously agreed completion date for up to, but not to exceed, one (1) year of additional time. If the developer fails to satisfy any phase or segment of the completion schedule within 20 days of the expiration date, or within 30 days of an extension denial by the City Council, said phase or portion of a previously approved site plan associated with the Planned Unit Development shall become null and void.
- (11) TERMINATION OF FINAL DEVELOPMENT PLAN APPROVAL.** If final development plan approval is given by the City Council to a developer and the developer thereafter wishes to abandon the plan, he shall so notify the City in writing. If the developer fails to commence the development within 18 months of the approval of the final development plan, or upon a finding by the Plan Commission that there has not been substantial development (as indicated by installation of utilities or completion of five percent (5%) of the proposed floor area) within the site area within 24 months

after final development plan approval has been granted by the City Council, such final development plan approval shall be terminated after a public hearing by the Plan Commission and approval by the City Council upon public hearing before the City Council.

(12) EXTENDED STAGE PUD. The City recognizes that certain PUD's may involve construction over an extended period of time. If a developer proposes to develop a PUD project during a period exceeding two years, he may request concept approval from the Plan Commission and the City Council for the entire project and for permission to submit application for preliminary development plan approval on the first stage of the project. A public hearing shall be required by the Plan Commission for consideration of concept approval as well as for each stage of development in the extended-stage PUD. Each stage of the PUD shall require both preliminary and final development plan approval.

(13) BUILDING PERMIT APPROVAL. No building permit shall be issued by the Building Inspector for a building in a PUD until the plans for said building have been reviewed and approved by the Building Inspector and found by him to be consistent with the plans for the PUD presented by the developer to the Plan Commission and the City Council and approved by the City Council.

17.42 VIOLATIONS AND PENALTIES.

(1) PENALTY. Any person who shall violate any provision of this chapter, or any order, rule or regulation made hereunder, shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

(2) COMPLAINTS. Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints shall be in writing and shall be filed with the Building Inspector, who shall properly record such complaint and immediately investigate and report thereon to the Plan Commission.

17.43 AMENDMENTS. The City Council may, from time to time on its own motion, or on petition or recommendation of the Plan Commission, amend, supplement or repeal the regulations and provisions of this chapter after referral to the Plan Commission, which shall give notice and hold public hearing thereon.

CHAPTER 18
SUBDIVISION AND PLATTING

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18.01 PURPOSE. The purpose of this chapter is to promote the public health, safety and general welfare of the community and these regulations are designed to lessen congestion in the streets and highways; further the orderly layout and use of land; secure safety from fire, panic and other dangers; provide adequate light and air; prevent the overcrowding of land; avoid undue concentration of population; facilitate adequate provision for transportation, water, sewerage, schools, parks, playgrounds and other public requirements; and facilitate the further re-subdivision of larger tracts into smaller parcels of land. These regulations are made with reasonable consideration, among other things, of the character of the City with a view to conserving the value of the buildings placed upon land, providing the best possible environment for human habitation and encouraging the most appropriate use of land throughout the City.

18.02 GENERAL PROVISIONS.

- (1) The provisions contained in Chapter 236, Wis. Stats., governing the subdivision and platting of land, and such other State laws as may apply and any revisions or amendments thereof enacted by the State Legislature; the rules of the Department of Commerce relating to lot size and lot evaluation if the subdivision is not served by a public sewer and provision for such service has not been made; and the rules of the Department of Transportation relating to safety of access and preservation of the public interest and investment in the streets if the subdivision abuts on a State trunk highway or connecting street, are all made a part hereof with the same force and effect as if herein set out in full, except that where the provisions of this chapter are more restrictive the provisions of this chapter shall apply.
- (2) Any division of land within the City or its extraterritorial plat approval jurisdiction which results in a subdivision as defined herein shall be, and any other division may be, surveyed and a plat thereof made, approved and recorded as required by this chapter and by Chapter 236, Wis. Stats.
- (3) Any division of land other than a subdivision within the City or its extraterritorial plat approval jurisdiction, of which a plat has not been approved and recorded, shall be surveyed and a certified survey map of such division approved and recorded with the Register of Deeds as required by Section 18.04 (2) and Chapter 236, Wis. Stats.

18.03 DEFINITIONS.

- (1) MUNICIPALITY OR CITY. The City of Kiel.

- (2) SUBDIVISION. A division of a lot, parcel or tract of land by the owner thereof or his agent for the purpose of sale or of building developments, where:
- (a) The act of division creates 5 or more parcels or building sites of 1 1/2 acres each or less in area.
 - (b) Five or more parcels or building sites of 1 1/2 acres each or less in area are created by successive divisions within a period of 5 years.
 - (c) The act of division involves the creation of a new street.
- (3) STREET. A public thoroughfare affording access to abutting property.
- (a) Major Street. A public thoroughfare capable of accommodating heavy traffic.
 - (b) Collector Street. A street which will carry traffic from minor streets to a major street system and includes principal entrance streets of developed areas and the primary circulating streets within a developed area.
 - (c) Minor Street. A street used primarily for access to the abutting properties.
 - (d) Cul-de-sac. A minor street having one opened end and being terminated at the other by a turnaround.
- (4) ALLEY. A public way affording secondary means of access to abutting property.
- (5) LOT. A portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of ownership or for building development.
- (6) OUTLOT. A portion of a subdivision or other land division not of standard "lot" size, but provided as a remnant of the subdivision, the intention of which is to either redivide it in the future into "lots" or combine it with one or more other adjacent "outlots" or "lots" in other subdivisions or land divisions to create buildable "lots".

18.04 SUBDIVISION PROCEDURE.

- (1) PRELIMINARY CONSULTATION. The subdivider may, before submitting a plat for official filing, consult or meet with the Plan Commission for advice and assistance. This step does not require formal application, fee or filing of a plat with the Plan Commission or City Council but may include a preliminary sketch.
- (2) PRELIMINARY PLAT.
- (a) Before submitting a final plat for approval, the subdivider shall submit a preliminary plat and such copies thereof as shall be required to the City Council for preliminary approval.

(b) Official Filing. The submission of the prints of a preliminary plat shall constitute an official filing and the Administrator shall note on each print the date filed and shall forthwith forward copies to the following:

1. Three copies for the Office File to the City.
2. Two copies to the Plan Commission.
3. Two copies to the City Engineer.
4. Two copies to the State Department of Administration as set forth in Chapter 236, Wis. Stats.
5. Four copies to the County Planning Agency, if required.
6. If the subdivision abuts or adjoins a State trunk highway or connecting street, 2 copies to the Department of Transportation.
7. If the subdivision is not served by a public sewer and provision for such service has not been made, 2 copies to the State Department of Commerce.

(c) Official Approval.

1. The City Council shall, within 40 days of submission of the preliminary plat, review the plat and negotiate with the subdivider on changes deemed advisable and the kind and extent of public improvements which will be required, and approve, approve conditionally or reject the plat. The subdivider and his surveyor shall be notified in writing of any conditions of approval or the reasons for rejection.
2. Approval of the preliminary plat shall entitle the subdivider to final approval of the layout shown by such plat if the final plat conforms substantially to the preliminary plat and all conditions of approval have been met.

(d) Engineering Data Requirements.

1. The preliminary plat shall be prepared by a registered land surveyor on tracing cloth or paper of good quality at a scale of not more than 100' to 1" and shall show correctly on its face:
 - a. Date, scale and north point.
 - b. The title, in accordance with the City standard for titling subdivisions, under which the proposed subdivision is to be recorded.
 - c. The name and address of the owner, the subdivider and surveyor preparing the plat.
 - d. Location of the proposed subdivision by government lot, quarter section, township, range and county.
 - e. Exact length and bearings of the exterior boundaries of the proposed subdivision and the approximate acreage therein.

- f.** Location and names of adjacent subdivisions.
 - g.** Zoning on and adjacent to the proposed subdivision.
 - h.** Location, widths and names of any adjacent existing highways, streets, alleys or other public ways, easements, railroad and utility rights-of-way, parks and cemeteries.
 - i.** A small scale drawing of the section or government subdivision of the section in which the subdivision lies with the location of the subdivision indicated thereon.
 - j.** The approximate location, size and elevations within the proposed subdivision and in the adjoining streets or property of any existing sewers, water mains, culverts, drain pipes, including farm drain tile, electric conduits proposed to be used on the property to be subdivided; or direction and distance to nearest water and sewer mains if not adjacent or within the tract to be divided.
 - k.** The location of existing property lines, streets, drives, buildings, water courses, utilities, railroads and other similar features within the tract being subdivided.
 - l.** The water elevations of adjoining lakes or streams at the date of survey and approximate high- and low-water elevations, all referred to U.S.G.A. data.
 - m.** Locations, widths and names of all proposed streets and rights-of-way such as alleys and easements and all parks and other open spaces. Street names shall be as provided by the City.
 - n.** Approximate dimensions of all lots together with proposed lot and block numbers or consecutive lot numbers.
 - o.** Approximate dimensions of all parcels of land proposed to be dedicated to public use and the conditions of such dedication, if any.
 - p.** Proposed building setback lines.
 - q.** Approximate radii of all curves and length of tangents.
 - r.** Source of domestic water supply and type of sewage disposal, locations of sites for community domestic water facilities and community sewage treatment or handling facilities, all subject to the rules and regulations of the State Department of Health and Family Services, Division of Health.
 - s.** Contours at vertical intervals of not more than 5' where the slope is greater than 10% and not more than 2' where the slope is less than 10%. Elevations shall be marked on such contours based on U.S.C. & G.S. data.
- 2.** In addition the City Council may require any one or all of the following:

- a. Profiles showing existing ground surface and proposed street grades, including extensions for a reasonable distance beyond the limits of the proposed subdivision. Elevations shall be based on U.S.C. & G.S. data.
 - b. A draft of protective covenants whereby the subdivider proposes to regulate land use in the subdivision and otherwise protect the proposed development.
- (e) FINAL PLAT.
 1. The final plat and such copies thereof as shall be required shall be submitted to the Administrator not later than 6 months after the approval of the preliminary plat. The City Council may refuse to approve such final plat if not submitted within such specified time.
 2. Within 2 days after the filing of any final plat with the Administrator, legible copies thereof furnished by the subdivider at his expense shall be forwarded by the Administrator to the following agencies:
 - a. Three copies to the Office File of the City.
 - b. Two copies to the Plan Commission.
 - c. Two copies to the City Engineer.
 - d. Two copies for each of the State agencies required to review the plat to the Department of Administration as set forth in Section 236.12, Wis. Stats.
 - e. Four copies to the County Planning Agency, if required.
 3. The City Council shall approve or reject the final plat within 60 days of its submission unless the time is extended with the subdivider and the time of such extension is entered upon the minutes of the Council. Reasons for rejection shall be stated in the minutes of the Council meeting and a copy thereof or a written statement of such reasons shall be supplied the subdivider and his surveyor.
 4. The Administrator shall certify on the face of the plat that the copies referred to above were forwarded as required and the date thereof, and that no objections to the plat have been filed within the 60-day limit set by Section 236.11 (2), Wis. Stats., or if filed, have been met.
 5. The City Attorney may require the subdivider to furnish an abstract of title or, at the option of the subdivider, title insurance or certificate of title certified to the date of submission of the plat for approval to ascertain the fact that all parties having an interest in the lands have signed the owners' certificate on the plat.

18.05 LAND DIVISIONS OTHER THAN SUBDIVISIONS.

(1) PROCEDURE. The subdivider shall first consult with the City Council regarding the requirements of this section before submission of his plat or map. Following consultation, the final plat and such copies thereof as shall be required shall be submitted to the City Council which shall approve, approve conditionally or reject the plat within 60 days. The subdivider shall be notified in writing of any conditions of approval or the reasons for rejection.

(2) REQUIREMENTS.

(a) To the extent reasonably practicable, the plat shall comply with the provisions of this section relating to general requirements and design standards and required improvements.

(b) The survey shall be performed and the map prepared by a registered surveyor.

(c) All corners shall be monumental in accordance with Section 236.15, Wis. Stats.

(d) The final plat shall be prepared in accordance with Section 236.20, Wis. Stats. All lines shall be made with nonfading black image to a scale of not more than 100' to 1".

(e) If any lots in the plat are not to be served by municipal sanitary sewer, the rules of the State Department of Commerce applicable to subdivisions shall be complied with.

(3) CERTIFICATES.

(a) The map shall include the certificate of ownership and the certificate of the surveyor who surveyed and mapped the parcel, typed, lettered, or reproduced legibly with nonfading black image, giving a clear and concise description of the land surveyed by bearings and distances, commencing with some corner marked and established in the U.S. Public Land Survey or some corner providing reference to a corner marked and established in the U.S. Public Land Survey. Such certificate shall include the statement of the surveyor to the effect that he has fully complied with the requirements of this section.

(b) The certificate of approval of the Plan Commission shall be typed, lettered or reproduced legibly with nonfading black image on the face of the map.

(4) RECORDING. Following approval of the certified survey map, it shall be filed for record with the Register of Deeds and a duplicate tracing shall be filed with the Administrator.

18.06 GENERAL REQUIREMENTS AND DESIGN STANDARDS.

(1) GENERAL. The proposed subdivision shall conform to:

(a) The provisions of Chapter 236, Wis. Stats., which are hereby adopted by reference.

(b) All applicable ordinances of the City.

- (c) Design and construction standards as established by the City.
- (d) The Master Plan of the City.
- (e) The Official Map of the City.
- (f) All rules and regulations of State or federal agencies with authority to regulate land use within the corporate limits of the City.

(2) STREETS.

- (a) General Considerations. Streets shall be designed and located in relation to existing and planned streets, to topographical conditions and natural terrain features, such as stream and existing tree growth, to public convenience and safety and in appropriate relation to the proposed use of the land to be served by such streets.
- (b) Width. All streets shall be not less than 60' in width.
- (c) Grades. The grade of streets shall not exceed 8%, unless necessitated by topography and approved by the Council.
- (d) Alignment and Visibility. There shall be a minimum sight distance with clear visibility along the centerline of all major streets of not less than 500'.
- (e) Dead End Streets. Cul-de-sacs or streets designed to have one end permanently closed shall terminate with a turnaround of not less than 120' in diameter.

(3) INTERSECTIONS.

- (a) Where streets intersect and cross major streets, their alignment shall be continuous and street jogs or off-center intersections shall be avoided.
- (b) Streets shall intersect as nearly as possible at right angles.
- (c) Not more than 2 streets shall intersect at one point unless approved by the Council.

(4) ALLEYS. Alleys shall not be less than 24' wide and shall be continuous through blocks. Alleys shall not be used in residential areas unless approved by the Council.

(5) EASEMENTS. Easements across lots or centered on rear or side lot lines shall be provided for the installation of utilities where necessary and shall be at least 10' wide and such easements shall be continuous from block to block. When an easement is centered on a rear or side lot line the width of the easement in each lot can be added together to meet the width requirement, as long as the minimum width of the easements added together is at least 20'.

(6) BLOCKS. The lengths, widths and shapes of blocks shall be appropriate for the topography and the type of development contemplated. Pedestrian crosswalks of not less than 10' wide may be required

by the Council through the center of blocks more than 900' in length where deemed essential to provide circulation and access to community facilities.

(7) LOTS.

- (a)** In General. The size, shape and facing of lots and the minimum building setback lines shall be appropriate for the topography of the subdivision and for the type of development and use contemplated and shall conform to all applicable zoning ordinances.
- (b)** Lot Dimensions. Width and areas of lots shall conform with lot width and area requirements set forth in the Zoning Code.
- (c)** Corner Lots. Corner lots for residential use shall have a width sufficient to provide a building setback of at least 25' from each street.
- (d)** Access to Public Street. Every lot shall abut on a public street.
- (e)** Lot Lines. Side lot lines shall be substantially at right angles or radial to street lines.
- (f)** Large Lots. A tract subdivided into parcels containing one or more acres shall be arranged to allow the resubdivision of any such parcels into normal lots in accordance with the provisions of these subdivision standards.
- (g)** Municipal Boundaries. Lots shall follow, rather than cross, municipal boundary lines whenever practicable.

18.07 REQUIRED LAND IMPROVEMENTS.

(1) SUBDIVIDER PROVIDED FACILITIES AND IMPROVEMENTS. No final plat shall be approved by the Plan Commission or City Council unless the subdivider shall provide and dedicate the following facilities and improvements, all of which shall be provided within the time required by the City Council.

(a) Street Site Grading.

1. The subdivider shall prepare, in accordance with the requirements and standards of the official map of the City and this chapter, plan and profile drawings together with typical street cross sections and specifications which indicate the proposed established grades of all streets shown on the plat.
2. The subdivider shall also have prepared a Master Site Grading Plan for the entire subdivision. This plan shall be prepared in accordance with this chapter and the official map of the City and shall show existing and proposed elevations of all lot corners, control points and building locations. The plan shall also indicate positive control of all storm drainage in and

- adjacent to the plat. The cost of the preparation of such plans shall be paid by the subdivider.
3. After approval of these plans by the City Engineer, the Plan Commission and City Council, the subdivider shall grade the full width of the right-of-way of the proposed streets in accordance with the approved drawings. Roadways shall be graded to subgrade with 9" of gravel subbase in accordance with engineering specifications established by the City.
 4. Upon completion of all street and subdivision grading, the subdivider shall supply the City with a document prepared by his engineer or surveyor certifying that the completed grading work is in compliance with the Master Site Grading Plan. The cost of all required grading work supervision, certification, inspection and engineering fees shall be paid for by the subdivider.
- (b) Storm Water Drainage Facilities.** All subdivisions shall be provided with adequate storm water facilities. The subdivider shall have plan and profile drawings and specifications prepared in accordance with the City Master Storm Sewer Plan and the requirements and specifications of the City for the installation of storm water facilities within the streets and sewer easements in and adjacent to the proposed subdivision. These facilities shall include storm sewers and storm sewer laterals to serve every lot in the subdivision extended to the lot line. The City and the subdivider shall cause to be installed, in accordance with the "Standard Specifications for Sewer and Water Construction in Wisconsin," all the facilities indicated on the plans. The cost of the installation of the sewer main, inlet basin leads, construction of manholes and inlet basins, etc., shall be paid for by the subdivider. The cost of installation of suitable laterals having a size of no less than 4" for all residential lots and being of an adequate size and in accordance with the "Standard Specifications for Sewer and Water Construction in Wisconsin," for all nonresidential lots shall be paid by the subdivider. The cost of inspection, supervision and engineering fees attributable to stormwater facilities shall be borne by the subdivider.
- (c) Sanitary Sewer and Water Facilities.**
1. The subdivider shall have plan and profile drawings and specifications prepared in accordance with the City Sanitary Sewer and Water Facilities Plan and this chapter for the installation of sanitary sewerage and water facilities including lateral house connections for each lot in the subdivision extended to the lot line. Upon approval of the plans by the City Engineer, Wastewater Treatment Plant Supervisor, Director of Public Works, Plan Commission and City Council, the subdivider shall install in accordance with the "Standard Specifications for

Sewer and Water Construction in Wisconsin," all facilities required and the cost of such installation, including inspection, supervision and engineering fees shall be paid for by the subdivider.

2. Where sewer mains larger than 10" and water mains larger than 8" are necessary to adequately serve the subdivision, the additional cost of adequately sized mains shall be borne by the City in those subdivisions devoted entirely to residential use. Where a subdivision will require mains larger than 10" and 8" respectively, and such requirement is a direct result of an industrial, commercial or other contemplated use to be made within the subdivision, the subdivider shall pay the entire cost of the installation regardless of the sizing of the mains.

(d) Public Utilities.

1. All utility lines for telephone, electric and cable television service shall be placed in rear lot line easements where practicable and side lot line easements where necessary.
2. All telephone, electric, gas and cable television service lines shall be placed underground entirely throughout a subdivision area unless otherwise approved by the City Council. Conduits or cables shall be placed within easements or dedicated public ways in a manner which will not conflict with other municipal underground services. Proposed utility layouts shall be shown on copies of the preliminary plat supplied by the subdivider to the appropriate utilities. These layouts shall be reviewed and approved by the directors of the appropriate City utilities prior to the completion of the final plat.

(e) Sanitary Sewer Lift Stations and Force Mains. Where sanitary sewer lift stations and force mains are required to lift sewerage to a higher elevation and to the gravity sewer system, the subdivider shall have the plan and profile drawings and specifications prepared for the installation of such sewerage lift facilities. Such installation and the inspection, supervision and engineering fees shall be paid for by the subdivider unless otherwise determined by the City Council.

(f) Curb and Gutter Design Standards. The subdivider shall install concrete curb and gutter along both sides of all streets and boulevards shown on the plat. The cost of the curb and gutter shall be paid for by the subdivider and all required inspection, supervision and engineering fees shall be paid for by the City.

(2) LETTER OF CREDIT OR BOND. If the above facilities and improvements have not been fully installed at the time the plat is submitted for final approval, the subdivider shall file with the City Treasurer,

or his deputy, either an irrevocable letter of credit from a responsible bank, savings and loan association or other financial institution, duly licensed and authorized to do business in this State, or a surety bond, which bond or irrevocable letter of credit shall be in an amount equal to the cost of making the necessary public improvements.

- (3) COUNCIL DISCRETION. In all instances where it shall appear to the satisfaction of the City Council and the Plan Commission that all of a platted subdivision cannot immediately be improved with respect to the installation of storm and sanitary sewers and related facilities, street improvements or any other required improvement, the City Council may, in its discretion, authorize the subdivider to proceed with the installation of improvements required under this chapter on one or a portion of the lots covered by the plat.

18.08 RESERVATIONS. In the design of a plat, due consideration shall be given by the subdivider and the Council to the reservation of suitable sites of adequate area for future schools, parks, playgrounds and other public purposes.

18.09 VARIANCES. When, in the judgment of the Council, it would be inappropriate to apply literally a provision of this chapter because the subdivision is located outside the corporate limits, or because extraordinary hardship would result, it may waive or vary such provision so that substantial justice may be done and the public interest secured, provided that in no event shall the requirement of filing and recording the plat be waived.

18.10 FAIR AND OPEN HOUSING.

- (1) STATE STATUTES ADOPTED. The Common Council of the City of Kiel hereby adopts Section 106.50, Wisconsin Statutes, as amended, and all subsequent amendments thereto.
- (2) AUTHORITY AND ENFORCEMENT PROCEDURES IMPLEMENTED: The officials and employees of the City of Kiel shall assist in the orderly prevention and removal of all discrimination in housing within the City of Kiel by implementing the authority and enforcement procedures set forth in Section 106.50, Wisconsin Statutes, as amended.
- (3) SEC. 13-3-3 COMPLAINTS. The City Administrator/City Clerk shall maintain forms for complaints to be filed under Section 106.50, Wisconsin Statutes, as amended, and shall assist any person alleging a violation thereof in the City of Kiel to file a complaint thereunder with the Wisconsin Department

of Workforce Development, Equal Rights Division, for enforcement of Section 106.50, Wisconsin Statutes, as amended.

18.15 PENALTY. Any person who shall violate any provision of this chapter, or any order, rule or regulation made hereunder, shall be subject to a penalty as provided in 25.04 of this Municipal Code. In addition, the remedies provided by Chapter 236, Wis. Stats., shall be available to the City.

CHAPTER 19
MANDATORY RECYCLING

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MANDATORY RECYCLING [#354 10/1/89; #388 1/1/95]

19.01 TITLE. Mandatory Recycling Code Chapter for the City of Kiel.

19.02 PURPOSE. The purpose of this chapter is to promote recycling, composting, and resource recovery through the administration of an effective recycling program, as provided in Section 287.01, Wis. Stats., and Chapter NR 544, Wis. Adm. Code.

19.03 STATUTORY AUTHORITY. This chapter is adopted as authorized under Section 287.09(3)(b), Wis. Stats.

19.04 ABROGATION AND GREATER RESTRICTIONS. It is not intended by this chapter to repeal, abrogate, annul, impair, or interfere with any existing rules, regulations, ordinances or permits previously adopted or issued pursuant to law. However, whenever this chapter imposes greater restrictions, the provisions of this chapter shall apply.

19.05 INTERPRETATION. In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes. Where any terms or requirements of this chapter may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this chapter is required by Wisconsin Statutes, or by a standard in Chapter NR 544, Wis. Adm. Code, and where the chapter provision is unclear, the provision shall be interpreted in light of the Wisconsin Statutes and the Chapter NR 544 standards in effect on the date of the adoption of this chapter, or in effect on the date of the most recent text amendment to this chapter.

19.06 SEVERABILITY. Should any portion of this chapter be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected.

19.07 APPLICABILITY. The requirements of this chapter apply to all persons and organizations within the City of Kiel limits.

19.08 ADMINISTRATION. The provisions of this chapter shall be administered by the City of Kiel Director of Public Works.

19.09 EFFECTIVE DATE. Sections 19.01-19.22 of this chapter took effect on January 1, 1995.

19.10 DEFINITIONS. For the purpose of this ordinance:

- (1) BI-METAL CONTAINER means a container for carbonated or malt beverages that is made primarily of steel and aluminum.
- (2) BRUSH AND BRANCHES means clean woody vegetative material no greater than six inches in diameter. This term does not include stumps, roots, or shrubs with intact root balls.
- (3) CONTAINER BOARD means corrugated paper board used in the manufacture of shipping containers and related products.
- (4) HDPE means high density polyethylene plastic containers marked by the SPI code No. 2.
- (5) LDPE means low density polyethylene plastic containers marked by the SPI code No. 4.
- (6) MAGAZINES means magazines and other materials printed on similar paper.
- (7) MAJORE APPLIANCES means a residential or commercial air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, or stove.
- (8) MIXED OR OTHER PLASTIC RESIN TYPES means plastic containers marked by the SPI code No. 7.
- (9) MULTIPLE FAMILY DWELLING means a property containing five or more residential units, including those which are occupied seasonally.
- (10) NEWSPAPER means a newspaper and other materials printed on newsprint.
- (11) NON-RESIDENTIAL FACILITIES AND PROPERTIES means commercial, retail, industrial, institutional and governmental facilities and properties. This term does not include multiple family dwellings.
- (12) OFFICE PAPER means high grade, staple free, printing and writing papers from offices in non-residential facilities and properties. Printed white ledger and computer printout are examples of office paper generally accepted as high grade. This term does not include industrial process waste.
- (13) PERSON includes any individual, corporation, partnership, company, association, local government unit, as defined in Section 66.0131(1)(a), Wis. Stats., state agency or authority or federal agency.
- (14) PETE means polyethylene terephthalate plastic containers marked by the SPI code No. 1.
- (15) POSTCONSUMER WASTE means solid waste other than solid waste generated in the production of goods, hazardous waste, as defined in Section 291.01(7), Wis. Stats., waste from construction and demolition of structures, scrap automobiles, or high volume industrial waste, as defined in Section 289.01(17), Wis. Stats.
- (16) PP means polypropylene plastic containers marked by SPI code No. 5.
- (17) PS means polystyrene plastic containers marked by SPI code No. 6.

- (18) PVC means polyvinyl chloride plastic containers marked by the SPI code No. 3.
- (19) RECYCLABLE MATERIALS includes lead acid batteries; major appliances; waste oil; yard waste; aluminum containers; corrugated paper or other container board; foam polystyrene packaging; glass containers; magazines; newspapers; office paper; plastic containers, including those made of PETE, HDPE, PVC, LDPE, PP, PS, and mixed or other plastic resin types; steel containers; waste tires; and bi-metal containers.
- (20) SOLID WASTE has the meaning specified in Section 289.01(33), Wis. Stats.
- (21) SOLID WASTE FACILITY has the meaning specified in Section 289.01(35), Wis. Stats.
- (22) SOLID WASTE TREATMENT means any method, technique or process which is designed to change the physical, chemical, or biological character or composition of solid waste. "Treatment" includes incineration.
- (23) WASTE TIRE means a tire that is no longer suitable for its original purpose because of wear, damage or defect.
- (24) YARD WASTE means leaves, grass clippings, and yard and garden debris.

19.11 SEPARATION OF RECYCLABLE MATERIALS. Occupants of single family and two-to-four-unit residences, multiple family dwellings, non-residential facilities, places of business, industry or commerce, farms, and governmental facilities shall separate the following materials from postconsumer waste:

- (1) Lead acid batteries.
- (2) Major appliances.
- (3) Waste oil.
- (4) Yard waste.
- (5) Aluminum containers.
- (6) Bi-metal containers.
- (7) Corrugated paper or other container board.
- (8) Foam polystyrene packaging.
- (9) Glass containers.
- (10) Magazines or other materials printed on similar paper.
- (11) Newspapers or other materials printed on newsprint.
- (12) Office paper.
- (13) Plastic containers made of PETE (#1), HDPE (#2), PVC (#3), LDPE (#4), PP (#5), PS (#6), and mixed or other plastic resin types (#7).

(14) Steel containers.

(15) Waste tires.

19.12 SEPARATION REQUIREMENTS EXEMPTED. The separation requirements of Section 19.11 do not apply to the following:

- (1) Occupants of single family and two-to-four-unit residences, multiple family dwellings and non-residential facilities and properties that send their postconsumer waste to a processing facility licensed by the Wisconsin Department of Natural Resources that recovers the material specified in Section 19.11 from solid waste in as pure a form as technically possible.
- (2) Solid waste which is burned as a supplemental fuel at a facility if less than 30% of the heat input to the facility is derived from the solid waste burned as supplemental fuel.
- (3) A recyclable material specified in Section 19.11 for which a variance or exemption has been granted by the Department of Natural Resources under Sections 287.07(7)(d) or 287.11(2m), Wis. Stats., or Section NR 544.14, Wis. Adm. Code.

19.13 CARE OF SEPARATED RECYCLABLE MATERIALS. To the greatest extent practicable, the recyclable materials separated in accordance with Section 19.11 shall be clean and kept free of contaminants such as food or product residue, oil or grease, or other non-recyclable materials, including but not limited to household hazardous waste, medical waste, and agricultural chemical containers. Recyclable materials shall be stored in a manner which protects them from wind, rain, and other inclement weather conditions.

19.14 MANAGEMENT OF LEAD ACID BATTERIES, MAJOR APPLIANCES, WASTE TIRES, WASTE OIL AND YARD WASTE. Occupants of single family and two-to-four -unit residences, multiple-family dwellings and non-residential facilities and properties shall manage lead acid batteries, major appliances, waste tires, waste oil, and yard waste as follows:

- (1) Lead acid batteries shall be disposed of by the owner by contacting an accepting vendor and then delivering the item as directed.
- (2) Major appliances shall be disposed of by the owner by contacting an accepting vendor.
- (3) Waste tires shall be disposed of by the owner by contacting an accepting vendor.
- (4) Waste oil shall be disposed of by the owner at a site designated by the City of Kiel.
- (5) Yard waste shall be disposed of by the owner at a site designated by the City of Kiel.

19.15 PREPARATION AND COLLECTION OF RECYCLABLE MATERIALS. Except as otherwise directed by the City Council or its representatives, occupants of single family and two-to-four-unit residences shall do the following for the preparation and collection of separated materials specified in Section 19.11 (5) - (14):

- (1) Steel/tin cans: Rinse out can, remove both ends and flatten.
- (2) Aluminum: Rinse out thoroughly. Examples include TV dinner trays, foil wrap, pot pie pans, aluminum cans, and siding.
- (3) Clear and colored glass: Rinse the jar or bottle thoroughly and remove and discard the cover. Acceptable examples include catsup, barbecue sauce, salad dressing, pickle, jam, jelly, peanut butter, beer, liquor and wine bottles. Not acceptable materials include plate glass, ceramics, clay items, and light bulbs.
- (4) Plastic containers: Rinse out thoroughly and remove caps and rings. Examples are milk jugs, liquid detergent bottles; all plastics identified as numbers 1 through 7 shall be recycled except as defined in Section 19.21.
- (5) Magazines or other materials printed on similar paper shall be bundled separately.
- (6) Newspapers or other materials printed on newsprint shall be bundled separately.
- (7) Office paper shall be bundled separately.
- (8) These items (1) - (7) are to be placed in the appropriate containers and placed out for collection on specified dates. The owner of the property which is placing these items out for collection shall not place them out for collection sooner than 72 hours before the City's designated pick-up date and shall remove them within 72 hours of the designated pick-up date. Failure to follow this rule shall be an ordinance violation subject to forfeiture under Ordinance 25.04 of this Code.
- (9) The City of Kiel reserves the right to change the method of preparing and collecting the materials in this section and shall provide a written notice to its residents, businesses and organizations of such changes.

19.16 RESPONSIBILITY OF OWNERS OR DESIGNATED AGENTS OF MULTIPLE-FAMILY DWELLINGS.

- (1) Owners or designated agents of multiple-family dwellings shall do the following for recycling the materials as specified in Section 19.11 (5) - (14):
 - (a) Provide adequate, separate containers for the recyclable materials.
 - (b) Notify tenants in writing at the time of renting or leasing the dwelling and at least semi-annually thereafter about the established recycling program.

- (c) Provide for the collection of materials separated from the solid waste by the tenants and the delivery of the materials to a recycling facility.
 - (d) Notify tenants of reasons to reduce and recycle solid waste, which materials are collected, how to prepare the materials in order to meet processing requirements, collection methods or sites, locations and hours of operation, and a contact person or company, including a name, address, and telephone number.
- (2) The requirements specified in (1) do not apply to the owners or designated agents of multiple-family dwellings if the postconsumer waste generated within the dwelling is treated at a processing facility licensed by the Department of Natural Resources that recovers for the recycling of the materials as specified in Section 19.11 (5) through (14) from solid waste in as pure a form as technically feasible.

19.17 RESPONSIBILITIES OF OWNERS OR DESIGNATED AGENTS OF NON-RESIDENTIAL FACILITIES AND PROPERTIES.

- (1) Owners or designated agents of non-residential facilities and properties shall do all of the following to recycle the materials specified in Section 19.11 (5) through (14):
- (a) Provide adequate, separate containers for the recyclable materials.
 - (b) Notify in writing, at least semi-annually, all users, tenants and occupants of the properties about the established recycling program.
 - (c) Provide for the collection of the materials separated from the solid waste by the users, tenants and occupants and the delivery of the materials to a recycling facility.
 - (d) Notify users, tenants and occupants of reasons to reduce and recycle, which materials are collected, how to prepare materials in order to meet the processing requirements, collection methods or sites, locations and hours of operation, and a contact person or company, including a name, address and telephone number.
- (2) The requirements specified in (1) do not apply to the owners or designated agents of non-residential facilities and properties if the postconsumer waste generated within the facility or property is treated at a processing facility licensed by the Department of Natural Resources that recovers for recycling the materials specified in Section 19.11 (5) through (14) from solid waste in as pure a form as is technically feasible.

19.18 RESPONSIBILITIES OF PERSONS USING A RECYCLING PROGRAM OTHER THAN THAT WHICH THE CITY OF KIEL PROVIDES.

Any person using a recycling program other than that of the City of Kiel, and whose facility or property is within the City limits, is required to submit the annual tonnage of materials recycled and also of materials disposed of as solid waste. This is to have supporting documentation, and will be submitted on or by December 31 each year to the City of Kiel.

19.19 PROHIBITIONS ON DISPOSAL OF RECYCLABLE MATERIAL, HAULER LICENSING, RESTRICTIONS, AND PROCESSING FACILITIES.

- (1) No person or corporation shall engage in the business of hauling recyclables within the City of Kiel City limits without being licensed by the Department of Natural Resources under Section NR 502.06, Wis. Adm. Code.
- (2) Haulers who collect solid waste or recyclables in the City of Kiel for storage, treatment, processing, marketing, or disposal shall obtain and maintain all necessary municipal and state permits, licenses, and approval prior to collecting any materials in the City of Kiel.
- (3) No person or hauler may dispose in a landfill or burn in a solid waste facility any recyclable materials as specified in Section 19.11 (5) through (14), generated in the City of Kiel that have been separated for recycling.
- (4) Any hauling contractor operating in the City of Kiel shall not transport for processing any recyclables to a processing facility unless that facility has been approved by the City of Kiel, or unless the contractor notifies the City of Kiel which facility they are using and the facility has self-certified with the Department of Natural Resources under Section NR 544.16, Wis. Adm. Code.

19.20 OWNERSHIP OF RECYCLABLE MATERIALS. Recyclable materials, upon placement at the curb or collection site, shall become the property of the hauler. Recyclable materials, upon collection by any permitted collector, shall become the property of the contractor.

19.21 EXEMPTIONS, VARIANCES, AND TEMPORARY SUSPENSIONS. The City of Kiel reserves the right to designate additional solid waste materials as recyclable or currently collected materials as no longer recyclable in accordance with State law and to either add or delete them from any collection services provided by the City of Kiel or its contractors. The City of Kiel shall provide written notice to its service recipients of this declaration.

19.22 ENFORCEMENT.

- (1) Any authorized city representative of the City of Kiel may inspect recyclable materials separated for recycling, postconsumer waste intended for disposal, collection sites and facilities, collection areas of multiple family dwellings and non-residential facilities and properties, solid waste disposal facilities and solid waste treatment facilities, and any records relating to recycling or solid waste disposal activities, for the purpose of ascertaining compliance with the provisions of this chapter. No person may refuse access to any authorized City representative of the City of Kiel who requests access for the purposes of inspection, and who presents appropriate credentials. No person may obstruct, hamper, or interfere with such an inspection.
- (2) Any person who violates a provision of this chapter may be issued a citation by the City of Kiel to collect forfeitures. The issuance of a citation shall not preclude proceeding under any other ordinance or law relating to the same or any other matter. Proceeding under any other law or ordinance relating to the same or any other matter shall not preclude the issuance of a citation under this paragraph.
- (3) Penalties for violating the provisions of this chapter shall be as set forth in Section 25.04 of the City of Kiel Municipal Code.

CHAPTER 20
FLOODPLAIN ZONING

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**STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE, TITLE AND
GENERAL PROVISIONS**

20.01 STATUTORY AUTHORIZATION

(1) This ordinance is adopted pursuant to the authorization in ss. 61.35 and 62.23, for villages and cities; 59.69, 59.692, and 59.694 for counties; and the requirements in s. 87.30, Stats.

20.02 FINDING OF FACT

(1) Uncontrolled development and use of the floodplains and rivers of this municipality would impair the public health, safety, convenience, general welfare and tax base.

20.03 STATEMENT OF PURPOSE

(1) This ordinance is intended to regulate floodplain development to:

- (a) Protect life, health and property;
- (b) Minimize expenditures of public funds for flood control projects;
- (c) Minimize rescue and relief efforts undertaken at the expense of the taxpayers;
- (d) Minimize business interruptions and other economic disruptions;
- (e) Minimize damage to public facilities in the floodplain;
- (f) Minimize the occurrence of future flood blight areas in the floodplain;
- (g) Discourage the victimization of unwary land and homebuyers;
- (h) Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and
- (i) Discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.

20.04 TITLE

(1) This ordinance shall be known as the Floodplain Zoning Ordinance for the City of Kiel, Wisconsin.

20.05 GENERAL PROVISIONS

(1) AREAS TO BE REGULATED This ordinance regulates all areas that would be covered by the regional flood or base flood, or hydraulic shadow of the Kiel Dam.

Note: Base flood elevations are derived from the flood profiles in the Flood Insurance Study. Regional flood elevations may be derived from other studies. Areas covered by the base flood are identified as A-Zones on the Flood Insurance Rate Map.

- (2) OFFICIAL MAPS & REVISIONS** The boundaries of all floodplain districts are designated as floodplains or A-Zones on the maps listed below and the revisions in the City of Kiel Floodplain Appendix. Any changes to the base flood elevations (BFE) in the Flood Insurance Study (FIS) or on the Flood Insurance Rate Map (FIRM) must be reviewed and approved by the DNR and FEMA before it is effective. No changes to regional flood elevations (RFE's) on non-FEMA maps shall be effective until approved by the DNR. These maps and revisions are on file in the office of the City Administrator, City of Kiel Office. If more than one map or revision is referenced, the most restrictive information shall apply.

OFFICIAL MAPS: Based on the Manitowoc County Flood Insurance Study (FIS), dated (August 2, 2011), volume number (55071CV000A) and Calumet County Flood Insurance Study (FIS) dated February 2009, volume number (55015CV000A)

- (a)** Manitowoc County Flood Insurance Rate Map (FIRM), panel numbers (55071C0367D, 55071C0370D and 55071C0386D dated AUGUST 2, 2011; with corresponding profiles that are based on the FIS.
- (b)** Calumet County Flood Insurance Rate Map (FIRM) panel number 55015C0295E dated February 9, 2009 with corresponding profiles that are based on the FIS.
- (c)** The hydraulic shadow map with corresponding profiles based on the Kiel Dam Failure Analysis by Robert E Lee dated 1-21-2014. The area designated at "Hydraulic Shadow" shall be regulated as Floodway District.

- (3) ESTABLISHMENT OF DISTRICTS** The regional floodplain areas are divided into three districts as follows:

- (a)** The Floodway District (FW) is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters.
- (b)** The Floodfringe District (FF) is that portion of the floodplain between the regional flood limits and the floodway.
- (c)** The General Floodplain District (GFP) is those areas that have been or may be covered by floodwater during the regional flood.
- (d)** The Flood Storage District (FSD) is that area of the floodplain where storage of floodwaters is calculated to reduce the regional flood discharge.

(4) LOCATING FLOODPLAIN BOUNDARIES Discrepancies between boundaries on the official floodplain zoning map and actual field conditions shall be resolved using the criteria in paragraphs (a) or (b) below. If a significant difference exists, the map shall be amended according to s. 20.70. The zoning administrator can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required. The zoning administrator shall be responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined and for initiating any map amendments required under this section. Disputes between the zoning administrator and an applicant over the district boundary line shall be settled according to s. 20.63(3) and the criteria in (a) and (b) below.

(a) If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.

(b) Where flood profiles do not exist, the location of the boundary shall be determined by the map scale, visual on site inspection and any information provided by the Department.

Note: Where the flood profiles are based on established base flood elevations from a FIRM, FEMA must also approve any map amendment pursuant to s. 20.71 (6).

(5) REMOVAL OF LANDS FROM FLOODPLAIN Compliance with the provisions of this ordinance shall not be grounds for removing land from the floodplain unless it is filled at least two feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to s. 20.70.

Note: This procedure does not remove the requirements for the mandatory purchase of flood insurance. The property owner must contact FEMA to request a Letter of Map Change (LOMC).

(6) COMPLIANCE Any development or use within the areas regulated by this ordinance shall be in compliance with the terms of this ordinance, and other applicable local, state, and federal regulations.

(7) MUNICIPALITIES AND STATE AGENCIES REGULATED Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if s. 13.48(13), Stats., applies. The construction, reconstruction, maintenance, and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when s. 30.2022, Stats., applies.

(8) ABROGATION AND GREATER RESTRICTIONS

(a) This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under ss. 59.69, 59.692 or 59.694 for counties; s. 62.23 for cities; or s. 61.35 for villages; or s. 87.30,

Stats., which relate to floodplains. If another ordinance is more restrictive than this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

(b) This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

(9) INTERPRETATION In their interpretation and application, the provisions of this ordinance are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this ordinance, required by ch. NR 116, Wis. Adm. Code, is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

(10) WARNING AND DISCLAIMER OF LIABILITY The flood protection standards in this ordinance are based on engineering experience and scientific research. Larger floods may occur or the flood height may be increased by man made or natural causes. This ordinance does not imply or guarantee that non-floodplain areas or permitted floodplain uses will be free from flooding and flood damages. Nor does this ordinance create liability on the part of, or a cause of action against, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

(11) SEVERABILITY Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

(12) ANNEXED AREAS FOR CITIES AND VILLAGES The Manitowoc/Calumet County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements of ch. NR 116, Wis. Adm. Code and the National Flood Insurance Program (NFIP). These annexed lands are described on the municipality's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the municipal zoning administrator. All plats or maps of annexation shall show the regional flood elevation and the location of the floodway.

(13) GENERAL DEVELOPMENT STANDARD The community shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be

designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with materials resistant to flood damage; be constructed by methods and practices that minimize flood damages; and be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Subdivisions shall be reviewed for compliance with the above standards. All subdivision proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this ordinance.

20.11 HYDRAULIC AND HYDROLOGIC ANALYSES

- (1) Except as allowed in par. (3) below, no floodplain development shall:
- (a) Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, increasing regional flood height; or
 - (b) Increase regional flood height due to floodplain storage area lost, which equals or exceeds 0.01 foot.
- (2) The zoning administrator shall deny permits if it is determined the proposed development will obstruct flow or increase regional flood heights 0.01 foot or more, based on the officially adopted FIRM or other adopted map, unless the provisions of sub. (3) are met.
- (3) Obstructions or increases equal to or greater than 0.01 foot may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with s. 20.70. Note: This section refers to obstructions or increases in base flood elevations as shown on the officially adopted FIRM or other adopted map. Any such alterations must be reviewed and approved by FEMA and the DNR.

20.12 WATERCOURSE ALTERATIONS

- (1) No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the local official has notified in writing all adjacent municipalities, the Department and FEMA regional offices and required the applicant to secure all necessary state and federal permits. The flood carrying capacity of any altered or relocated watercourse shall be maintained.
- (2) As soon as is practicable, but not later than six months after the date of the watercourse alteration or relocation, the zoning administrator shall notify FEMA of the changes by submitting appropriate

technical or scientific data in accordance with NFIP guidelines that shall be used to revise the FIRM, risk premium rates and floodplain management regulations as required.

20.13 CHAPTER 30, 31, WIS. STATS., DEVELOPMENT

- (1) Development which requires a permit from the Department, under chs. 30 and 31, Wis. Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed if the necessary permits are obtained and amendments to the floodway lines, water surface profiles, BFE's established in the FIS, or other data from the officially adopted FIRM, or other floodplain zoning maps or the floodplain zoning ordinance are made according to s. 20.70.

20.14 PUBLIC OR PRIVATE CAMPGROUNDS

- (1) Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:
- (a) The campground is approved by the Department of Health Services.
 - (b) A land use permit for the campground is issued by the zoning administrator.
 - (c) The character of the river system and the elevation of the campground is such that a 72-hour warning of an impending flood can be given to all campground occupants.
 - (d) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation.
 - (e) This agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated - by the officials identified in sub. (4) - to remain in compliance with all applicable regulations, including those of the state department of health services and all other applicable regulations.
 - (f) Only camping units are allowed.

- (g) The camping units may not occupy any site in the campground for more than 180 consecutive days, at which time the camping unit must be removed from the floodplain for a minimum of 24 hours.
- (h) All camping units that remain on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit for a period not to exceed 180 days and shall ensure compliance with all the provisions of this section.
- (i) The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section.
- (j) All camping units that remain in place for more than 180 consecutive days must meet the applicable requirements in either s. 20.20 or s. 20.30 for the floodplain district in which the structure is located.
- (k) The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued.
- (l) All service facilities, including but not limited to refuse collection, electrical service, natural gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation.

20.20 FLOODWAY DISTRICT (FW)

20.21 APPLICABILITY

- (1) This section applies to all floodway areas on the floodplain zoning maps and those identified pursuant to s. 20.41(4).

20.22 PERMITTED USES

- (1) The following open space uses are allowed in the floodway district and the floodway areas of the general floodplain district, if:
 - (a) They are not prohibited by any other ordinance;
 - (b) They meet the standards in s. 20.23 and 20.24; and
 - (c) All permits or certificates have been issued according to s. 20.61:
 - 1. Agricultural uses, such as: farming, outdoor plant nurseries, horticulture, viticulture and wild crop harvesting.

2. Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.
3. Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas and hiking and horseback riding trails, subject to the fill limitations of s. 20.23(4).
4. Uses or structures accessory to open space uses, or classified as historic structures that comply with ss. 20.23 and 20.24.
5. Extraction of sand, gravel or other materials that comply with s. 20.23(4).
6. Functionally water dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with chs. 30, 31, Stats.
7. Public utilities, streets and bridges that comply with s. 20.23(3).

20.23 STANDARDS FOR DEVELOPMENTS IN FLOODWAY AREAS

(1) GENERAL

- (a) Any development in floodway areas shall comply with s. 20.10 and have a low flood damage potential.
- (b) Applicants shall provide the following data to determine the effects of the proposal according to s. 20.11:
 1. A cross section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or
 2. An analysis calculating the effects of this proposal on regional flood height.
- (c) The zoning administrator shall deny the permit application if the project will increase flood elevations upstream or downstream 0.01 foot or more, based on the data submitted for par. (b) above.

(2) STRUCTURES

- (a) Structures accessory to permanent open space uses or functionally dependent on a waterfront location may be allowed by permit if the structures comply with the following criteria:
 1. The structure is not designed for human habitation and does not have a high flood damage potential;
 2. it must be anchored to resist flotation, collapse and lateral movement;

3. mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and
4. **it** must not obstruct the flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.

(3) PUBLIC UTILITIES, STREETS AND BRIDGES

- (a)** Public utilities, streets and bridges may be allowed by permit, if:
1. Adequate floodproofing measures are provided to the flood protection elevation; and
 2. Construction meets the development standards of s. 20.11.

(4) FILLS OR DEPOSITION OF MATERIALS

- (a)** Fills or deposition of materials may be allowed by permit, if:
1. The requirements of s. 20.11 are met;
 2. No material is deposited in the navigable channel unless a permit is issued by the Department pursuant to ch. 30, Stats., and a permit pursuant to s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and the other requirements of this section are met;
 3. The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and
 4. The fill is not classified as a solid or hazardous material.

20.24 PROHIBITED USES

- (1)** All uses not listed as permitted uses in s. 20.22 are prohibited, including the following uses:
- (a)** Habitable structures, structures with high flood damage potential, or those not associated with permanent open space uses;
 - (b)** Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
 - (c)** Uses not in harmony with or detrimental to uses permitted in the adjoining districts;
 - (d)** Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and ch. COMM 83, Wis. Adm. Code.

- (e) Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and chs. NR 811 and NR 812, Wis. Adm. Code;
- (f) Any solid or hazardous waste disposal sites;
- (g) Any wastewater treatment ponds or facilities, except those permitted under s. NR 110.15(3)(b), Wis. Adm. Code;
- (h) Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

20.30 FLOODFRINGE DISTRICT (FF)

20.31 APPLICABILITY

- (1) This section applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to s. 20.41(4).

20.32 PERMITTED USES

- (1) Any structure, land use, or development is allowed in the floodfringe district if the standards in s. 20.33 are met, the use is not prohibited by this or any other ordinance or regulation and all permits or certificates specified in s. 20.61 have been issued.

20.33 STANDARDS FOR DEVELOPMENT IN FLOODFRINGE AREAS

- (1) S. 20.11 shall apply in addition to the following requirements according to the use requested.
- (2) RESIDENTIAL USES Any habitable structure, including a manufactured home, which is to be erected, constructed, reconstructed, altered, or moved into the floodfringe area, shall meet or exceed the following standards;
 - a. The elevation of the lowest floor, excluding the basement or crawlway, shall be at or above the flood protection elevation on fill. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. The Department may authorize other floodproofing measures if the elevations of existing streets or sewer lines makes compliance impractical;

- b. The basement or crawlway floor may be placed at the regional flood elevation if it is floodproofed to the flood protection elevation. No basement or crawlway floor is allowed below the regional flood elevation;
- c. Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in par. (4).
- d. In developments where existing street or sewer line elevations make compliance with par. (3) impractical, the municipality may permit new development and substantial improvements where access roads are at or below the regional flood elevation, if:
 - 1. The municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or
 - 2. The municipality has a natural disaster plan approved by Wisconsin Emergency Management and the Department.

(3) ACCESSORY STRUCTURES OR USES

- a. Except as provided in par. (2), an accessory structure which is not connected to a principal structure may be constructed with its lowest floor at or above the regional flood elevation.
- b. An accessory structure which is not connected to the principal structure and which is less than 600 square feet in size and valued at less than \$10,000 may be constructed with its lowest floor no more than two feet below the regional flood elevation if it is subject to flood velocities of no more than two feet per second and it meets all of the provisions of sections 20.23 (2)(a) (1), (2), (3) and (4) and 20.33 (e) below.

(4) COMMERCIAL USES Any commercial structure which is erected, altered or moved into the floodfringe area shall meet the requirements of s. 20.33(1). Subject to the requirements of s.20.33(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(5) MANUFACTURING AND INDUSTRIAL USES Any manufacturing or industrial structure which is erected, altered or moved into the floodfringe area shall be protected to the flood protection elevation using fill, levees, floodwalls, or other flood proofing measures in s. 20.65. Subject to the requirements of s. 20.33(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(6) STORAGE OF MATERIALS Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood

protection elevation or floodproofed in compliance with s. 20.65. Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.

- (7) PUBLIC UTILITIES, STREETS AND BRIDGES All utilities, streets and bridges shall be designed to be compatible with comprehensive floodplain development plans; and
 - a. When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction of and substantial improvements to such facilities may only be permitted if they are floodproofed in compliance with s. 20.65 to the flood protection elevation;
 - b. Minor roads or nonessential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.
- (8) SEWAGE SYSTEMS All on site sewage disposal systems shall be floodproofed, pursuant to s. 20.65, to the flood protection elevation and shall meet the provisions of all local ordinances and ch. COMM 83, Wis. Adm. Code.
- (9) WELLS All wells shall be floodproofed, pursuant to s. 20.65, to the flood protection elevation and shall meet the provisions of chs. NR 811 and NR 812, Wis. Adm. Code.
- (10) SOLID WASTE DISPOSAL SITES Disposal of solid or hazardous waste is prohibited in floodfringe areas.
- (11) DEPOSITION OF MATERIALS Any deposited material must meet all the provisions of this ordinance.
- (12) MANUFACTURED HOMES
 - a. Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.
 - b. In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:
 - 1 have the lowest floor elevated to the flood protection elevation; and
 - 2. be anchored so they do not float, collapse or move laterally during a flood.
 - c. Outside of existing manufactured home parks, including new manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in s. 20.33(a).

- (13) MOBILE RECREATIONAL VEHICLES All mobile recreational vehicles that are on site for 180 consecutive days or more or are not fully licensed and ready for highway use shall meet the elevation and anchoring requirements in s. 20.33 (k)(2) and (3). A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

20.40 OTHER FLOODPLAIN DISTRICTS

- (1) Other floodplain districts may be established under the ordinance and reflected on the floodplain zoning map. These districts may include general floodplain districts and flood storage districts.

20.41 GENERAL FLOODPLAIN DISTRICT (GFP)

- (1) APPLICABILITY The provisions for this district shall apply to all floodplains for which flood profiles are not available or where flood profiles are available but floodways have not been delineated. Floodway and floodfringe districts shall be delineated when adequate data is available.
- (2) PERMITTED USES Pursuant to s. 20.41(4), it shall be determined whether the proposed use is located within a floodway or floodfringe area. Those uses permitted in floodway (s. 20.22) and floodfringe areas (s. 20.32) are allowed within the general floodplain district, according to the standards of s. 20.41(3), provided that all permits or certificates required under s. 20.61 have been issued.
- (3) STANDARDS FOR DEVELOPMENT IN THE GENERAL FLOODPLAIN DISTRICTS. 20.20 applies to floodway areas, s. 20.30 applies to floodfringe areas. The rest of this ordinance applies to either district.
- (4) DETERMINING FLOODWAY AND FLOODFRINGE LIMITS Upon receiving an application for development within the general floodplain district, the zoning administrator shall:
- (a) Require the applicant to submit two copies of an aerial photograph or a plan which shows the proposed development with respect to the general floodplain district limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and flood proofing measures;
 - (b) Require the applicant to furnish any of the following information deemed necessary by the Department to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries:

1. A typical valley cross section showing the stream channel, the floodplain adjoining each side of the channel, the cross sectional area to be occupied by the proposed development, and all historic high water information;
 2. Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information;
 3. Profile showing the slope of the bottom of the channel or flow line of the stream;
 4. Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.
- (c) Transmit one copy of the information described in pars. (a) and (b) to the Department Regional office along with a written request for technical assistance to establish regional flood elevations and, where applicable, floodway data. Where the provisions of s. 20.61(2)(c) apply, the applicant shall provide all required information and computations to delineate floodway boundaries and the effects of the project on flood elevations.

20.42 FLOOD STORAGE DISTRICT The flood storage district delineates that portion of the floodplain where storage of floodwaters has been taken into account and is relied upon to reduce the regional flood discharge. The district protects the flood storage areas and assures that any development in the storage areas will not decrease the effective flood storage capacity which would cause higher flood elevations.

- (1) **APPLICABILITY** The provisions of this section apply to all areas within the Flood Storage District (FSD), as shown on the official floodplain zoning maps.
- (2) **PERMITTED USES** Any use or development which occurs in a flood storage district must meet the applicable requirements in s. 20.33.
- (3) **STANDARDS FOR DEVELOPMENT IN FLOOD STORAGE DISTRICTS**
 - (a) Development in a flood storage district shall not cause an increase equal or greater than 0.01 of a foot in the height of the regional flood.
 - (b) No development shall be allowed which removes flood storage volume unless an equal volume of storage as defined by the pre-development ground surface and the regional flood elevation shall be provided in the immediate area of the proposed development to compensate for the

volume of storage which is lost, (compensatory storage). Excavation below the groundwater table is not considered to provide an equal volume of storage.

- (c) If compensatory storage cannot be provided, the area may not be developed unless the entire area zoned as flood storage district – on this waterway – is rezoned to the floodfringe district. This must include a revision to the floodplain study and map done for the waterway to revert to the higher regional flood discharge calculated without flood plain storage, as per s. 20.71 of this ordinance.
- (d) No area may be removed from the flood storage district unless it can be shown that the area has been filled to the flood protection elevation and is contiguous to other lands lying outside of the floodplain.

20.50 NONCONFORMING USES

20.51 GENERAL

- (1) APPLICABILITY If these standards conform with s. 59.69(10), Stats., for counties or s. 62.23(7)(h), Stats., for cities and villages, they shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto.
- (2) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:
 - (a) No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this ordinance. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered an extension, modification or addition; these include painting, decorating, paneling and the replacement of doors, windows and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Ordinary maintenance repairs do not include any costs associated with the repair of a damaged structure. The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.

- (b) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;
- (c) The municipality shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;
- (d) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 20.33(1). The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph;
- (e) Except as provided in sub. (1), if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds 50% of the structure's present equalized assessed value.

 - 1. For nonconforming buildings that are damaged or destroyed by a non flood disaster, the repair or reconstruction of any such nonconforming building may be permitted in order to restore it after the non-flood disaster, provided that the nonconforming building will meet all of the minimum requirements under applicable FEMA regulations (44 CFR Part 60), or the regulations promulgated thereunder.
- (f) A nonconforming historic structure may be altered if the alteration will not preclude the structures continued designation as a historic structure, the alteration will comply with s. 20.23 (1), flood resistant materials are used, and construction practices and floodproofing methods that comply with s. 20.65 are used.

20.52 FLOODWAY AREAS

- (1)** No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area, unless such modification or addition:
- (a)** Has been granted a permit or variance which meets all ordinance requirements;
 - (b)** Meets the requirements of s. 20.51;
 - (c)** Will not increase the obstruction to flood flows or regional flood height;
 - (d)** Any addition to the existing structure shall be floodproofed, pursuant to s. 20.65, by means other than the use of fill, to the flood protection elevation;
 - (e)** If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:
 - 1.** The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;
 - 2.** The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;
 - 3.** Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and
 - 4.** The use must be limited to parking or limited storage.
 - (f)** No new on site sewage disposal system, or addition to an existing on site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing on site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances and ch. COMM 83, Wis. Adm. Code.
 - (g)** No new well or modification to an existing well used to obtain potable water shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of all municipal ordinances and chs. NR 811 and NR 812, Wis. Adm. Code.

20.53 FLOODFRINGE AREAS

- (1)** No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality, and the modification or addition shall be placed on fill or floodproofed to the flood protection elevation in compliance with the standards for that particular use in ss. 20.33 and 20.65, except where s. 20.53(2) is applicable.
- (2)** Where compliance with the provisions of par. (1) would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Adjustment/Appeals, using the procedures established in s. 20.63, may grant a variance from those provisions of par. (1) for modifications or additions, using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:
 - (a)** No floor is allowed below the regional flood elevation for residential or commercial structures;
 - (b)** Human lives are not endangered;
 - (c)** Public facilities, such as water or sewer, will not be installed;
 - (d)** Flood depths will not exceed two feet;
 - (e)** Flood velocities will not exceed two feet per second; and
 - (f)** The structure will not be used for storage of materials as described in s. 20.33(5).
- (3)** If neither the provisions of par. (1) or (2) above can be met, one addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in the floodfringe, if the addition:
 - (a)** Meets all other regulations and will be granted by permit or variance;
 - (b)** Does not exceed 60 square feet in area; and
 - (c)** In combination with other previous modifications or additions to the building, does not equal or exceed 50% of the present equalized assessed value of the building.
- (4)** All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable provisions of all local ordinances and ch. COMM 83, Wis. Adm. Code.
- (5)** All new wells, or addition to, replacement, repair or maintenance of a well shall meet the applicable provisions of this ordinance and ch. NR 811 and NR 812, Wis. Adm. Code.

20.54 FLOOD STORAGE AREAS

- (1) No modifications or additions shall be allowed to any nonconforming structure in a flood storage area unless the standards outlined in 20.42(3) are met.

20.60 ADMINISTRATION

- (1) Where a zoning administrator, planning agency or a board of adjustment/appeals has already been appointed to administer a zoning ordinance adopted under ss. 59.69, 59.692 or 62.23(7), Stats., these officials shall also administer this ordinance.

20.61 ZONING ADMINISTRATOR

- (1) The zoning administrator is authorized to administer this ordinance and shall have the following duties and powers:
- (a) Advise applicants of the ordinance provisions, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.
 - (b) Issue permits and inspect properties for compliance with provisions of this ordinance, and issue certificates of compliance where appropriate.
 - (bm) Inspect all damaged floodplain structures and perform a substantial damage assessment to determine if substantial damage to the structures has occurred.
 - (c) Keep records of all official actions such as:
 - 1. All permits issued, inspections made, and work approved;
 - 2. Documentation of certified lowest floor and regional flood elevations for floodplain development;
 - 3. Records of water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.
 - 4. All substantial damage assessment reports for floodplain structures.
 - (d) Submit copies of the following items to the Department Regional office:
 - 1. Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;
 - 2. Copies of any case by case analyses, and any other information required by the Department including an annual summary of the number and types of floodplain zoning actions taken.

3. Copies of substantial damage assessments performed and all related correspondence concerning the assessments.

Note: Information on conducting substantial damage assessments is available on the DNR website – <http://dnr.wi.gov/org/water/wm/dsfm/flood/title.htm>

4. Investigate, prepare reports, and report violations of this ordinance to the municipal zoning agency and attorney for prosecution. Copies of the reports shall also be sent to the Department Regional office.

5. Submit copies of text and map amendments and biennial reports to the FEMA Regional office.

- (2) LAND USE PERMIT** A land use permit shall be obtained before any new development or any repair or change in the use of a building or structure, including sewer and water facilities, may be initiated. Application to the zoning administrator shall include:

(a) GENERAL INFORMATION

1. Name and address of the applicant, property owner and contractor;
2. Legal description, proposed use, and whether it is new construction or a modification;

- (b) SITE DEVELOPMENT PLAN** A site plan drawn to scale shall be submitted with the permit application form and shall contain:

1. Location, dimensions, area and elevation of the lot;
2. Location of the ordinary highwater mark of any abutting navigable waterways;
3. Location of any structures with distances measured from the lot lines and street center lines;
4. Location of any existing or proposed on site sewage systems or private water supply systems;
5. Location and elevation of existing or future access roads;
6. Location of floodplain and floodway limits as determined from the official floodplain zoning maps;
7. The elevation of the lowest floor of proposed buildings and any fill using vertical datum from the adopted study - either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD);
8. Data sufficient to determine the regional flood elevation in NGVD or NAVD at the location of the development and to determine whether or not the requirements of s. 20.20 or 20.30 are met; and

9. Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to s. 20.11. This may include any of the information noted in s. 20.23(1).

(c) DATA REQUIREMENTS TO ANALYZE DEVELOPMENTS

1. The applicant shall provide all survey data and computations required to show the effects of the project on flood heights, velocities and floodplain storage, for all subdivision proposals, as "subdivision" is defined in s. 236, Stats., and other proposed developments exceeding 5 acres in area or where the estimated cost exceeds \$125,000. The applicant shall provide:
 - a. An analysis of the effect of the development on the regional flood profile, velocity of flow and floodplain storage capacity;
 - b. A map showing location and details of vehicular access to lands outside the floodplain; and
 - c. A surface drainage plan showing how flood damage will be minimized. The estimated cost of the proposal shall include all structural development, landscaping, access and road development, utilities, and other pertinent items, but need not include land costs.

- (d) EXPIRATION** All permits issued under the authority of this ordinance shall expire 180 days after issuance.

- (3) CERTIFICATE OF COMPLIANCE** No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the zoning administrator, except where no permit is required, subject to the following provisions:

- (a)** The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this ordinance;
- (b)** Application for such certificate shall be concurrent with the application for a permit;
- (c)** If all ordinance provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed;
- (d)** The applicant shall submit a certification signed by a registered professional engineer or registered land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or registered architect that floodproofing measures meet the requirements of s. 20.65.

- (4) OTHER PERMITS The applicant must secure all necessary permits from federal, state, and local agencies, including those required by the U.S. Army Corps of Engineers under s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.

20.62 ZONING AGENCY

- (1) The Kiel Plan Commission shall:
- (a) oversee the functions of the office of the zoning administrator; and
 - (b) review and advise the Governing body on all proposed amendments to this ordinance, maps and text.
- (2) This zoning agency shall not
- (a) grant variances to the terms of the ordinance in place of action by the Board of Adjustment/Appeals; or
 - (b) amend the text or zoning maps in place of official action by the Governing body.

20.63 BOARD OF ADJUSTMENT/APPEALS The Board of Adjustment/Appeals, created under s. 59.694, Stats., for counties or s. 62.23(7)(e), Stats., for cities or villages, is hereby authorized or shall be appointed to act for the purposes of this ordinance. The Board shall exercise the powers conferred by Wisconsin Statutes and adopt rules for the conduct of business. The zoning administrator may not be the secretary of the Board.

- (1) POWERS AND DUTIES The Board of Adjustment/Appeals shall:
- (a) Appeals hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance.
 - (b) Boundary Disputes Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map.
 - (c) Variances Hear and decide, upon appeal, variances from the ordinance standards.
- (2) APPEALS TO THE BOARD
- (a) Appeals to the board may be taken by any person aggrieved, or by any officer or department of the municipality affected by any decision of the zoning administrator or other administrative officer. Such appeal shall be taken within 30 days unless otherwise provided by the rules of the board, by filing with the official whose decision is in question, and with the board, a notice of

appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the board all records regarding the matter appealed.

(b) NOTICE AND HEARING FOR APPEALS INCLUDING VARIANCES

1. Notice The board shall:

- a. Fix a reasonable time for the hearing;
- b. Publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the hearing;
- c. Assure that notice shall be mailed to the parties in interest and the Department Regional office at least 10 days in advance of the hearing.

2. Hearing any party may appear in person or by agent. The board shall:

- a. Resolve boundary disputes according to s. 20.63(3).
- b. Decide variance applications according to s. 20.63(4).
- c. Decide appeals of permit denials according to s. 20.64.

(c) DECISION: The final decision regarding the appeal or variance application shall:

- 1. Be made within a reasonable time;
- 2. Be sent to the Department Regional office within 10 days of the decision;
- 3. Be a written determination signed by the chairman or secretary of the Board;
- 4. State the specific facts which are the basis for the Board's decision;
- 5. Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the variance application;
- 6. Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.

(3) BOUNDARY DISPUTES The following procedure shall be used by the Board in hearing disputes concerning floodplain district boundaries:

- (a)** If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined.
- (b)** In all cases, the person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Board.

- (c) If the boundary is incorrectly mapped, the Board should inform the zoning committee or the person contesting the boundary location to petition the governing body for a map amendment according to s. 20.70.

(4) VARIANCE

- (a) The Board may, upon appeal, grant a variance from the standards of this ordinance if an applicant convincingly demonstrates that:

1. Literal enforcement of the ordinance provisions will cause unnecessary hardship;
2. The hardship is due to adoption of the floodplain ordinance and unique property conditions, not common to adjacent lots or premises. In such case the ordinance or map must be amended;
3. The variance is not contrary to the public interest; and
4. The variance is consistent with the purpose of this ordinance in s. 20.03.

- (b) In addition to the criteria in par. (a), to qualify for a variance under FEMA regulations, the following criteria must be met:

1. The variance may not cause any increase in the regional flood elevation;
2. Variances can only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the RFE;
3. Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the ordinance.

- (c) A variance shall not:

1. Grant, extend or increase any use prohibited in the zoning district.
2. Be granted for a hardship based solely on an economic gain or loss.
3. Be granted for a hardship which is self created.
4. Damage the rights or property values of other persons in the area.
5. Allow actions without the amendments to this ordinance or map(s) required in s. 20.71.
6. Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.

- (d) When a floodplain variance is granted the Board shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property. A copy shall be maintained with the variance record.

20.64 TO REVIEW APPEALS OF PERMIT DENIALS

- (1)** The Zoning Agency (s. 20.62) or Board shall review all data related to the appeal. This may include:
 - (a)** Permit application data listed in s. 20.61(2).
 - (b)** Floodway/floodfringe determination data in s. 20.41(4).
 - (c)** Data listed in s. 20.23(1)(b) where the applicant has not submitted this information to the zoning administrator.
 - (d)** Other data submitted with the application, or submitted to the Board with the appeal.
- (2)** For appeals of all denied permits the Board shall:
 - (a)** Follow the procedures of s. 20.63;
 - (b)** Consider zoning agency recommendations; and
 - (c)** Either uphold the denial or grant the appeal.
- (3)** For appeals concerning increases in regional flood elevation the Board shall:
 - (a)** Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases equal to or greater than 0.01 foot may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners.
 - (b)** Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase equal to or greater than 0.01 foot provided no other reasons for denial exist.

20.65 FLOODPROOFING

- (1)** No permit or variance shall be issued until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to the flood protection elevation.
- (2)** Floodproofing measures shall be designed to:
 - (a)** Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;
 - (b)** Protect structures to the flood protection elevation;
 - (c)** Anchor structures to foundations to resist flotation and lateral movement; and
 - (d)** Insure that structural walls and floors are watertight to the flood protection elevation, and the interior remains completely dry during flooding without human intervention.
- (3)** Floodproofing measures could include:

- (a) Reinforcing walls and floors to resist rupture or collapse caused by water pressure or floating debris.
- (b) Adding mass or weight to prevent flotation.
- (c) Placing essential utilities above the flood protection elevation.
- (d) Installing surface or subsurface drainage systems to relieve foundation wall and basement floor pressures.
- (e) Constructing water supply wells and waste treatment systems to prevent the entry of flood waters.
- (f) Putting cutoff valves on sewer lines or eliminating gravity flow basement drains.

20.66 PUBLIC INFORMATION

- (1) Place marks on structures to show the depth of inundation during the regional flood.
- (2) All maps, engineering data and regulations shall be available and widely distributed.
- (3) All real estate transfers should show what floodplain zoning district any real property is in.

20.70 AMENDMENTS

20.71 GENERAL The governing body may change or supplement the floodplain zoning district boundaries and this ordinance in the manner provided by law. Actions which require an amendment include, but are not limited to, the following:

- (1) Any change to the official floodplain zoning map, including the floodway line or boundary of any floodplain area.
- (2) Correction of discrepancies between the water surface profiles and floodplain zoning maps.
- (3) Any fill in the floodplain which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain.
- (4) Any fill or floodplain encroachment that obstructs flow, increasing regional flood height 0.01 foot or more.
- (5) Any upgrade to a floodplain zoning ordinance text required by s. NR 116.05, Wis. Adm. Code, or otherwise required by law, or for changes by the municipality.
- (6) All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.

Note: Consult the FEMA web site - www.fema.gov - for the map change fee schedule.

20.72 PROCEDURES Ordinance amendments may be made upon petition of any interested party according to the provisions of s. 62.23, Stats., for cities and villages, or 59.69, Stats., for counties. Such petitions shall include all necessary data required by ss. 20.41(4) and 20.61(2).

- (1) The proposed amendment shall be referred to the zoning agency for a public hearing and recommendation to the governing body. The amendment and notice of public hearing shall be submitted to the Department Regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of s. 62.23, Stats., for cities and villages or s. 59.69, Stats., for counties.
- (2) No amendments shall become effective until reviewed and approved by the Department.
- (3) All persons petitioning for a map amendment that obstructs flow, increasing regional flood height 0.01 foot or more, shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the governing body.
- (4) For amendments in areas with no water surface profiles, the zoning agency or board shall consider data submitted by the Department, the zoning administrator's visual on site inspections and other available information. (See s. 20.05(4).)

20.80 ENFORCEMENT AND PENALTIES Any violation of the provisions of this ordinance by any person shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violations. A violator shall upon conviction, forfeit to the municipality a penalty of not more than \$50 (as provided in section 87.30(2), Stats.), together with taxable cost of such action. Each day of continued violation shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to s. 87.30, Stats.

20.90 DEFINITIONS Unless specifically defined, words and phrases in this ordinance shall have their common law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and is not discretionary.

- (1) A ZONES Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.
- (2) ACCESSORY STRUCTURE OR USE A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building.
- (3) BASE FLOOD - Means the flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a FIS and depicted on a FIRM.
- (4) BASEMENT - Any enclosed area of a building having its floor sub-grade, i.e., below ground level, on all sides.
- (5) BUILDING See STRUCTURE.
- (6) BULKHEAD LINE A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to s. 30.11, Stats., and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.
- (7) CAMPGROUND - Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area.
- (8) CAMPING UNIT - Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, tent or other mobile recreational vehicle.
- (9) CERTIFICATE OF COMPLIANCE A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.
- (10) CHANNEL – A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
- (11) CRAWLWAYS OR CRAWL SPACE - An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.
- (12) DECK – An unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.
- (13) DEPARTMENT The Wisconsin Department of Natural Resources.
- (14) DEVELOPMENT Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of

additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

- (15) DRYLAND ACCESS A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.
- (16) ENCROACHMENT Any fill, structure, equipment, building, use or development in the floodway.
- (17) EXISTING MANUFACTURED HOME PARK OR SUBDIVISION A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this ordinance. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.
- (18) EXPANSION TO EXISTING MOBILE/MANUFACTURED HOME PARK the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.
- (19) FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) The federal agency that administers the National Flood Insurance Program.
- (20) FLOOD INSURANCE RATE MAP (FIRM) - A map of a community on which the Federal Insurance Administration has delineated both special flood hazard areas (the floodplain) and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.
- (21) FLOOD or FLOODING – A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:
 - (a) The overflow or rise of inland waters,
 - (b) The rapid accumulation or runoff of surface waters from any source,
 - (c) The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior, or

- (d) The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
- (22) FLOOD FREQUENCY The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent (%) chance of occurring in any given year.
- (23) FLOODFRINGE That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.
- (24) FLOOD HAZARD BOUNDARY MAP A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.
- (25) FLOOD INSURANCE STUDY A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.
- (26) FLOODPLAIN Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe and may include other designated floodplain areas for regulatory purposes.
- (27) FLOODPLAIN ISLAND A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.
- (28) FLOODPLAIN MANAGEMENT Policy and procedures to insure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.
- (29) FLOOD PROFILE A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.
- (30) FLOODPROOFING Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.

- (31) FLOOD PROTECTION ELEVATION An elevation of two feet of freeboard above the water surface profile elevation designated for the regional flood. (Also see: FREEBOARD.)
- (32) FLOOD STORAGE Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.
- (33) FLOODWAY The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
- (34) FREEBOARD A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.
- (35) HABITABLE STRUCTURE Any structure or portion thereof used or designed for human habitation.
- (36) HEARING NOTICE Publication or posting meeting the requirements of Ch. 985, Stats. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.
- (37) HIGH FLOOD DAMAGE POTENTIAL Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.
- (38) HISTORIC STRUCTURE - Any structure that is either:
- (a) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register,
 - (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district,
 - (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior, or
 - (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.

- (39) INCREASE IN REGIONAL FLOOD HEIGHT A calculated upward rise in the regional flood elevation, equal to or greater than 0.01 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.
- (40) LAND USE Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)
- (41) MANUFACTURED HOME A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."
- (42) MOBILE RECREATIONAL VEHICLE - A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."
- (43) MUNICIPALITY or MUNICIPAL The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.
- (44) NAVD or NORTH AMERICAN VERTICAL DATUM -Elevations referenced to mean sea level datum, 1988 adjustment.
- (45) NGVD or NATIONAL GEODETIC VERTICAL DATUM Elevations referenced to mean sea level datum, 1929 adjustment.
- (46) NEW CONSTRUCTION - For floodplain management purposes, "new construction" means structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

- (47) NONCONFORMING STRUCTURE An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies. (For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)
- (48) NONCONFORMING USE An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies. (Such as a residence in the floodway.)
- (49) OBSTRUCTION TO FLOW Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.
- (50) OFFICIAL FLOODPLAIN ZONING MAP That map, adopted and made part of this ordinance, as described in s. 1.5(2), which has been approved by the Department and FEMA.
- (51) OPEN SPACE USE Those uses having a relatively low flood damage potential and not involving structures.
- (52) ORDINARY HIGHWATER MARK The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.
- (53) PERSON An individual, or group of individuals, corporation, partnership, association, municipality or state agency.
- (54) PRIVATE SEWAGE SYSTEM A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Commerce, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.
- (55) PUBLIC UTILITIES Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.
- (56) REASONABLY SAFE FROM FLOODING - Means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

- (57) REGIONAL FLOOD A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.
- (58) START OF CONSTRUCTION - The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (59) STRUCTURE Any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.
- (60) SUBDIVISION - Has the meaning given in s. 236.02(12), Wis. Stats.
- (61) SUBSTANTIAL DAMAGE - Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.
- (62) UNNECESSARY HARDSHIP Where special conditions affecting a particular property, which were not self created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.
- (63) VARIANCE An authorization by the board of adjustment or appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.
- (64) VIOLATION - The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest

floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

(65) WATERSHED The entire region contributing runoff or surface water to a watercourse or body of water.

(66) WATER SURFACE PROFILE A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

(67) WELL means an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

CHAPTER 21
MUNICIPAL CEMETERY

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21.01 CEMETERY ADMINISTRATOR. DUTIES. The Director of Public Works shall be responsible to the Council for the control and management of the municipal cemetery, for the direction of all assistants assigned to his supervision and for the administration of the provisions of this chapter and any supplemental rules and regulations adopted by the Council. As far as possible, the Director of Public Works shall utilize the services of existing City officials and employees.

21.02 PLATTING. Before any new block of a municipal cemetery is opened for the sale of lots, the Council shall cause it to be platted. Copies of the plat map shall be deposited with the Director of Public Works and the City Administrator. The plat shall be so designed as to provide direct access to each lot from either a road or walk.

21.03 PRICE OF LOTS. The Council shall, from time to time, fix a schedule of prices for all lots sold in municipal cemeteries based upon the recommendation from the Director of Public Works.

21.04 SALE OF LOTS.

(1) **PROCEDURE; ISSUANCE OF DEEDS.** The sale of lots in municipal cemeteries shall be under the control of the City Administrator, subject to the rules and regulations and the general supervision of the City Council. Any applicant shall apply to the Director of Public Works and select from those lots available for sale the lot which he desires to buy. The City Administrator shall issue a deed to the lot in the form prescribed by the City Attorney. The deed shall be signed by the City Administrator, Mayor, Director of Public Works and Office Clerk and sealed with the corporate seal and acknowledged so as to entitle it to be recorded.

(2) **TRANSFER.** The transfer in accordance with applicable Wisconsin Statutes of lots previously sold may be registered with the City Administrator upon the presentation of a quit claim deed or a certified copy of a court order evidencing transfer and payment of a transfer fee of \$10. (Question the Amount of Transfer Fee) The deed shall be executed and acknowledged in the manner set forth in Chapter 706, Wis. Stats., for recording purposes.

21.05 CARE OF CEMETERIES. All lots hereafter sold in municipal cemeteries shall be provided with perpetual care services, the expense to be included in the price of the lot pursuant to Section 21.03, shall include the cutting of grass upon the lot at reasonable intervals, the raking and cleaning of the lot, the pruning or trimming of trees or shrubs, and such work as may be necessary to keep the graves

in neat condition, and for the care and maintenance of the cemetery; but shall not include maintenance or repair of any monuments, nor the planting of flowers or shrubs upon any lot.

21.06 CEMETERY ACCOUNT AND FUND.

- (1) CEMETERY ACCOUNT. The Council shall annually appropriate to the funds account such an amount as is deemed necessary to maintain and operate the municipal cemeteries for the ensuing year. The monies in the account shall be expended under direction of the Director of Public Works for the development, improvement, upkeep and care of the cemetery.
- (2) DUTIES OF THE CITY ADMINISTRATOR. The City Administrator shall serve as trustee to receive and hold monies in trust, according to the terms of any gift or bequest, the income of which is to be used for the improvement, maintenance, repair, preservation, expansion or ornamentation of the cemetery or any lot or structure thereon. Such monies shall be invested pursuant to Chapter 157, Wis. Stats., No additional compensation shall be paid the City Administrator for his duties under this chapter and the bond of the City Administrator shall also cover the performance of all such duties.

21.07 REGULATIONS FOR IMPROVING LOTS.

- (1) FENCES. No fences or enclosures around lots shall be permitted.
- (2) GRAVES. Graves shall not be raised above the level of the lot.
- (3) MONUMENTS AND MARKERS. Only one monument or marker which, taken together with its base shall not exceed 3 feet in height, may be erected on any lot or grave, such height to be measured from the ground, and the base area of such monument or marker together with the wash area shall not exceed 15% of the lot area or, in the case of a single grave marker, 15% of the grave area. All such monuments and markers shall be of bronze, granite or marble and no vertical joints therein shall be permitted. All foundations for monuments and other structures shall be of sufficient depth and stability to support the proposed structure. Monuments and markers shall not be placed out on the front yard of the grave site. The wash of a monument or marker must extend at least one foot from the monument in all directions, so as to provide proper space for mowing and lawn care in the cemetery. No plants may be cultivated on the wash area, but a potted plant may be placed on the wash area, as long as 4 inches is left between the edge of that pot and the edge of the wash.

- (4) IMPROVEMENTS BY LOT OWNERS. Lot owners shall not cultivate trees, shrubs or plants within the lot. Owners shall not change the grade of any lot or interfere in any way with the general plan of landscaping in the cemetery.
- (5) ENTRY BY DIRECTOR OF PUBLIC WORKS. The Director of Public Works may enter upon any lot and remove any shrub or tree which he deems detrimental to the cemetery or to an adjoining lot, or which is unsightly or inconvenient to the public. He may also enter upon any lot and make any improvement he deems to be advantageous for the grounds.

21.08 REGULATIONS FOR INTERMENT.

- (1) PAYMENT OF CHARGES. No interment shall be allowed in any lot which has not been fully paid.
- (2) BURIAL PERMIT REQUIRED. No interment shall be permitted or dead body received without a burial permit or removal certificate issued by the Register of Deeds, County Health Officer or Administrator of the place where the death occurred. Such permit or certificate shall be retained by the Director of Public Works or Office Clerk as part of his record. All interments, disinterment and other matters relating to the disposal of dead bodies shall be pursuant to the State Statutes and the orders of the State Department of Health and Family Services.
- (3) NOTICE. Notice of interment shall be given to the Director of Public Works at least 24 hours in advance. The Director shall have full charge of opening, closing and sodding all graves.
- (4) WORKERS. Laborers working in the vicinity of a lot where an interment is in progress shall suspend work and maintain silence during the progress of the service and during the period immediately preceding and following.
- (5) INTERMENT FEE. An interment fee in the amount determined by the Director of Public Works and approved by the Council to include the digging of the grave for a cremation urn shall be paid to the City Administrator and a receipt therefor presented before the Director of Public Works shall direct the digging of the grave. Full burial digging costs are collected by the funeral home director.

21.09 RECORDS. The City Administrator's Office Clerk shall keep records consisting of such books, registers and files as the City Council may direct.

21.10 POLICE REGULATIONS. The following regulations shall apply in all municipal cemeteries:

- (1) ENTRY. No person other than cemetery employees or police officers shall be within the cemetery except during daylight hours.

- (2) FIREARMS. No person shall carry any firearms, except in the case of military funerals and on Memorial Day, without the written permission of the Director of Public Works.
- (3) CATS AND DOGS. No person shall allow any cat or dog to run at large.
- (4) VEHICLES. No vehicle shall be driven except on roads designated for that purpose, nor shall such be driven in a reckless manner.
- (5) DISTURBING PROPERTY. No person, except the owner of the lot or a cemetery employee, shall cut, remove, injure or carry away any flowers, trees, shrubs, plants or vines from any lot or property. No person shall deface, injure or mark upon any markers, headstones, monuments, fences or structures.
- (6) REFRESHMENTS. No person shall consume or possess alcoholic beverages.
- (7) GENERAL. The Director of Public Works or Police Department personnel shall maintain order and shall eject any person whose conduct is objectionable or who violates this chapter.

21.11 PENALTY. Any person who shall violate any provision of this chapter shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

CHAPTER 22
CABLE COMMUNICATIONS SYSTEM

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Cable Communications System

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CABLE COMMUNICATIONS [#403 8/27/96]

22.01 PURPOSE. It is the purpose of this chapter to establish the terms upon which the City may grant a franchise to construct, maintain and operate a cable television system in the City, and to set forth the respective obligations and rights of the City as grantor of a cable television franchise and the grantee of the cable franchise.

22.02 DEFINITIONS. For the purpose of this chapter, the following terms, phrases and words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

- (1) **ADDITIONAL SERVICE.** A subscriber service provided by a grantee for which a special charge is made based on program or service content, time or spectrum space usage.
- (2) **ANNUAL GROSS SUBSCRIBER REVENUES.** Revenues derived directly or indirectly by a grantee, its affiliates or subsidiaries, or any persons or entities in which a grantee has a financial interest of 5% or more, from or in connection with the operation of a Kiel cable system including, but not limited to, basic or extended basic subscriber service monthly fees, leased channel fees, converter rentals, studio rental, production equipment rental and advertising revenues.
- (3) **BASIC SERVICE.** All subscriber services provided by the grantee, including the delivery of broadcast signals and programming originated over the cable system, covered by the regular charge paid by all subscribers.
- (4) **CABLE TELEVISION CHANNEL.** A frequency band 6 MHz in width within which a standard television broadcast signal is delivered by cable to a subscriber terminal.
- (5) **CABLE COMMUNICATIONS COMMITTEE.** A Committee of the City appointed by the Mayor on an annual basis, with approval of the nominations of members to be required by the City Council.
- (6) **CABLE COMMUNICATIONS SYSTEM (CCS).** Any network of cables, optical, electrical or electronic equipment used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital, for sale or use by the inhabitants of the City.
- (7) **CABLE COMMUNICATIONS SYSTEM CHANNEL CAPACITY.** The highest total number of cable television channels on which television signals from separate sources may be delivered downstream simultaneously to every subscriber in the system. The system may have additional channel capacity for specialized or discrete purposes, but the technical performance specified shall not be materially degraded thereby.

- (8) CHANNEL FREQUENCY RESPONSE. The relationship, within a cable television channel, as measured at a subscriber terminal between amplitude and frequency of a constant-amplitude input signal at all specified frequencies within each channel.
- (9) CITY. The City of Kiel or the area within the corporate limits of the City and such territory outside of the City over which the City has jurisdictional control by virtue of constitutional or charter provisions, or any law. The term City shall include any areas hereafter incorporated within the corporate limits of the City as of the time of such incorporation.
- (10) COMMENCE OPERATION. When sufficient distribution facilities have been installed so as to permit the offering of "full system service" to at least 25% of the dwelling units located within the designated "service area".
- (11) CITY COUNCIL. The governing body of the City or any successors to the legislative powers of that body.
- (12) FCC. The Federal Communications Commission and any legally appointed or elected successor thereof.
- (13) FRANCHISE. The right, privilege and authority granted by the City to construct, maintain and operate a cable communications system within the City.
- (14) FRANCHISE FEE OR PAYMENT. Includes any tax, fee or assessment the City imposes on the grantee solely because of the grantee's status as such. The term "franchise fee" or "franchise payment" does not include:
- (a) Any tax, fee, or assessment of general applicability (including any such tax for or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee, or assessment which is unduly discriminatory against the grantee);
 - (b) Capital costs which are required by the franchise to be incurred by grantee for educational or governmental access facilities;
 - (c) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, consulting or legal costs, indemnification, penalties or liquidated damages; or
 - (d) Any fee imposed under Title 17, United States Code.
- (15) FULL SYSTEM SERVICE. All "basic services" and "additional services" offered by the grantee.
- (16) GRANTEE. Any firm, corporation or other entity to which the City grants a franchise to construct, maintain and operate a cable communication system within the City, and any lawful successor or

assignee of the franchise recipient, the succession of or assignment to which the City has duly approved.

- (17) GRANTEE'S PROPOSAL. Incorporates "Applicant Questionnaire" and "Supplement to Application", both submitted to the City Administrator.
- (18) NORMAL BUSINESS HOURS. Those hours between 8 a.m. and 5 p.m., Monday through Friday, plus at least one night from 5 p.m. until 8 p.m. and at least four hours on the weekend.
- (19) NORMAL OPERATING CONDITIONS. Those conditions affecting service within the control of the grantee. Those conditions presumed to be outside normal operating conditions include natural disasters, human-caused disasters and civil disturbances, power or telephone outage, and severe or unusual weather conditions where such conditions reasonably limit the grantee's ability to provide service. Those conditions presumed to be within normal operating conditions include special promotions, pay-per-view events, rate increases, regular or seasonal demand periods and maintenance, rebuilding or upgrading of the cable system.
- (20) SERVICE AREA. The geographical area within the incorporated limits of the City.
- (21) SERVICE OUTAGE. The loss of signal for one or more channels which continues for a period of 4 or more continuous hours.
- (22) STREET. Includes all streets, roadways, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, rights-of-way or other public ways in the City which have been or may hereafter be dedicated and open to public use, or such other public property so designated by law.
- (23) SUBSCRIBER. Any person, firm, company, corporation, partnership, or association receiving either "basic service" or "additional service" from a grantee under a schedule of charges filed with and approved by the City.
- (24) SUBSTANTIALLY COMPLETED. An operation will be considered substantially completed when sufficient distribution facilities have been installed so as to permit the offering of "full system service" to at least 75% of the dwelling units in the City to which access is legally and reasonably available.
- (25) USER. A person utilizing a channel for purposes of production or transmission of material, as contrasted with receipt thereof, in a subscriber capacity.

22.03 RIGHTS AND PRIVILEGES.

- (1) The City may grant the right, privilege and franchise to construct, operate and maintain a CCS in the City to a grantee which meets the qualifications for a franchise recipient established by the City

for a period not to exceed 15 years, subject to the rights, obligations, conditions and restrictions hereinafter provided. A franchise so granted shall be designed to give to the grantee the right and privilege to construct, erect, operate, modify and maintain in, upon, along, across, above, over and under streets which have been or may hereafter be dedicated open to public use in the City, towers, antennas, poles, cables, electronic equipment and other appurtenances necessary for the operation of a CCS in the City, utilizing wherever possible existing facilities, with the right, upon application to the Superintendent of the Electrical Utility of the City, to set such poles and other equipment on new facilities constructed by the grantee. The Superintendent of the Electrical Utility will not unreasonably refuse permission for construction, but the City hereby signifies that it is City policy that poles not be unreasonably proliferated within the City and that aesthetic concerns be taken into account whenever placement of equipment is undertaken or considered. The right and privilege of a grantee to construct, erect, operate, modify and maintain equipment as set forth above shall be subject to the requirements of the subdivision and zoning regulations of the City and all other existing City ordinances.

- (2) The City shall require all developers of future subdivisions, when making provisions for or restrictions of utilities in their subdivision plat, to include cable communications services.

22.04 CONDITIONS OF FRANCHISE. A grantee shall be subject to the following restrictions and conditions with regard to the operation of the CCS, which conditions and restrictions shall be in addition to any other provisions of this Municipal Code.

- (1) Cables, wires and other equipment in connection with such system shall only be installed and operated on or under the public rights-of-way upon the poles or in underground conduit and equipment of the existing utilities within the City, and their successors or assigns, where conduits exist and where space in installed conduits is available. Installation of any additional poles, conduits or other equipment for the installation of cables, wires and other overhead and underground equipment in public rights-of-way in connection with the system shall be subject to the authorization of the City Council or its designated representative. The City Council may consider the suggestions of the utility companies servicing or planning to serve the area for which location of additional poles or equipment is proposed. It is the City's policy that underground installations shall always be preferred; however, the City may grant the grantee permission to construct its plant aerial so long as there is at least one utility aerial.

- (2) All wires, cables and other underground or overhead equipment shall be located as may be required of telephone companies or power lines by the Public Service Commission. All equipment shall be grounded in the same manner as required by the State Electrical Code for electrical services existing on the date of installation of any equipment.
- (3) A grantee shall pay all costs incurred by the City if it becomes necessary to restore public rights-of-way as a result of the grantee's construction of its system or its operation. The grantee and the City shall coordinate the restoration of the public rights-of-way if it becomes necessary for the grantee to open or otherwise serve public rights-of-way.
- (4) A grantee shall, at its own expense, protect, support, temporarily or permanently disconnect, relocate in the same public right-of-way or remove from any public right-of-way any property owned or used by the grantee if required to do so by the City for reason of traffic conditions, public safety, vacating of streets, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, tracks or any other type of structures or improvements by governmental agencies when acting in a governmental capacity. The City shall provide a grantee with notice of its intention to make changes which might otherwise cause the grantee expense pursuant to this paragraph and the grantee shall have an opportunity to comment. A grantee shall obtain pole- or conduit-use agreements from the gas, electric and telephone companies maintaining poles or conduits in streets of the City whenever the grantee finds it necessary to make use of these poles or conduits.
- (5) A grantee shall, upon the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines or disconnect or take them down to permit the moving of buildings. The expense of such removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall be given not less than 3 working days' advance notice to arrange for such temporary wire changes.
- (6) All installations of cables and incidental equipment by a grantee shall comply in all respects with all laws, ordinances, rules and regulations of the FCC, the State or any agency or department thereof, and the City or any agency or department thereof, now or hereafter in effect.
- (7) A grantee shall provide and maintain its equipment in such condition and of such quality that none of its services will adversely affect radio and television reception.
- (8) Installation and maintenance of equipment by a grantee shall be such that standard color signals shall be transmitted with reasonable fidelity to all subscribers.

- (9) A grantee shall not directly or indirectly require of any subscriber the patronage of any designated person or company engaged in the servicing or repair of television receivers. This shall not apply to the repair or adjustment of equipment which is part of the system of the grantee.
- (10) A grantee shall submit to inspections by authorized personnel of the City and shall make available to such inspectors or authorized personnel its facilities and equipment wherever situated. The City reserves the right to enact reasonable regulations regarding the installation and maintenance of the facilities of a grantee.
- (11) The City or any assignee thereof shall have the right during the life of this franchise, free of charge, to install and maintain upon the fixtures and conduits of a grantee within the City limits, wire and appropriate attachments necessary for a security and fire alarm system. Such wire and fixtures shall be constructed and maintained to the satisfaction of the grantee and in accordance with its specifications.
- (12) The City, in its use and maintenance of such wires and attachments as it may install pursuant to sub. (11) above, shall at all times comply with the rules and regulations of the grantee so that there may be a minimum danger of contact or conflict between the wires and fixtures of the grantee and the wires and attachments used by the City.
- (13) A grantee shall have the authority to trim trees upon and overhanging public rights-of-way of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction.
- (14) Anything contained herein to the contrary notwithstanding, the award of a franchise by the City under the terms established by this chapter shall not impart to a grantee any right of property in or on City-owned property.

22.05 FUNCTIONS OF THE CABLE COMMUNICATIONS COMMITTEE. A Cable Communications Committee is established consisting of five members with two members representing governmental users and 3 persons chosen at large to be representative of the community; all 5 members to be appointed by the mayor annually subject to approval of the City Council. The duties of the Committee shall be the following:

- (1) Make recommendations to the grantee of the CCS and to the users of the public, educational and governmental access channels.

- (2) Ensure that the grantee makes the public access channel available to all residents of the City on a nondiscriminatory basis and advise the grantee on procedural rules for this purpose.
- (3) Assure that the operation of the public access channel be free of program censorship.
- (4) Make recommendations to the grantee and City Council regarding the quality of services and programs.
- (5) Plan and develop production and programming on dedicated access channels.
- (6) Prepare and submit an annual budget for public access programming.
- (7) Allocate funds it deems necessary to assist production and programming on the public access channels.
- (8) Perform such other duties and functions as may be assigned from time to time by the City Council.

22.06 FRANCHISE APPLICATION. Prior to the granting of a franchise under this chapter, a grantee shall file with the City Administrator an application (original and four copies) containing the following information and provisions:

- (1) The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer.
- (2) Payment of a nonrefundable filing fee of \$500.
- (3) Providing of a proposal bond or certified check for \$10,000 as set forth in Section 22.19.
- (4) A general description of the applicant's proposed operation in the service area and in other areas within the State, including but not limited to business hours, operating staff, maintenance procedures beyond those required in this chapter, management and marketing staff complement and procedure, and, if available, the rules of operation for public access.
- (5) A statement of the television and radio services to be provided including both off-the-air and locally originated signals.
- (6) A statement setting forth a description of the automated services proposed and a description of the production facilities to be made available by the grantee for the public, municipal and educational channels required to be made available under this chapter or by the Federal Communications Commission.
- (7) A statement establishing any additional funding, facilities, equipment or personnel beyond those required elsewhere to be designated to effect and promote local programming development. It is understood that the foregoing shall be available without charge to all on a fair and nondiscriminatory basis and may be used by the grantee as well. Such funding and services shall

be contingent upon a special showing, where required, that the proposed uses are consistent with the regulatory program of the FCC.

- (8)** A statement of the applicant's proposed Schedule of Charges for service to be provided under its franchise.
- (9)** A statement detailing the organizational form of the applicant, including the number of authorized and outstanding shares of applicant's stock, and the names and addresses of officers and directors and of the corporate shareholders, partners or members who individually or in concert have an ownership interest of 5% or more of the applicant.
- (10)** A statement describing all of the applicant's intracompany relationships, including parent, subsidiary or affiliated companies.
- (11)** A statement setting forth all agreements and understandings, whether written or oral existing between the applicant and any other person with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time of submittal of the proposal.
- (12)** If the applicant is a corporation, audited financial statements for the 2 previous fiscal years. If the applicant is a partnership or a limited liability company, copies of the "U.S. Partnership Return of Income" (IRS Form 1065) for the 2 previous fiscal years. If the applicant is a sole proprietorship, copies of "U.S. Individual Tax Return" (IRS Form 1040) for the 2 previous fiscal years. The applicant shall also provide a copy of a Board of Directors resolution authorizing the obtaining and expenditure of such funds as are required to construct, install and operate the CCS contemplated by the applicant for the City. The applicant shall also provide a copy of its most recent annual report.
- (13)** A 10-year operations proforma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets and annual levels of subscriber penetration. Costs and revenues anticipated for voluntary services shall, if presented, be incorporated in the program as required in this chapter, but shall be separately identified in the proforma.
- (14)** A suitable written statement from a recognized lending or funding institution or agency, addressed both to the applicant and the City, advising that the applicant's financial ability and planned operation have been analyzed by the institution or agency and that the institution or agency is prepared to make such funds as the applicant may require available if the applicant is awarded a franchise by the City.
- (15)** A brief technical description of the type of system proposed for use by the applicant.

- (16)** A statement from the applicant's senior technical staff member or consultant advising that he has reviewed the CCS description, the CCS technical standards, performance measurements, channels to be provided, service standards, continuation standards and conditions of street occupancy and that the applicant's planned CCS and operations in these respects will meet all the requirements established by this chapter.
- (17)** A statement of existing pending and proposed franchises held or applied for by the applicant or which the applicant proposes to apply for, indicating as applicable when the franchises were issued and when the systems were constructed and the present state of the system or application in each respective governmental unit, together with the name, address and telephone number of a responsible governmental official knowledgeable of the applicant.
- (18)** A statement as to whether the applicant or any of its officers or directors or holders of 5% or more of its voting stock has, in the past 10 years, been convicted of or has charges pending for any crime other than a routine traffic offense, together with a statement of the disposition made in any such case.
- (19)** A statement detailing the prior cable television experience of the applicant including that of the applicant's officers, management and staff to be associated with the proposed operation.
- (20)** If an application is for renewal of a franchise, the proposal shall include, in addition to the information required in subs. (1) through (19) above, the following:
- (a)** A summary of the technical, financial and programming history of the network since the granting of the original franchise.
 - (b)** A statement and timetable that outlines all proposed changes, expansion or improvements in the system as to services, programming or technical specifications during the following 5-year period.
- (21)** A statement setting forth the applicant's agreement to conform to all of the provisions of this chapter. The City may require such supplementary information as the City deems reasonably necessary for its determinations. Modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the City. Specific permission to operate a CCS under the provisions of this chapter may be granted by the City Council to any grantee after a review of the legal, character, financial and technical qualifications and the adequacy and feasibility of the grantee's construction arrangements and after the City Council has approved the grantee's qualifications as a part of a public proceeding affording due process.

22.07 FRANCHISE TERM, REVIEW AND RENEWAL.

- (1) The term of any franchise issued by the City shall be for a period of up to 15 years and shall be in full force and effect for the term set, subject to the provisions of this chapter.
- (2) On or about the 2nd, 5th and 10th anniversaries, of the effective date of a franchise, the City shall schedule a public meeting or meetings with the grantee to review the franchise performance, plans and prospects. Specifically the City will inquire whether the grantee is supplying a level and variety of services equivalent to those being generally offered at the same time in the industry and in comparable market situations. If the grantee desires to change or modify its obligations, it may negotiate with the City Council to do so at that time. Within 60 days of the conclusion of the review, the City and the grantee shall report in a public hearing the result of their review and their conclusions. The City Council may then order unilateral changes in the franchise rights and obligations of the CCS where the changes do not adversely affect the economic viability of the cable communications franchise or adversely affect programming and maintenance services to subscribers. Disputes hereunder are to be resolved by arbitrators, one to be selected by each party and a third to be selected by the other two. The decision of the arbitrators shall be final. The arbitrators are to base their decisions on what is fair and equitable to both the City and the grantee, as well as to subscribers and the residents of the City in general.
- (3) The grantee shall make available specified records, documents and information concerning the operation of the franchise for the purpose of these meetings. Topics for review at the said meetings shall include, but not be limited to, the following: services, rate structure, free or discounted services, use and availability of new technologies, subscriber complaints, user complaints, programming and any amendments which may be proposed to the franchise terms.
- (4) The City shall determine whether to renew a franchise granted under this ordinance in the event that the grantee files a written request for such a renewal. The grantee shall submit such a request no sooner than 36 months before the expiration of the franchise. At the time of such request, the City may revise this ordinance, reevaluate the needs of the community for cable service, and review the performance of the grantee. The City may grant a franchise renewal for a term to be negotiated between the City and the grantee, but in no event for more than 15 years.
- (5) To the extent that federal cable communications legislation permits, the City in its sole discretion and judgment shall have the right to grant, deny or conditionally grant renewal of a franchise, provided that the City shall not unreasonably condition the renewal. The conditions the City may place on its approval shall include, but are not limited to: reimbursement for reasonable expenses

incurred in evaluating the request for renewal; updating the ordinance and surveying community cable needs; remedy of historical or existing violations of the franchise or ordinance; payment of all fees and penalties owed by the grantee at the time of the renewal; acceptance of any updated ordinance; and acceptance of any updated franchise agreement.

22.08 COMPLETION OF CONSTRUCTION AND EXTENSION OF SYSTEM.

- (1) A grantee shall initiate construction and installation of its CCS within 6 months of receiving necessary authority from the FCC, including microwave licenses and a Certificate of Compliance, and within 18 months the grantee shall commence operations. The grantee shall have substantially completed construction within the franchise area within 24 months of the effective date of the grant of the franchise by the City.
- (2) The City may, in its discretion, extend the time for a grantee, acting in good faith, to perform any act required hereunder. The time for performance shall be extended or excused for any period during which a grantee demonstrates to the satisfaction of the City Council that the grantee is being subjected to delay or interruption due to any of the following circumstances if reasonably beyond its control:
 - (a) Necessary utilities rearrangements or pole changeouts.
 - (b) Governmental or regulatory restrictions.
 - (c) Labor strikes.
 - (d) Lockouts.
 - (e) War.
 - (f) National emergencies.
 - (g) Fire.
 - (h) Other acts of God.
- (3) A grantee shall extend the CCS so as to provide full system service to all residents within the City limits. For newly annexed areas and new subdivisions the grantee shall extend service when the density reaches 15 houses per lineal mile.
- (4) A grantee shall be allowed to furnish service to areas other than the City, provided that the construction or provision of the services to areas other than the City does not prohibit, impede or delay the substantial completion date of the system in the City.

22.09 FRANCHISE CHARACTERISTICS.

- (1) The franchise shall not be exclusive and the City reserves the right to grant a similar franchise to any person, firm, partnership, company, corporation or association at any time.
- (2) The scope of the franchise shall be amenable from time to time allowing the grantee to innovate and implement new services and technology; provided, however, that no such services or technological development be implemented without the express prior approval of the City Council.
- (3) No privilege or exemption shall be inferred from the granting of the franchise unless it is specifically prescribed.
- (4) Nothing in this chapter shall be deemed to prohibit the mortgage or the pledge of the system or any part thereof. However, any such mortgage or pledge shall be subject to and subordinate to the right of the City under this franchise or applicable laws.
- (5) The franchise shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled or exercisable by the grantee or any successor pertaining to the construction, operation or maintenance of a cable communications system in the City. The acceptance of the franchise shall operate, as between the grantee and the City, as an abandonment of any and all of such rights, privileges, powers, immunities and authorities within the City. All construction, operation and maintenance by the grantee of any cable system in the City shall be under the franchise and not under any other right, privilege, power, immunity or authority.
- (6) The grantee shall at all times during the life of the franchise be subject to all lawful exercise of the police power by the City and other duly authorized regulatory State and federal bodies and shall comply with any and all codes which the City has adopted or shall adopt applying to the public generally and to other grantees.
- (7) The franchise shall not relieve the grantee of any obligation involved in obtaining pole-or conduit-use agreements from the gas, electric and telephone companies, or others maintaining poles or conduits in the streets of the City, whenever the grantee finds it necessary to make use of such poles or conduits.
- (8) Anything contained herein to the contrary notwithstanding, the franchise shall not impart to the grantee any right of property in or on City-owned property.

22.10 TRANSFER OR SALE OF CABLE TELEVISION SYSTEM.

- (1)** A CCS franchise granted by the City may be transferred, assigned or sold only with the written consent of the City Council and approved only if the transferee, assignee or purchaser agrees in writing to be subject to all the terms and conditions of this chapter.
- (2)** A grantee of this franchise shall notify the City Council at least 30 days before a proposed transfer, assignment or sale is to take effect. Such notice must be in the form of a written request to the City Administrator stating the reasons why such an assignment is necessary and/or advisable and detailing the expected changes in the operation of the system.
- (3)** A franchise granted hereunder shall be a privilege to be held for the benefit of the public by the grantee. The franchise shall not in any event be sold, transferred, leased, assigned or disposed of in whole or in part, either by forced or voluntary sale, merger, consolidation, mortgage, trust, receivership or any other means without the prior consent of the City expressed by Council resolution, and then only under such conditions as the Council may establish. Such consent shall be given or denied no later than 120 days following a request for consent and consent shall not be withheld by the City unreasonably.
- (4)** In seeking the City's consent to any change in ownership or control, the grantee shall have the responsibility to do the following:
 - (a)** To show to the satisfaction of the City whether the proposed purchaser, transferee, or assignee (the "proposed transferee"), which in the case of a corporation shall include all directors and all persons having a legal or equitable interest of 5% or more of the voting stock:
 - 1.** Has even been convicted or held liable for acts involving moral turpitude including, but not limited to, any violation of Federal, State or local law or regulations, or is presently under an indictment, investigation or complaint charging such acts.
 - 2.** Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against it, her, him or them by any court of competent jurisdiction; or
 - 3.** Has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a cable system.
 - (b)** To establish, to the satisfaction of the City, the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee which the grantee was required to submit in its franchise application, and such other data as the City may request, where the same shall be audited, certified and qualified by a certified public accountant.

- (c) To establish to the satisfaction of the City that the financial and technical capability of the proposed transferee is such as shall enable it to maintain and operate the cable system for the remaining term of the franchise under the existing franchise terms.
- (5) Any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the City that the financial institution, or its designee, as approved in writing by the City, shall take control and operate the cable system in the event of a grantee's default in its financial obligations. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding 1 year unless extended by the City in its discretion, but during said period of time it shall have the right to petition the City to transfer the franchise to another grantee. Except insofar as the enforceability of this subsection may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, and further subject to applicable Federal, State or local law, if the City finds that such transfer, after considering the legal, financial, character, technical and other public interest qualities of the proposed transferee, is satisfactory, the City shall transfer and assign the right and obligations of such franchise as in the public interest. The consent of the City to transfer shall be given or denied no less than 120 days after any request, and shall not be unreasonably withheld.
- (6) The consent or approval of the City to any transfer by the grantee shall not constitute a waiver or release of the rights of the City in and to the streets, and any transfer shall by its terms be expressly subject to the terms and conditions of any franchise.
- (7) The City shall be entitled to a right of first refusal of any bona fide offer to purchase the CCS made to the grantee. Bona fide offer as used in this section means a written offer which has been accepted by grantee subject to the City's rights under this franchise. The price to be paid by the City shall be the price of the bona fide offer at the same terms and conditions as the bona fide offer. The City shall notify grantee of its decision to purchase within 90 days of the City's receipt from the grantee of a copy of the written bona fide offer.

22.11 OPERATIONAL RULES FOR FRANCHISE.

- (1) The grantee shall maintain and operate its CCS in accordance with all such rules and regulations of the FCC, the State of Wisconsin and the City as are applicable or as may be promulgated. The

grantee, whenever it is necessary to interrupt service over the CCS for the purpose of maintenance, alteration or repair, shall do so at such times as will cause the least amount of inconvenience to the subscribers, and unless such interruption is unforeseen and immediately necessary, the grantee shall give reasonable notice thereof to the affected subscribers.

- (2)** The grantee shall cooperate with the City to establish a production studio and public access production facilities and shall provide a toll-free telephone number which subscribers may call with questions or concerns about billing or service and where complaints and requests for repairs or adjustments may be received at any time. The grantee shall also designate at least one local depository for receipt of payments by subscribers of bills for service provided by the grantee. The grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for service.
- (3)** The grantee shall furnish each subscriber at the time service is installed, written instructions that clearly set forth procedures, furnish information concerning the procedure for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the City office responsible for administration of the franchise with the address and telephone number of the office.
- (4)** The grantee shall make a list of all complaints and interruptions or degradation of service received or experienced during the term of franchise. It shall also maintain records on complaint response time and service restoration periods. These records shall be continuously open to inspection, examination or audit by any duly authorized representative of the City; the City shall review such records at the end of the fiscal year and, once the City's annual review has been completed, the grantee shall not be required to continue to maintain the specific documents for the year reviewed by the City.
- (5)** The grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonable and necessary to enable the grantee to exercise its rights and perform its obligations under this chapter.

 - (a)** No such rules, regulations, terms and conditions promulgated under (5) above shall be in conflict with the provisions hereof or the laws of the State, or the Rules and Regulations of the Federal Communications Commission, or any rules and regulations promulgated by the City in the exercise of its regulatory authority.

- (b) Two copies of all rules, regulations, terms and conditions promulgated under (5) above, together with any amendments, additions or deletions thereto, shall be kept currently on file with the Administrator and another copy thereof shall be maintained for public inspection during normal business hours at grantee's office serving the City; no such rules, regulations, terms, conditions, or amendments, additions or deletions thereto shall take effect unless and until so filed and maintained.
- (6) The grantee shall not require the removal, or offer to remove or provide any inducements for removal of, any potential or existing subscriber's antenna as a condition of provision of service.
- (7) Neither the grantee during the period of the franchise nor any of its affiliated, subsidiary, parent organizations, officers, directors or stockholders holding 5% or more of outstanding stock of the grantee, shall within the corporate limits of the City or within 10 miles in any direction, directly or indirectly, engage in the retail sale, renting, leasing, or repairing of radio or television receivers or their appurtenances, nor shall they require any subscriber to utilize the services of any specific television/radio service business for the repair or maintenance of the subscriber's receivers, either radio or television.
- (8) The grantee, upon request from any subscriber, shall install at a reasonable charge therefor, a switching device so as to permit a subscriber to continue to utilize his own television antenna as he chooses.

22.12 RIGHTS RESERVED TO THE CITY.

- (1) Nothing herein shall be deemed or construed to impair or affect, in any way to any extent, the right of the City to acquire the property of the grantee through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted, and nothing shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the City's right to eminent domain.
- (2) The City shall have the right to intervene in any suit or proceeding to which a grantee is a party and which in any respect involves the CCS and service supplied by the grantee in the City. The City also reserves the right during the life of any franchise granted hereunder to inspect and supervise all construction or installation work performed subject to the provisions of this chapter and to perform system measurements to ensure compliance with the terms herein.
- (3) Upon expiration of the term of the franchise, or revocation, or other termination as provided by law, or upon receipt of application for approval of an assignment of the franchise or upon change

of de facto control, the City shall have a right to purchase the CCS as set forth in Sections 22.10(7), 22.26 and 22.27.

- (4) The City reserves the right during the life of the franchise to install and maintain free of charge upon or in the poles and conduits of the grantee any wire and pole fixtures necessary for municipal subsystems on the condition that such installation and maintenance thereof does not interfere with the operation of the grantee.

22.13 FRANCHISE FEE.

- (1) A grantee shall pay to the City a franchise fee of 5% of the grantee's "annual gross subscriber revenues" from its operation of the CCS within the City limits, or such other amount as allowed by law upon reasonable advance notice by the City. This sum shall be paid quarterly and shall be due by the tenth day of the month following the end of each quarter. The first three quarterly payments shall be calculated at one-quarter of the annual payment for the prior year (with an adjustment made for the first year from 3% to 5% of "annual gross subscriber revenues") and the final quarterly payment shall contain an adjustment to reflect actual receipts and shall be due no later than the 30th day of March. Any payment received after the tenth day of the month following the end of the quarter shall be subject to an interest charge at the rate of 1% per month on the unpaid balance. The payment of this sum shall be in addition to any other payment owed to the City by a grantee and shall not be construed as payment in lieu of municipal property taxes or other State, County or local taxes. The annual user franchise fee is subject to annual review for an increase or decrease subsequent to the 4th year of operation. It is to be utilized by the City to offset its regulatory and administrative costs incurred in connection with the operation of the CCS.
- (2) Charges for past due payments as set forth in sub. (1) are made in order to defray those additional expenses and costs incurred by the City by reason of the delinquent payment.
- (3) No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee. All amounts paid shall be subject to audit and recomputation by the City.

22.14 AMENDMENTS. The City may from time to time, add to, modify or delete provisions of this chapter as it shall deem necessary in the exercise of its regulatory powers, provided that such additions, modifications or revisions are reasonable and do not adversely affect a grantee economically. Such

additions, modifications or revisions shall be made only after a public hearing for which the grantee shall have received written notice at least 30 days prior to such hearing.

22.15 REPORTS.

- (1) A grantee shall file annually with the City Administrator not later than 3 months after the end of the fiscal year during which it accepted a CCS franchise and within 3 months after the end of each subsequent fiscal year, or upon reasonable advance notice by written request from the City, the following information:
- (a) A total facilities report setting forth the total physical miles of plant installed or in operation during the fiscal year, including an as-built system map showing the location of all local apparatus, to be maintained in the City Administrator's office.
 - (b) All records regarding complaints within the City required by the FCC and the resolution or outcome of each complaint.
 - (c) A list of all current owners, shareholders and bondholders, both of record or beneficial, who individually or as a concerted group hold an ownership interest of 5% or more of the grantee. If the grantee is a corporation, the grantee shall supply a list of all shareholders who individually or as a concerted group hold 5% or more of the voting stock in the corporation.
 - (d) A current list of all officers and directors of grantee, including addresses and telephone numbers.
 - (e) Copies of all pertinent operational agreements or contracts, including pole-and conduit-use agreements, entered into by the grantee during the fiscal year in the conduct of its business under the CCS franchise granted by the City. Copies of individual subscribers' agreements need not be filed with the City, but shall be made available upon request by the City.
 - (f) The names, addresses and current business and home telephone numbers of the resident manager and engineer of the CCS located in or serving the City.
 - (g) One copy of all types of subscriber agreements used by the grantee in providing service within the City.
 - (h) Copies of all rules and regulations promulgated by the grantee during each fiscal year in the conduct of its business.
 - (i) A copy of the annual report of a parent firm which owns an interest of 5% or more of the voting stock of the grantee, and such other annual report of subsidiaries or divisions of a parent firm as the City deems necessary.

- (j) The grantee's engineering plans, accounting and financial data, service records and contracts relating to the CCS, which the City shall, during the life of any CCS franchise it grants, have access to, at all normal business hours and upon the giving of at least 72 hours' notice to a grantee.

22.16 UNAUTHORIZED CONNECTIONS OR MODIFICATIONS.

- (1) No person, without the express consent of a grantee, shall possess or make any connection, extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of a franchised CCS for any purpose whatsoever.
- (2) No person shall willfully interfere with, remove, obstruct or damage any part, segment or content of a franchise CCS for any purpose whatsoever.
- (3) Violation of subs. (1) and (2) shall result in a forfeiture under Section 25.04 and the reimbursement to the grantee for all losses incurred through the prohibited activities.

22.17 SUBSCRIBER PRIVACY.

- (1) No person shall initiate or use any form, procedure or device for procuring information or data from a subscriber's terminals by use of the CCS, except for routine maintenance of the system and verification of billing accuracy, without prior authorization from each subscriber so affected. Such authorization shall mean approval from the subscriber for a period of time not to exceed one year and shall not have been obtained from the subscriber as a condition of providing service to the subscriber.
- (2) No person shall, without prior written valid authorization from the City Council, provide any data identifying designated subscribers to anyone seeking such information.

22.18 LIABILITY AND INDEMNIFICATION.

- (1) It is expressly understood and agreed by and between the City and the grantee that the grantee shall save the City harmless from all losses sustained by the City on account of any suit, judgment, execution, claim or demand which the City may legally be required to pay as a result of the award of a CCS franchise to a grantee under the terms of this chapter.
- (2) It shall be expressly understood and agreed by and between the City and a grantee that the grantee shall save the City and its agents and employees harmless from and against all claims, damages, losses and expenses, including attorneys' fees sustained by the City on account of any suit,

judgment, execution, claim or demand whatsoever, arising out of, but not limited to, copyright infringements and all other damages arising out of the installation, operation or maintenance of a CCS franchise granted by the City, whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter. This provision shall not apply to acts of the City, its agents or employees.

- (3)** A grantee shall pay and, by its acceptance of any CCS franchise granted by the City, agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties provided in subs. (1) and (2) above. These expenses shall include all out-of-pocket expenses, such as consultants' or attorneys' fees, and shall also include the reasonable value of any services rendered by the City Attorney or any other employee of the City.
- (4)** A grantee shall maintain and, by its acceptance of a CCS franchise, agrees that it will maintain throughout the term of the franchise and any extension thereto, a general comprehensive liability insurance policy naming as an additional insured the City, its officers, boards, commissions, agents and employees. The policy shall be issued by a company approved by the City Council and in a form satisfactory to the Council, which shall protect the City, its officers, boards, commissions, agents and employees against liability for loss or damage for personal injury, death or property damage occasioned by the operations of the grantee under any franchise granted hereunder, in the following amounts:

 - (a)** General Comprehensive Liability Insurance containing the following coverages: Premises/Operations; Product/Completed Operations; Broad Form Property Damage; Contractual Liability; Coverage for Explosion, Collapse and Underground Hazards; and Pollution Control Liability. The policy shall include limits of not less than \$1,000,000 for bodily injury (including death) and property damage for each occurrence of not less than \$2,000,000 in the aggregate.
 - (b)** Worker's Compensation Insurance in compliance with Sections 102.28 and 102.31 of the Wisconsin Statutes and in compliance with the laws of each state having jurisdiction over each employee.
 - (c)** Comprehensive Automobile Liability including owned, non-owned, and hired vehicles with limits of not less than \$1,000,000 for bodily injury (including death) and \$1,000,000 for property damage for each occurrence.
 - (d)** Umbrella Liability with limits of not less than \$8,000,000, which shall carry the following endorsement:

It is hereby understood and agreed that despite anything to the contrary where underlying insurance, as described herein, provides greater protection or indemnity to the insured than the terms and conditions of this policy, this insurance shall pay on behalf of the insured the same terms, conditions and coverages which apply to the basic underlying insurance. Where no such broader underlying insurance exists, this policy shall pay on behalf of the insured upon terms and conditions and limitations of the carrier's umbrella excess policy.

- (5) The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the grantee under the terms of this chapter and shall contain the following endorsement:
 - (a) It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until 30 days after receipt by the City Administrator by registered mail of 2 copies of a written notice of such intent to cancel or reduce the coverage.
- (6) All policies of insurance or certified copies thereof and written evidence of payment of required premiums shall be filed with the City Administrator during the term of any CCS franchise granted by the City or any renewal thereof.
- (7) Neither the provisions of this chapter nor any insurance accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by a grantee of the obligations established for it under this chapter or limit the liability of the grantee under any franchise granted hereunder, or for damages, either to the full amount of the performance bond or otherwise.

22.19 PROPOSAL BOND.

- (1) Each applicant for a franchise hereunder shall submit a proposal bond in a form acceptable to the City Attorney or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the City in the amount of \$10,000.
- (2) Should the applicant fail or refuse to accept a franchise hereunder or fail or refuse to furnish the performance bond as set forth in Section 22.20 within 30 days after written notification of the award of a franchise by the City, such applicant will be considered to have abandoned the proposal and the City shall enforce the proposal bond in accordance with its term or retain the proceeds of the certified check.
- (3) Proposal Bonds or certified checks received in lieu thereof from applicants whose proposals are not accepted by the City shall be returned to the applicant as soon as the proposal is rejected.

- (4) Two copies of all bonds or certified copies thereof and written evidence of payment of required premiums shall be filed and maintained with the City Administrator during the term of any franchise granted hereunder or any renewal thereof.

22.20 PERFORMANCE BOND.

- (1) A grantee shall maintain and, by its acceptance of a CCS franchise granted by the City, agrees that it will maintain throughout the terms of the franchise or any renewal or extension thereof, a faithful performance bond running to the City, with at least 2 good and sufficient sureties or other financial guarantees approved by the City Council. This bond shall be in the penal sum of \$10,000, except that the City may require a grantee to provide a bond in the penal sum of \$100,000 if construction of a system upgrade is undertaken, with said \$100,000 bond to be carried by the grantee until the construction is completed. The performance bond or bonds shall be conditioned upon the faithful performance of the grantee and, upon the further condition that, if the grantee fails to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond.
- (2) The bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be canceled nor the intention not to renew be stated until 30 days after receipt by the City Administrator by registered mail of two copies of a written notice of such intent to cancel or not renew.
- (3) Two copies of the performance bond or certified copies thereof and written evidence of payment of required premiums shall be filed with the City Administrator during the term of the franchise and any renewal thereof.

22.21 RATES.

- (1) The grantee shall establish rates for its services which shall be applied on a nondiscriminatory basis in the service area, except for commercial and bulk account rates, which are negotiated individually. Pursuant to federal law, the City reserves the right to assume regulation of rates paid by cable subscribers; if so assumed, such rate regulations shall be performed by the City Council in accordance with FCC Rules and Regulations set forth in 47 CFR Ch. 1, Part 76, Subpart N. As

specified by the FCC's Rules (47 CFR Ch. 1, Part 76, Subpart N), such rate regulation shall cover basic service rates and customer premises installations and equipment rates (including, but not limited to charges for: converter boxes, remote control units, connections for additional television receivers and other cable home wiring).

- (2)** The City reserves the right further to regulate rates pursuant to any additional powers granted it by either the FCC or Federal or State law.
- (3)** In the event that the City assumes rate regulatory powers pursuant to Federal cable communications legislation, the following shall apply:
 - (a)** The City shall notify the grantee of the City's FCC certification and of the City's adoption of rate regulations which are consistent with the FCC regulations and which provide for a reasonable opportunity for consideration of the views of interested parties. Upon receipt of such notification by the grantee, basic service regulation shall become effective. The grantee shall be prohibited from raising basic service rates without the approval of the City Council, and the grantee shall, within 30 days, submit for review its basic service, installation and equipment rates and supporting documentation using either the FCC's benchmark calculations or the FCC's cost-of-service standards.
 - (b)** To aid in the evaluation of the grantee's proposed rates, the City Council may require the production of proprietary information, and in such cases will apply procedures analogous to those set forth in FCC regulations, and consistent with Federal and State law.
 - (c)** As specified in the FCC regulations, the City Council may order the grantee to refund to subscribers that portion of previously paid rates which have been found to be unreasonable. Before ordering the grantee to refund previously paid rates to subscribers, the City Council shall give the grantee notice and opportunity to comment.
 - (d)** The grantee shall not file for increases in equipment charges and/or basic service rates more often than allowed under FCC regulations. All subsequent requests by the grantee for increases in equipment charges and/or basic service rates shall be subject to the procedures outlined in this section.
 - (e)** A subscriber shall have the right to have his service disconnected without charge, which shall include the removal of any equipment owned by the grantee from the subscriber's residence. Such disconnection shall be made as soon as practicable and in no case later than 30 days following written notice to the grantee of same. No grantee shall enter into any agreement with a subscriber which imposes any charge following disconnection of service, except for

reconnection and subsequent monthly or periodic charges, and those charges shall be no greater than charges for new customers. This section shall not prevent a grantee from refusing service to any person because of the grantee's prior accounts with that person which remain due and owing.

22.22 SERVICES, FACILITIES AND EQUIPMENT, CHANNEL CAPACITY.

- (1) The grantee shall provide, at a minimum, the initial services listed in Section 22.23. Such services shall include, but not be limited to, basic cable service and additional service, as defined herein. Services shall not be reduced without prior notification to the City.
- (2) The grantee shall provide, at a minimum, the initial facilities and equipment listed in Section 22.23.
- (3) The grantee shall provide the public, educational and government (PEG) access facilities, including channel capacity, necessary interface equipment and cabling to permit operation as specified in Section 22.23.
- (4) The grantee shall provide, at a minimum, the categories of video programming listed in Section 22.23.
- (5) If local origination programming is provided, the grantee shall operate any cable casting studios on a high-quality, professional basis for the purpose of providing cable cast programming responsive to local needs and interests.
- (6) The grantee shall designate channel capacity for commercial use as required by Federal cable communications legislation.

22.23 SERVICE AND OPERATION STANDARDS.

- (1) A grantee shall maintain and operate its CCS in accordance with the rules and regulations of the FCC, State and City as incorporated herein or as may be promulgated. The City hereby adopts the standards established by the FCC for customer service for cable television. The City shall notify a grantee by certified mail that it has ordered and intends to enforce the FCC customer service standards.
- (2) Nothing in this ordinance shall be construed to prohibit the grantee and City from agreeing to exceed the FCC customer service standards or the establishment or enforcement of any State or municipal law or regulation concerning customer service or consumer protection that imposes

customer service standards or consumer protection requirements that exceed the FCC customer service standards or address matters not addressed in this ordinance.

- (3) Whenever it is necessary to interrupt services over the CCS for the purpose of system maintenance, alteration or repair, a grantee shall do so at such time as will cause the least amount of inconvenience to the subscribers.
- (4) A grantee shall provide a network having a minimum immediate or potential capacity of 54 channels with immediate or potential 2 way, "video grade" capability. The grantee shall also provide as part of its basic service at least one noncommercial public/government access channel together with suitable production and distribution equipment therefor. The City government shall be entitled to preferential scheduling of up to 10 hours per week of programming, and the balance of the remaining time shall be made available to the public access channels. A grantee shall also provide up to 2 additional channels and associated distribution equipment for educational use when requested by the public and parochial school systems. A grantee shall carry, to the extent permitted by the FCC or any other regulatory agency which may have jurisdiction, and shall exercise its best efforts to obtain permission from such regulatory agencies to carry, the stations it has listed in its franchise proposal as approved by the City.
- (5) A grantee shall provide one channel carrying continuous time and weather programming and one local interest channel carrying a minimum of 15 hours per month of locally originated programming.
- (6) A grantee shall provide "same day service" response 7 days a week for all complaints of service outages received prior to 2 p.m. each day. In no event shall the response time for calls received subsequent to 2 p.m. for service outages exceed 24 hours. Service within 48 hours shall be provided for all other complaints and requests for repairs or adjustments.
- (7) Upon failing to correct a service deficiency within 24 hours, a grantee shall rebate 1/30th of the monthly charge for basic service and additional service to each subscriber for 24 hours or fraction thereof after the first 24 hours following report of the loss of service to the grantee, except to the extent that restoration of service is prevented by strike, injunction or other cause beyond the control of the grantee. A grantee shall maintain a log, which shall be filed annually with the City, of such reports and the time of restoration of service. A loss of one or more channels shall be one of the operational developments considered a service deficiency.
- (8) A grantee shall also make available, when requested by a subscriber, a lockable means of disabling reception of basic and/or other additional services to which the subscriber may have access.

- (9) Basic service shall be provided free of charge to all public and parochial school buildings and public buildings used primarily for municipal purposes by the grantee.
- (10) A grantee shall upgrade its facilities, equipment and service as subscribers' demand dictates so that its system is as advanced as the current state of technology with field-proven equipment will allow.

22.24 TERMINATION OF FRANCHISE.

- (1) The City reserves the right to revoke any franchise granted hereunder and to rescind all rights and privileges associated with the franchise in the following circumstances:
 - (a) If the grantee should default in the performance of any of its obligations under this chapter and fail to cure the default within 30 days after receipt of written notice of the default from the City.
 - (b) If the grantee should fail to provide or maintain in full force and effect the performance bond and liability and indemnification coverages as required in this chapter.
 - (c) If a petition is filed by or against the grantee under the Bankruptcy Act, or any other insolvency or creditors' rights law, State or Federal, and the grantee shall fail to have it dismissed.
 - (d) If a receiver, trustee or liquidator of the grantee is applied for or appointed for all or part of its assets.
 - (e) If the grantee makes an assignment for the benefit of creditors.
 - (f) If any court of competent jurisdiction, the FCC or any State regulatory body by rules, decision or other action determines that any material provision of the franchise documents, including this chapter, is invalid or unenforceable.
 - (g) If the grantee should violate any orders or ruling of any regulatory body having jurisdiction over the grantee, unless the grantee is lawfully contesting the legality or applicability of such order or ruling.
 - (h) If the grantee fails to receive the necessary FCC authorization within a reasonable period of time, unless such cause is directly attributable to an action or condition imposed by the City.
 - (i) If the grantee knowingly and with intent to deceive makes any false, misleading or fraudulent statements of fact in its proposal for a franchise or other reports or information provided to the City, other regulatory agencies or subscribers.

22.25 REVOCATION PROCEDURE. Upon the occurrence of any of the events enumerated in Section 22.24, the following procedures shall be followed:

- (1) The grantee shall be provided with a written notice of the alleged default, describing the alleged default in as much detail as possible.
- (2) The grantee shall have 30 calendar days to correct the alleged default or deny that such alleged default exists.
- (3) If the alleged default is denied to exist, or if no satisfactory corrective action is undertaken within the 30-day period, the grantee shall be afforded a public hearing, with 20 days advance notice, before the City Council in order to respond to the allegation of default. The public shall be permitted to speak at such hearing, and the hearing may be continued from time to time as appropriate.
- (4) The City Council shall conclude the hearing with a finding that the grantee is in default or is not in default.
- (5) If the City Council determines that there is a default, the grantee shall be granted such an additional amount of time as the City Council shall deem reasonable to correct the default to the satisfaction of the City Council.
- (6) At the conclusion of such reasonable period, the City Council shall again at a public meeting determine whether the default has been satisfactorily corrected and, if it has not, the franchise granted under authority of this chapter may be immediately revoked by resolution without further notice or hearing.

22.26 PURCHASE OF SYSTEM BY CITY ON NONRENEWAL.

- (1) If the City determines not to renew the franchise, the grantee shall first offer the CCS for sale to the City at fair market value, determined on the basis of the CCS valued as a going concern but with no value allocated to the franchise itself.
- (2) If the determination of fair market value cannot be negotiated or determined, the value shall be determined by an impartial appraisal procedure pursuant to Chapter 788, Wis. Stats., Arbitration, wherein the grantee and the City shall each choose an appraiser and the appraisers chosen shall choose a third appraiser and the valuation determined by such appraisers shall be considered the fair market value at which the system will be offered to the City. The determination of the value of the system shall be decreased by the amount of any damages sustained by the City in connection with nonrenewal, including without limitation, payment made by the City to another person or

entity to operate the CCS for a temporary period after nonrenewal. The cost of the appraisal procedure shall be shared equally by the City and the grantee.

- (3) The City shall have 90 days commencing on the day the fair market value of the system is determined either through negotiation or the appraisal procedure to exercise its option to purchase. If the City does not exercise its option to purchase, and the CCS is not sold to another operator who has obtained a franchise from the City, the grantee, upon request by the City, shall promptly remove all its plant, structures and equipment. While transfer of the system and franchise is being negotiated, arranged or ordered, the grantee may be required to continue service to the public unless for reasons beyond the control of the grantee such operation will be economically infeasible to the grantee.

22.27 PURCHASE OF SYSTEM BY CITY ON REVOCATION.

- (1) If the City revokes the franchise for cause, the grantee shall first offer the CCS for sale to the City at an equitable price.
- (2) If the determination of an equitable price cannot be negotiated or determined, the price shall be determined by an impartial appraisal procedure pursuant to Chapter 788, Wis. Stats., wherein the grantee and the City shall each choose an appraiser and the appraisers chosen shall choose a third appraiser and the price determined by such appraisers shall be considered the equitable price at which the system will be offered to the City. The determination of the price of the system shall be decreased by the amount of any damages sustained by the City in connection with revocation, including without limitation, payment made by the City to another person or entity to operate the CCS for a temporary period after revocation. The cost of the appraisal procedure shall be shared equally by the City and the grantee.
- (3) The City shall have 90 days commencing on the day the equitable price of the system is determined either through negotiation or the appraisal procedure to exercise its option to purchase. If the City does not exercise its option to purchase, and the CCS is not sold to another operator who has obtained a franchise from the City, the grantee, upon request by the City, shall promptly remove all its plant, structures and equipment. While transfer of the system and franchise is being negotiated, arranged or ordered, the grantee may be required to continue service to the public unless for reasons beyond the control of the grantee such operation will be economically infeasible to the grantee.

22.28 RESTORATION; ALLOCATION OF COSTS.

- (1) In removing its plant, structures and equipment, the grantee shall refill at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the company's removal of its equipment and appliances, without affecting the electric or telephone cables, wires or attachments. The City shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance and indemnity provided in Section 22.18 and the performance bond in Section 22.20 shall continue in full force and effect during the period of removal.
- (2) If the grantee fails to complete any work required by (1) above or any work required by City law or ordinance within the time established and to the satisfaction of the City, the City may cause such work to be done and the grantee shall reimburse the City the costs thereof within 30 days after receipt of an itemized list of such costs or the City may recover such costs as provided in Section 22.20.
- (3) Nothing shall prohibit the City from imposing lesser sanctions or censures than revocation for violations of provisions of this chapter, including the shortening of the franchise term.
- (4) Upon the expiration of the franchise the City may by resolution, on its own motion or at the request of the grantee, require the grantee to operate the franchise for an extended period of time not to exceed 6 months from the date of any such resolution. All provisions of the franchise shall continue to apply to operations during an extension period. The City shall serve written notice at least 30 days prior to expiration of the original franchise or any extensions thereof.

22.29 REGULATORY JURISDICTION AND PROCEDURES.

- (1) The City shall have continuing regulatory jurisdiction and supervision over the operation of the franchise and may from time to time adopt such reasonable rules and regulations as it may deem necessary for the conduct of the business contemplated thereunder.
- (2) The continuing regulatory jurisdiction of the City shall be exercised through the Cable Communications Committee. The Committee shall have the responsibilities and duties set forth in Section 22.05.
- (3) The Cable Communications Committee shall consider any inquiry or proceeding requiring City Council action in accordance with normal City Council procedures.

- (4) The grantee shall not be excused from complying with any of the terms and conditions of the franchise by any failure of the City upon one or more occasions to insist upon or to seek compliance with any such terms or conditions.
- (5) The City may at its option and in its sole discretion impose liquidated damages in the amount of \$5,000 upon a grantee whose action or failure to act causes the City to bring a court action to enforce any provision of this chapter or the franchise grant, provided that the City's enforcement action is successful.

22.30 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE.

- (1) Any franchise awarded hereunder and the rights, privileges and authority granted thereby shall take effect and be in force from and after the 30th day following the award thereof, provided that within 30 days of such award the grantee shall file with the City the following:
 - (a) A notarized statement by the grantee of its unconditional acceptance of the franchise.
 - (b) Certificates of insurance as required by this chapter.
 - (c) A performance bond in the penal sum of \$100,000 as required by this chapter.
- (2) Should the grantee fail to comply with sub. (1) above, it shall acquire no rights, privileges or authority under its franchise whatever, and the amount of the filing fee, and the proposal bond or a certified check in lieu thereof submitted with the franchise application shall be forfeited in full to the City as liquidated damages.

22.31 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

- (1) A grantee shall not refuse cable communications service to any person or organization who requests such service for a lawful purpose. A grantee shall not, as to rates, charges, service facilities, rules regulations or in any other respect, make or grant any unreasonable preference or advantage nor subject any person to any prejudice or disadvantage. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscription to the CCS or other legitimate uses thereof; nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classifications shall be entitled, provided such schedules have been filed with and approved by the City as provided in Section 22.21.
- (2) The entire CCS shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies or other entities having legitimate use for the CCS. No one shall be

arbitrarily excluded from its use. The allocation of use of the grantee's facilities shall be made according to the rules or decisions of regulatory agencies affecting the same.

22.32 FRANCHISE GRANT. The grant of a CCS franchise may be made by a City Council resolution granting to the successful applicant the CCS franchise, and the resolution shall bind the grantee pursuant to the resolution to all of the terms and provisions contained in this chapter.

22.33 INTERCONNECTION.

- (1) Nothing in this chapter shall be construed so as to prohibit a grantee from interconnecting its CCS with other similar contiguous systems either in the City or in other municipalities, counties or states. However, any revenues derived therefrom shall be equitably allocated in the calculation of annual gross subscriber revenues as defined in Section 22.02(2) herein.
- (2) A grantee shall, if requested by the City, conduct a technical and economic feasibility study of any interconnection requested by the City. The study shall be presented to the City, and if the study shows such interconnection to be feasible, the grantee shall, if so instructed by the City, accomplish the interconnection.
 - (a) If the study indicates technical feasibility only, the City may elect at its sole discretion to arrange for compensation to be paid to the grantee, in an amount sufficient to assure an economic break-even by the grantee, and so order the interconnection.
 - (b) If the study fails to show technical feasibility, the grantee shall have no further responsibility for accomplishing interconnection until such time as improvements in technology permit such interconnection.

22.34 UNAUTHORIZED CONNECTIONS OR MODIFICATIONS.

- (1) No firm, person, group, partnership, company, corporation or governmental body or agency, without the express consent of the grantee, shall make any connection, extension or division, whether physically, inductively, electronically or otherwise, with or to any segment of a franchised CCS for any purpose whatsoever, except as may be provided in this chapter.
- (2) No firm, person, group, partnership, company, corporation or government body or agency shall willfully interfere with, tamper with, remove, obstruct or damage any part, segment or content of a franchised CCS for any purpose whatsoever. This section shall in no way impair or infringe upon rights presently enjoyed by utilities in the City.

- (3) Any firm, person, group, partnership, company, corporation, or governmental body or agency convicted of a violation of this section shall be assessed a forfeiture under Section 25.04 of these ordinances. Each 24-hour period a violation continues shall be considered a separate offense.

22.35 CONSTRUCTION AND SYSTEM TECHNICAL STANDARDS AND MEASUREMENTS. The technical standards, including measurements of the construction and the system to be operated in the City, shall comply with the minimum standards established by the FCC.

22.36 SUBSCRIBER PRIVACY.

- (1) The grantee, City or any person shall not initiate nor use any form, procedure or device for procuring information or data from cable subscribers' terminals by use of the cable system, without prior written valid authorization from each subscriber so affected, except to conduct routine maintenance and verify billing accuracy. Valid authorization shall mean written approval from the subscriber for a period of time not to exceed one year and shall not have been obtained from the subscriber as a condition of service. Further, a grantee, without such authorization, shall not activate and/or utilize any "television signal" in any manner from the subscriber's premises. In any case the subscriber shall retain the right to deactivate his terminal.
- (2) The City, the grantee or any person shall not, without prior written valid authorization from each subscriber so affected, provide any data identifying or designating subscribers. Any data so authorized will be made available to the authorizing subscriber in understandable fashion.
- (3) Any agreement or contract such as is necessary for (1) and (2) above shall not be part of any other contract or agreement and shall not be a condition of subscribing to the system.

22.37 SEPARABILITY. If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or word shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

CHAPTER 23
SHORELAND-WETLAND ZONING

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SHORELAND-WETLAND ZONING [#353 5/23/89]

23.01 STATUTORY AUTHORIZATION, FINDINGS OF FACT, STATEMENT OF PURPOSE AND TITLE.

- (1) STATUTORY AUTHORIZATION. This ordinance is adopted pursuant to the authorization in Sections 62.23, 62.231, 87.30 and 281.31, Wis. Stats.
- (2) FINDINGS OF FACT AND PURPOSE. Uncontrolled use of the shoreland-wetlands and pollution of the navigable waters of the municipality would adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The Legislature of Wisconsin has delegated responsibility to all municipalities to:
- (a) Promote the public health, safety, convenience and general welfare.
 - (b) Maintain the storm and flood water storage capacity of wetlands.
 - (c) Prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters.
 - (d) Protect fish, their spawning grounds, other aquatic life and wildlife by preserving wetlands and other aquatic habitat.
 - (e) Prohibit certain uses detrimental to the shoreland-wetland area.
 - (f) Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland-wetland excavation, filling and other earth moving activities.

23.02 DEFINITIONS. For the purpose of administering and enforcing this ordinance, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally. The following terms used in this ordinance mean:

- (1) ACCESSORY STRUCTURE OR USE means a detached subordinate structure or a use which is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related and which is located on the same lot as that of the principal structure or use.
- (2) BOATHOUSE as defined in Section 30.01(1d), Wis. Stats., means a structure used for the storage of watercraft and associated materials which has one or more walls or sides.
- (3) CLASS 2 PUBLIC NOTICE means publication of a public hearing notice under Chapter 985, Wis. Stats., in the official newspaper of the City. Publication is required on two consecutive weeks, the last at least seven days prior to the hearing.

- (4) CONDITIONAL USE means a use which is permitted by this ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the City Council.
- (5) DEPARTMENT means the Wisconsin Department of Natural Resources.
- (6) DEVELOPMENT means any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials.
- (7) DRAINAGE SYSTEM means one or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.
- (8) ENVIRONMENTAL CONTROL FACILITY means any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.
- (9) FIXED HOUSEBOAT as defined in Section 30.01(1r), Wis. Stats., means a structure not actually used for navigation which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.
- (10) NAVIGABLE WATER OR NAVIGABLE WATERS means Lake Superior, Lake Michigan, all natural inland lakes within this State, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this State, including the Wisconsin portion of boundary waters, which are navigable under the laws of this State. Under Section 281.31(2m), Wis. Stats., notwithstanding any other provision of law and administrative rule promulgated thereunder, a shoreland zoning ordinance or a wetland zoning ordinance required under Sections 61.351 or 62.231, Wis. Stats., does not apply to land adjacent to farm drainage ditches if:
- (a) Such lands are not adjacent to a natural navigable stream or river;
 - (b) Those parts of the drainage ditches adjacent to these lands were non-navigable streams before ditching; and
 - (c) Such lands are maintained in nonstructural agricultural use.

- (11) ORDINARY HIGH-WATER MARK means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.
- (12) PLANNING AGENCY means the Plan Commission created under Section 62.23(1), Wis. Stats., which acts on matters pertaining to planning and zoning.
- (13) SHORELANDS means the area within the following distances from the ordinary high-water mark of navigable waters, as defined under Section 281.31(2)(d), Wis. Stats.:
- (a) One thousand (1,000) feet from a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.
 - (b) Three hundred (300) feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.
- (14) SHORELAND-WETLAND DISTRICT means the zoning district, created in this shoreland-wetland zoning ordinance, comprised of shorelands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this ordinance.
- (15) UNNECESSARY HARDSHIP means that circumstances where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage height or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.
- (16) VARIANCE means an authorization granted by the Board of Appeals to construct or alter a building or structure in a manner that deviates from the dimensional standards of this ordinance.
- (17) WETLANDS means those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.
- (18) WETLAND ALTERATION means any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.

23.03 GENERAL PROVISIONS.

- (1) COMPLIANCE. The use of wetlands and the alteration of wetlands within the shoreland area of the City shall be in full compliance with the terms of this ordinance and other applicable local, State or Federal regulations. (However, see Section 23.05 of this ordinance, for the standards applicable to non-conforming uses.) All permitted development shall require the issuance of a zoning permit unless otherwise expressly excluded by a provision of this ordinance.

- (2) MUNICIPALITIES AND STATE AGENCIES REGULATED. Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if Section 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of State highways and bridges by the Wisconsin Department of Transportation are exempt when Section 30.12(4)(a), Wis. Stats., applies.
- (3) ABROGATION AND GREATER RESTRICTIONS.
- (a) This ordinance supersedes all the provisions of any City zoning ordinance enacted under Sections 61.35, 62.23 or 87.30, Wis. Stats., which relate to floodplains and shoreland-wetlands, except that where another City zoning ordinance is more restrictive than this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
- (b) This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.
- (4) 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 City and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this ordinance is required by a standard in Chapter NR 117, Wis. Adm. Code, and where the ordinance provision is unclear, the provision shall be interpreted in light of the Chapter NR 117 standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.
- (5) SEVERABILITY. Should any portion of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.
- (6) ANNEXED AREAS. The Manitowoc/Calumet County shoreland zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the City Administrator.

23.04 SHORELAND-WETLAND ZONING DISTRICT.

- (1) SHORELAND- WETLAND ZONING MAPS. The following maps are hereby adopted and made part of this ordinance and are on file in the office of the City Administrator:
- (a) Wisconsin Wetland Inventory maps stamped "FINAL" on July 15, 1987.
- (b) Floodplain zoning maps titled Firm and dated January 3, 1985.

(c) United States Geological Survey maps dated April 23, 1962.

(d) Amended floodplain zoning map dated August 31, 1998.

(2) DISTRICT BOUNDARIES.

(a) The shoreland-wetlands zoning district includes all wetlands in the municipality which are five acres or more and are shown on the final Wetland Inventory Map that has been adopted and made a part of this ordinance and which are:

1. Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the municipality shall be presumed to be navigable if they are shown on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this ordinance.
2. Within three hundred (300) feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps which have been incorporated by reference and made a part of this ordinance. Floodplain zoning maps adopted in Section 23.04(1)(b) and (1)(d) shall be used to determine the extent of floodplain areas.

(b) Determinations of navigability and ordinary high-water mark location shall initially be made by the Building Inspector. When questions arise, the Building Inspector shall contact the appropriate district office of the Department for a final determination of navigability or ordinary high-water mark.

(c) When an apparent discrepancy exists between the shoreland-wetland district boundary shown on the official zoning maps and actual field conditions at the time the maps were adopted, the Building Inspector shall contact the appropriate district office of the Department to determine if the shoreland-wetland district boundary as mapped is in error. If Department staff concur with the Building Inspector that a particular area was incorrectly mapped as a wetland, the Building Inspector shall have the authority to immediately grant or deny a zoning permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors shown on the official shoreland-wetland zoning maps, the Building Inspector shall be responsible for initiating a map amendment within a reasonable period.

(3) PERMITTED USES. The following uses are permitted subject to the provisions of Chapters 30 and 31, Wis. Stats., and the provisions of other local, State and Federal laws, if applicable:

- (a) Activities and uses which do not require the issuance of a zoning permit, provided that no wetland alteration occurs:
1. Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating.
 2. The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops.
 3. The practice of silviculture, including the planting, thinning and harvesting of timber.
 4. The pasturing of livestock.
 5. The cultivation of agricultural crops.
 6. The construction and maintenance of duck blinds.
- (b) Uses which do not require the issuance of a zoning permit and which may involve wetland alterations only to the extent specifically provided below:
1. The practice of silviculture, including limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silviculture activities if not corrected.
 2. The cultivation of cranberries, including limited wetland alterations necessary for the purpose of growing and harvesting cranberries.
 3. The maintenance and repair of exiting drainage systems to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is otherwise permissible and that dredged spoil is placed on existing spoil banks where possible.
 4. The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance.
 5. The construction and maintenance of piers, docks, and walkways, observation decks and trail bridges built on pilings, including limited excavating and filling necessary for such construction or maintenance.
 6. The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district provided that such installation or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the shoreland-wetland listed in Section 23.07(c) of this ordinance.
 7. The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.

- (c) Uses which are allowed upon the issuance of a zoning permit and which may include wetland alterations only to the extent specifically provided below:
1. The construction and maintenance of roads which are necessary for the continuity of the municipal street system, the provision of essential utility and emergency services or to provide access to uses permitted under Section 23.04(3) of this ordinance provided that:
 - a. The road cannot, as a practical matter, be located outside the wetland;
 - b. The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland listed in Section 23.07(c) of this ordinance;
 - c. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
 - d. Road construction activities are carried out in the immediate area of the roadbed only; and
 - e. Any wetland alteration must be necessary for the construction or maintenance of the road.
 2. The construction and maintenance of nonresidential buildings provided that:
 - a. The building is used solely in conjunction with a use permitted in the shoreland-wetland district or for the raising of waterfowl, minnows or other wetland or aquatic animals;
 - b. The building cannot, as a practical matter, be located outside the wetland;
 - c. The building does not exceed 500 square feet in floor area; and
 - d. Only limited filling and excavating necessary to provide structural support for the building is allowed.
 3. The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves and public boat launching ramps, provided that:
 - a. Any private development allowed under this paragraph shall be used exclusively for the permitted purpose;
 - b. Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches or the construction of park shelters or similar structures is allowed;

environmental control facility in existence on May 7, 1982 related to such a structure. All other modifications to nonconforming structures are subject to Section 62.23(7)(h), Wis. Stats.

- (3) Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this ordinance adopted under Sections 61.351 or 62.231 Wis. Stats., may be continued although such use does not conform with the provisions of the ordinance.
- (4) The maintenance and repair of nonconforming boathouses which are located below the ordinary high-water mark of any navigable waters shall comply with the requirements of Section 30.121, Wis. Stats.
- (5) Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.

23.06 ADMINISTRATIVE PROVISIONS.

(1) ZONING ADMINISTRATOR. The City Administrator is appointed Zoning Administrator for the purpose of administering and enforcing this ordinance. The Zoning Administrator shall have the following duties and powers:

- (a) Advise applicants as to the provisions of this ordinance and assist them in preparing permit applications and appeal forms.
- (b) Issue permits and certificates of compliance and inspect properties for compliance with this ordinance.
- (c) Keep records of all permits issued, inspections made, work approved and other official actions.
- (d) Have access to any structure or premises between the hours of 8 A.M. and 6 P.M. for the purpose of performing these duties.
- (e) Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments within 10 days after they are granted or denied, to the appropriate district office of the Department.
- (f) Investigate and report violations of this ordinance to the City Attorney.

(2) ZONING PERMITS.

- (a) WHEN REQUIRED. Unless another section of this ordinance specifically exempts certain types of development from this requirement, a zoning permit shall be obtained from the Zoning Administrator before any new development, as defined in Section 23.02(2)(f) of this ordinance, or any change in the use of an existing building or structure is initiated.

(b) APPLICATION. Any application for a zoning permit shall be made to the Zoning Administrator upon forms furnished by the City and shall include, for the purpose of proper enforcement of these regulations, the following information:

1. GENERAL INFORMATION.

- a.** Name, address, and telephone number of applicant, property owner and contractor, where applicable.
- b.** Legal description of the property and a general description of the proposed use or development.
- c.** Whether or not a private water supply or sewage system is to be installed.

2. SITE DEVELOPMENT PLAN. The site development plan shall be submitted as a part of the permit application and shall contain the following information drawn to scale:

- a.** Dimensions and area of the lot;
- b.** Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways;
- c.** Description of any existing or proposed on-site sewage systems or private water supply systems;
- d.** Location of the ordinary high-water mark of any abutting navigable waterways;
- e.** Boundaries of all wetlands;
- f.** Existing and proposed topographic and drainage features and vegetative cover;
- g.** Location of floodplain and floodway limits on the property as determined from floodplain zoning maps;
- h.** Location of existing or future access roads; and
- i.** Specifications and dimensions for areas of proposed wetland alteration.

3. EXPIRATION. All permits issued under the authority of this ordinance shall expire 6 months from the date of issuance.

(3) CERTIFICATES OF COMPLIANCE.

(a) Except where no zoning permit or conditional use permit is required, no land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the Zoning Administrator subject to the following provisions:

- 1.** The certificate of compliance shall show that the building or premises or part thereof, and the proposed use thereof, conform to the provisions of this ordinance.

2. Application for such certificate shall be concurrent with the application for a zoning or conditional use permit.
 3. The certificate of compliance shall be issued within 10 days after notification of the completion of the work specified in the zoning or conditional use permit, providing the building or premises and proposed use thereof conform with all the provisions of this ordinance.
 - (b) The Zoning Administrator may issue a temporary certificate of compliance for a building, premises or part thereof pursuant to rules and regulations established by the City Council.
 - (c) Upon written request from the owner, the Zoning Administrator shall issue a certificate of compliance for any building or premises existing at the time of ordinance adoption, certifying after inspection, the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this ordinance.
- (4) CONDITIONAL USE PERMITS.**
- (a) **APPLICATION.** Any use listed as a conditional use in this ordinance shall be permitted only after an application has been submitted to the Plan Commission for review and recommendation thereon by the Plan Commission to the City Council and public hearing before the City Council.
 - (b) **CONDITIONS.** Upon consideration of the permit application and the standards applicable to the conditional uses designated in Section 23.04(3) of this ordinance, the City Council shall attach such conditions to a conditional use permit, in addition to those required elsewhere in this ordinance, as are necessary to further the purposes of this ordinance as listed in Section 23.01(2). Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; erosion controls; increased setbacks; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction. To secure information upon which to base its determination, the City Council may require the applicant to furnish, in addition to the information required for a zoning permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this ordinance.
- (5) FEES.** The municipal governing body may, by resolution, adopt fees for the following:
- (a) Zoning permits.
 - (b) Certificates of compliance.
 - (c) Public hearings.

(d) Legal notice publications.

(e) Conditional use permit.

(f) Rezoning petitions.

(6) RECORDING. Where a zoning permit or conditional use permit is approved, an appropriate record shall be made by the Zoning Administrator of the land use and structures permitted.

(7) REVOCAION. Where the conditions of a zoning permit or conditional use permit are violated, the permit shall be revoked by the Board of Appeals.

(8) BOARD OF APPEALS. The mayor shall appoint a Board of Appeals under Section 62.23(7)(e), Wis. Stats., consisting of five members subject to confirmation by the City Council as set forth in Section 17.39 of the City Ordinances. The Board of Appeals shall adopt rules for the conduct of its business as required by Section 62.23(7)(e)3., Wis. Stats.

(a) POWER AND DUTIES.

1. Shall have the powers authorized in Section 62.23 Wis. Stats., as specifically set forth in Section 17.39(3)(c) of the City Ordinances.

2. Shall hear and decide applications for conditional use permits.

3. May authorize upon appeal a variance from the dimensional standards of this ordinance where an applicant convincingly demonstrates:

a. That literal enforcement of the terms of the ordinance will result in unnecessary hardship for the applicant;

b. That the hardship is due to special conditions unique to the property; and is not self-created or based solely on economic gain or loss;

c. That such variance is not contrary to the public interest as expressed by the purpose of this ordinance; and

d. That such variance will not grant or increase any use of property which is prohibited in the zoning district.

(b) APPEALS TO THE BOARD. Appeals to the Board of Appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the community affected by any order, requirement, decision, or determination of the Zoning Administrator or other administrative official. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the official whose decisions is in question, and with the Board of Appeals, a notice of appeal specifying the reasons for the appeal. The Zoning Administrator

or other official whose decision is in question shall transmit to the Board all the papers constituting the record on the matter appealed.

(c) PUBLIC HEARING.

1. Before making a decision on an appeal or application, the Board of Appeals shall, within a reasonable period of time, hold a public hearing. The Board shall give public notice of the hearing by publishing a class 2 notice under Chapter 985, Wis. Stats., specifying the date, time and place of the hearing and the matters to come before the board. At the public hearing, any party may present testimony in person, by agent or by attorney.
2. A copy of such notice shall be mailed to the parties in interest and the appropriate district office of the Department at least 10 days prior to all public hearings on issues involving shoreland-wetland zoning.

(d) DECISIONS.

1. The final disposition of an appeal or application for a conditional use permit before the Board of Appeals shall be in the form of a written decision, made within a reasonable time after the public hearing and signed by the Board chairperson. Such decision shall state the specific facts which are the basis of the Board's determination and shall either affirm, reverse, or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or prosecution, or grant the application for a conditional use.
2. A copy of such decision shall be mailed to the parties in interest and the appropriate district office of the Department of Natural Resources (DNR) within 10 days after the decision is issued.

23.07 AMENDING SHORELAND-WETLAND ZONING REGULATIONS.

(1) The City Council may alter, supplement or change the district boundaries and the regulations contained in this ordinance in accordance with the requirements of Section 62.23(7)(d)2, Wis. Stats., NR 117, Wis. Adm. Code, and the following:

- (a)** A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the DNR within 5 days of the submission of the proposed amendment to the municipal planning agency.
- (b)** All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the Plan Commission, and a public hearing shall be held after class II notice as

required by Section 62.23(7)(d)2, Wis. Stats. The appropriate district office of the DNR shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

(c) In order to ensure that this ordinance will remain consistent with the shoreland protection objectives of Section 281.31, Wis. Stats., the City Council may not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following wetland functions:

1. Storm and flood water storage capacity;
2. Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;
3. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
4. Shoreline protection against erosion;
5. Fish spawning, breeding, nursery or feeding grounds;
6. Wildlife habitat; or
7. Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.

(d) Where the district office of the DNR determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in Section 23.07(c) of this ordinance, the DNR shall notify the municipality of its determination either prior to or during the public hearing held on the proposed amendment.

(e) The appropriate district office of the DNR shall be provided with:

1. A copy of the recommendation and report, if any, of the Plan Commission on a proposed text or map amendment, within 10 days after the submission of those recommendations to the **City Council**.
2. Written notice of the action on the proposed text or map amendment within 10 days after the action is taken.

(f) If the DNR notifies the City Council in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in Section 23.07(c) of this ordinance, that proposed amendment, if approved by the City Council, shall not become effective until more than 30 days have elapsed since written notice of the municipal approval was mailed to the DNR, as required by Section 23.07(1)(e)2 of this ordinance. If within the 30 day period the DNR

notifies the City that the DNR intends to adopt a superseding shoreland-wetland zoning ordinance for the City as provided by Section 62.231(6), Wis. Stats., the proposed amendment shall not become effective until the ordinance adoption procedure under Section 62.231(6), Wis. Stats. is completed or otherwise terminated.

23.08 ENFORCEMENT AND PENALTIES. Any development, building or structure or accessory building or structure constructed, altered, added to, modified, rebuilt or replaced or any use or accessory use established after the effective date of this ordinance in violation of the provisions of this ordinance, by any person, firm, association, corporation, limited liability company or limited liability partnership (including building contractors or their agents) shall be deemed a violation. The Zoning Administrator shall refer violations to the City Attorney who shall prosecute such violations. Any person, firm, association, corporation, limited liability company or limited liability partnership which violates or refuses to comply with any of the provisions of this ordinance shall be subject to a forfeiture as established in City Ordinance 25.04, together with the taxable costs of such action. Each day of continued violation shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated by suit of the municipality, the State, or any citizen thereof pursuant to Section 87.30(2), Wis. Stats.

CHAPTER 24
ADMINISTRATIVE REVIEW PROCEDURE

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24.01 LEGISLATIVE PURPOSE. The purpose of this chapter is to afford a constitutionally sufficient, fair and orderly administrative review procedure in connection with determinations by City authorities which involve constitutionally protected rights of specific persons which are entitled to due process protection under the Fourteenth Amendment of the United States Constitution.

24.02 REVIEW OF ADMINISTRATIVE DETERMINATIONS. Any person having a substantial interest which is adversely affected by an administrative determination of a governing board, commission, committee, agency, official or employee of the City or an agent acting on its behalf as set forth in Section 24.03 may have such determination reviewed as provided in this chapter. The remedies under this chapter shall not be exclusive. No department, board, commission, agency, officer or employee of the City who is aggrieved may initiate review under this chapter of a determination of any other department, board, commission, agency, officer or employee of the City, but may respond or intervene in a review proceeding under this chapter initiated by another.

24.03 DETERMINATIONS REVIEWABLE. The following determinations are reviewable under this chapter:

- (1) The grant or denial in whole or in part, after application, of an initial permit, license, right, privilege or authority, except an alcohol beverage license.
- (2) The suspension, revocation or nonrenewal of an existing permit, license, right, privilege or authority, except as provided in Section 24.04(5).
- (3) The denial of a grant of money or other thing of substantial value under a statute or ordinance prescribing conditions of eligibility for such grant.
- (4) The imposition of a penalty or sanction upon any person except a City employee or officer, other than by a court.

24.04 DETERMINATIONS NOT SUBJECT TO REVIEW. Except as provided in Section 24.03, the following determinations are not reviewable under this chapter:

- (1) A legislative enactment. A legislative enactment is an ordinance, resolution or adopted motion of the City Council.
- (2) Any action subject to administrative or judicial review procedures under State Statutes or other provisions of this Code.

- (3) The denial of a tort or contract claim for money required to be filed with the City under Section 62.25, Wis. Stats.
- (4) The suspension, removal, disciplining or nonrenewal of a contract of a City employee or officer.
- (5) The grant, denial, suspension or revocation of an alcohol beverage license under Sections 125.04 and 125.12, Wis. Stats.
- (6) Judgments and orders of a court.
- (7) Determinations made during municipal labor negotiations.
- (8) Notwithstanding any other provision of this chapter, any action or determination of a City authority which does not involve the constitutionally protected right of a specific person or persons to due process in connection with the action or determination.

24.05 MUNICIPAL AUTHORITY DEFINED. "Municipal authority" includes the City Council, commission, committee, agency, official, employee or agent of the City making a determination under Section 24.02.

24.06 PERSONS AGGRIEVED. A person aggrieved includes any individual, partnership, corporation, limited liability company, association, public or private organization, and any official, department, board, commission or agency of the City, whose rights, duties or privileges are adversely affected by a determination of a municipal authority.

24.07 REDUCING DETERMINATION TO WRITING. If a determination subject to this chapter is made orally or, if in writing, does not state the reasons therefor, the municipal authority making such determination shall, upon written request of any person aggrieved by such determination made within 10 days of notice of such determination, reduce the determination and the reasons therefor to writing and mail or deliver such determination and reasons to the person making the request. The determination shall be dated and shall advise such person of his right to have such determination reviewed, shall advise that such review may be taken within 30 days and shall name the office or person to whom a request for review shall be addressed.

24.08 TIME WITHIN WHICH APPEAL MAY BE TAKEN. A person aggrieved may appeal from a decision within 30 days of notice of such decision by filing with or mailing to the office of the Administrator a written notice of appeal. The notice shall state the aggrieved person's name and the reasons for his objection to the determination.

24.09 ADMINISTRATIVE APPEAL.

- (1) TIME OF HEARING. The City shall provide the appellant a hearing on an appeal under Section 24.11 within 30 days of receipt of the notice of appeal filed or mailed under Section 24.11 and shall serve the appellant with notice of such hearing by mail or personal service at least 20 days before such hearing.
- (2) CONDUCT OF HEARING. At the hearing, the appellant and the City may be represented by counsel and may present evidence and call and examine witnesses and cross-examine witnesses of the other party. Such witnesses shall be sworn by the person conducting the hearing.
- (3) RECORD OF HEARING. The person conducting the hearing or a person employed for the purpose of making a record of the hearing shall take notes of the testimony and shall mark and preserve all exhibits. The person conducting the hearing may, and upon request of the appellant shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the City.

24.10 FINAL DETERMINATION. Within 20 days of completion of the hearing conducted under Section 24.09 and the filing of briefs, if any, the decision maker shall mail or deliver to the appellant its written determination, stating the reasons therefor. Such determination shall be a final determination.

24.11 JUDICIAL REVIEW.

- (1) As provided in Section 68.13, Wis. Stats., any party to a proceeding resulting in a final determination may seek review thereof by writ of certiorari within 30 days of receipt of the final determination. The court may affirm or reverse the final determination, or remand to the decision maker for further proceedings consistent with the court's decision.
- (2) If review is sought of a final determination, the record of the proceedings shall be transcribed at the expense of the person seeking review. A transcript shall be supplied to anyone requesting the same at the requester's expense. If the person seeking review establishes impecuniousness to the satisfaction of the reviewing court, the court may order the proceedings transcribed at the expense of the City and the person seeking review shall be furnished a free copy of the transcript. By stipulation, the court may order a synopsis of the proceedings in lieu of a transcript. The court may otherwise limit the requirement for transcript.

24.12 LEGISLATIVE REVIEW.

- (1) Seeking review pursuant to Section 24.09 or 24.11 does not preclude a person aggrieved from seeking relief from the City Council or any of its boards, commissions, committees or agencies which may have jurisdiction.
- (2) If, in the course of legislative review under this section, a determination is modified, such modification and any evidence adduced before the City Council, board, commission, committee or agency shall be made part of the record on review under Section 68.10, Wis. Stats.
- (3) The City Council, board, commission, committee or agency conducting a legislative review under this section need not conduct the type of hearing required under Section 24.09.

24.13 AVAILABILITY OF METHODS OF RESOLVING DISPUTES. This chapter does not preclude the City and person aggrieved from employing arbitration, mediation or other methods of resolving disputes and does not supersede contractual provisions for that purpose.

24.14 APPEALS - WHO TO HEAR.

- (1) Appeals from decisions by a municipal authority, except decisions by the Building Inspector, shall be heard by the two members of the standing committee of the Council most closely related to the subject matter of the appeal plus the President of the Common Council, or if the President of the Common Council is one of the two persons on the standing committee, then by the two persons on the committee and a third person to be appointed by the Mayor with approval of the Common Council.
- (2) Appeals from decisions by the Building Inspector shall be heard by the Board of Appeals pursuant to Section 17.39 of this Municipal Code. The provisions of this chapter to the extent they do not conflict with Section 17.39 shall govern appeals of decisions of the Building Inspector.

CHAPTER 25
CONSTRUCTION AND EFFECT OF ORDINANCES

[#420 5/25/99]

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25.01 RULES OF CONSTRUCTION. In the construction of this Code of general ordinances, the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the ordinance.

- (1) **WISCONSIN STATUTES.** All references to "Wisconsin Statutes" or "Wis. Stats.," shall mean the Wisconsin Statutes in effect as published by the State of Wisconsin.
- (2) **GENDER, SINGULAR AND PLURAL.** Every word in this Code and in any ordinance imparting the masculine gender may extend and be applied to females as well as males, and every word imparting the singular number only may extend and be applied to several persons or things as well as to one person or thing; provided these rules of construction shall not be applied to any provision which contains any express language excluding such construction or when the subject matter or context of such provision may be repugnant thereto.
- (3) **PERSON.** The word "person" extends and applies to natural persons, firms, corporations, associations, partnerships, limited liability companies, or other bodies politic and all entities capable of being sued, unless plainly inapplicable.
- (4) **ACTS OF AGENTS.** When a provision requires an act to be done which may, by law, as well be done by an agent as by the principal, such requirement shall be construed to include all such acts when done by an authorized agent.

25.02 CONFLICT AND SEPARABILITY.

- (1) **CONFLICT OF PROVISIONS.** If the provisions of the different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions arising out of the subject matter of such chapter.
- (2) **SEPARABILITY OF CODE PROVISIONS.** If any section, subsection, sentence, clause or phrase of the Code is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof. The Council hereby declares that they would have passed this Code and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions may be declared invalid or unconstitutional.

25.03 ADMINISTRATOR TO FILE DOCUMENTS INCORPORATED BY REFERENCE. Whenever in this Code any standard, code, rule, regulation or other written or printed matter is adopted by reference, it

shall be deemed incorporated in this Code as if fully set forth herein and the Administrator shall file, deposit and keep in his office a copy of the code, standard, rule, regulation or other written or printed matter as adopted. Materials so filed, deposited and kept shall be public records open for examination with proper care by any person during the Administrator's office hours, subject to such orders or regulations as the Administrator may prescribe for their preservation.

25.04 PENALTY PROVISIONS.

(1) GENERAL PENALTY. Except as otherwise provided, any person who shall violate any of the provisions of this Code shall, upon conviction of such offense, be subject to a penalty, which shall be as follows:

(a) First Offense. Any person who shall violate any provision of this Code shall, upon conviction thereof, forfeit not less than \$25 nor more than \$500, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution may have his or her motor vehicle operating privilege suspended for a period not to exceed five years, or be imprisoned in the County Jail until such forfeiture and costs are paid, under the terms of Section 800.095, Wis. Stats. Imprisonment in the County Jail for default in payment of a municipal forfeiture shall not exceed ninety days.

(b) Second and Subsequent Offense. Any person who shall violate any provisions of this Code shall, upon conviction thereof, forfeit not less than \$50 nor more than \$500, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution may have his or her motor vehicle operating privilege suspended for a period not to exceed five years, or be imprisoned in the County Jail until such forfeiture and costs are paid, under the terms of Section 800.095, Wis. Stats. Imprisonment in the County Jail for default in payment of a municipal forfeiture shall not exceed ninety days.

(2) CONTINUED VIOLATIONS. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Code shall preclude the City from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.

(3) EXECUTION AGAINST PROPERTY OF PERSON CONVICTED. Whenever any person fails to pay any forfeiture and costs of prosecution upon the order of any court for violation of any ordinance of the City, the Court may, in lieu of ordering a suspension of the person's motor vehicle operating privilege or imprisonment of the person in the County Jail, or after the person convicted has been released from custody, issue an execution against his property for such forfeiture and costs.

(4) USE OF CITATIONS.

- (a)** Where a citation has been issued to a person for a violation of a City ordinance, the person named as the alleged violator in said citation may appear in court at the time specified in the citation, or may mail or deliver personally a cash deposit in the amount set forth on the citation, within the time and to the Municipal Court, or Clerk of the Municipal Court, as specified in the citation. If a person makes a cash deposit, the person may nevertheless appear in court at the time specified in the citation, provided that the cash deposit may be retained for application against any forfeiture, restitution, penalty assessment, jail assessment or other assessment that may be imposed by the court.
- (b)** If a person appears in court in response to a citation, that citation may be used as the initial pleading, unless the court directs that a formal complaint be made, and the appearance confers personal jurisdiction over the person. The person may then plead guilty, no contest or not guilty. If the person pleads guilty or no contest, the court shall accept the plea, enter judgment of guilty and impose a forfeiture, penalty assessment, jail assessment and such other assessments as may be established by statute. If the Court finds that the violation meets the conditions set forth in Section 800.093(1) Wis. Stats., the court may order restitution under said statute. A plea of not guilty shall put all matters in the case at issue, and the matter shall be set for trial.
- (c)** If the alleged violator makes a cash deposit or fails to appear in court, the citation may serve as the initial pleading and the violator shall be considered to have tendered a plea of no contest or submitted to a forfeiture, the penalty assessment imposed under State Statutes, and the jail assessment imposed under State Statutes, as well as any other assessments applying to the particular case under the Wisconsin Statutes and these Municipal Ordinances. The court may either accept the plea of no contest and enter judgment accordingly or reject the plea. If the court finds the violation to meet the conditions set forth in Section 800.093(1), Wis. Stats., the court may summon the alleged violator into court to determine if restitution shall be ordered under said statute. If the court accepts the plea of no contest, the defendant may move within ten (10) days after the date set for appearance to withdraw the plea of no contest, open the judgment and enter a plea of not guilty if the defendant shows to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise or excusable neglect. If the plea of no contest is accepted and that is subsequently changed to a plea of not guilty, no costs or fees shall be taxed against the violator, but a penalty assessment, jail assessment, and

other applicable assessments under Wisconsin Statutes shall be assessed. If the court rejects the plea of no contest, an action for collection of the forfeiture, penalty assessment, jail assessment or other applicable assessments under the Wisconsin Statutes may be commenced. The City may commence action under Section 66.0114(1) Wis. Stats. The citation may be used as the complaint in an action for collection of the forfeiture, penalty assessment, jail assessment or other assessments provided for under Wisconsin Statutes.

- (d) If the alleged violator does not make a cash deposit and fails to appear in court at the time specified in the citation, the court may issue a summons or warrant for the defendant's arrest or consider the nonappearance to be a plea of no contest and enter judgment accordingly if service was completed as provided under Section 968.04(3)(b)2, Wis. Stats., or by personal service by a City employee, or the City may commence an action for collection of the forfeiture, penalty assessment, jail assessment and any other applicable assessments under State law. The City may commence action under Section 66.0114(1). The citation may be used as a complaint in the action for the collection of the forfeiture, penalty assessment, jail assessment and any other applicable assessments under Wisconsin Statutes. If the court considers the nonappearance to be a plea of no contest and enters judgment accordingly, the court shall promptly mail a copy or notice of the judgment to the defendant. The judgment shall allow the defendant not less than twenty (20) days from the date of judgment to pay any forfeiture, penalty assessment, jail assessment and any other applicable assessments under the Wisconsin Statutes. If the defendant moves to open the judgment within six (6) months after the court appearance date fixed in the citation, and shows to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise or excusable neglect, the court shall reopen the judgment, accept a not guilty plea and set a trial date
- (e) The issuance of a citation under this section shall not preclude a proceeding under any other ordinance or law related to the same or any other matter, nor shall the proceeding under any other ordinance or law relating to the same or any other matter preclude the issuance of a citation under this section.
- (f) If the action is to be used in Municipal Court, the citation which shall be used shall be that provided for by Section 800.02(2), Wis. Stats.

25.05 REPEAL OF GENERAL ORDINANCES. Adoption of a revised Code shall not have the effect of repealing those ordinances which are not inconsistent with said revised Code. In addition, the Code

shall not be considered to have repealed any special or charter ordinances of the City or parts of general ordinances relating to the following subjects which do not conflict with any of the provisions of the Municipal Code of the City of Kiel, as revised:

- (1) Any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of such Code;
- (2) The issuance of corporate bonds and notes of the City of whatever name and description; or other obligations promising or guaranteeing the payment of money;
- (3) Fixing of salaries or wages of public officials or employees;
- (4) Rights, licenses, permits or franchises or the creation of any contractual obligation with the City;
- (5) The establishment of grades, curb lines and widths of sidewalks in the public streets and alleys.
- (6) The lighting of streets, sidewalks and alleys;
- (7) Any ordinance prescribing any fee or payment of money to the City;
- (8) Any regulations regarding plats or subdivisions in the City, or of annexation of territory to the City;
- (9) Prescribing traffic regulations for specific streets, such as ordinances establishing speed limits or designating one-way streets, no parking areas, truck routes, stop intersections, and intersections where traffic is to be controlled by signals;
- (10) Establishing or amending zoning regulations and creation of boards for enforcement of the zoning map or rezoning property;
- (11) The naming, changing, establishing or dedicating or any paving, widening, extension, vacating or opening of streets or public ways, public grounds and parks and other public places;
- (12) The letting of contracts with or without bids;
- (13) Tax and special assessment levies or charges;
- (14) The establishment of wards, ward boundaries and election districts;
- (15) Any ordinance regarding the creation and establishment of districts wherein all wires, cables, and other utility lines are required to be located underground;
- (16) Establishing positions or classifying positions of City officers and employees or any personnel regulations;
- (17) Any purchase of land;
- (18) Any releases of persons, firms or corporations, limited liability companies or limited liability partnerships from liability;
- (19) Construction of any public works;

- (20) Ratification or rescission of any agreement with the City or the act of any municipal officer, board or commission;
- (21) Water, sewer and electric main and line construction, and establishment of water, sewer and electric rates, rules and regulations;
- (22) Budget ordinances, resolutions and actions, and appropriations;
- (23) Claim approvals;
- (24) Municipal utility regulations;
- (25) Establishment and regulation of cable communications systems;
- (26) Code of ethics;
- (27) Any ordinance which is temporary although general in effect;
- (28) Any ordinance which is special although permanent in effect; and
- (29) Any ordinance containing any administrative provisions.

25.06 EFFECT OF AMENDMENT. The amendment of any section or provision of this Code or of any other ordinance or resolution of the Council shall be governed by the following rules:

- (1) Any additions or amendments to this Code, when passed in such form as to indicate the intention of the Common Council to make such additions or amendments a part of this Code, are incorporated in this Code. A reference to this Code shall be understood as including such additions and amendments. All ordinances passed subsequent to the adoption of the Code as revised, which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion therein. When subsequent ordinances repeal any chapter, section or subsection or any portion thereof, such repealed portions may be excluded from this Code by the omission of same from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as this Code and subsequent ordinances numbered or omitted are readopted as a new code of ordinances by the Common Council.
- (2) Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this Code being amended in the following language: "That section ____ of the Municipal Code of the City of Kiel, Wisconsin, is hereby amended to read as follows:..." The new provisions shall then be set out in full as desired.
- (3) If a new section not then existing in the Code is to be added, the following language shall be used: "That the Municipal Code of the City of Kiel, Wisconsin, is hereby amended by adding a section to

be numbered ____, which section shall read as follows:..." The new section shall then be set out in full as desired.

- (4) All sections, articles, chapters or provisions of this Code desired to be repealed must be specifically repealed by section, article or chapter number, as the case may be.

25.07 EFFECT OF REPEALS. The repeal of any section or provision of this Code or of any other ordinance or resolution of the Council shall be governed by the following rules:

- (1) The repeal of an ordinance shall not revive any ordinance in force before or at the time the ordinance repealed took effect.
- (2) The repeal of an ordinance shall not affect a punishment or penalty incurred before the repeal took effect or any suit, prosecution or proceeding pending at the time of the repeal for an offense committed or cause of action arising under the ordinance repealed.

25.08 TITLE: EFFECTIVE DATE: CITATION. These ordinances shall be known as the "Municipal Code of the City of Kiel, Wisconsin" and shall take effect from and after passage and publication as provided in Section 62.11(4) and all other relevant provisions of the Wis. Stats. All references thereto shall be cited by section number (example: Section 13.06, Municipal Code of the City of Kiel).

25.09 KEEPING CODE CURRENT: REVISER'S AMENDMENTS. The following provisions shall govern the keeping current of the Municipal Code and revisions to the Code:

- (1) By contract or by City personnel, supplements to this Code shall be prepared and printed. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered as to fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of adoption of the latest ordinances included in the supplement.
- (2) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.
- (3) When preparing a supplement to this Code, the reviser shall make no substantive changes to such ordinances or resolutions but may renumber, rearrange and edit them first without submitting them

to the City Council; and such rearranging, renumbering and editing shall not affect the validity of such ordinances and resolutions or the provisions of this Municipal Code affected thereby.

CHAPTER 26
HISTORIC PRESERVATION ORDINANCE

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26.01 PURPOSE AND INTENT. It is hereby declared a matter of public policy that the protection, enhancement, perpetuation, and use of improvements or sites of special character or special architectural, archeological or historic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people. The purpose of this section is to:

- (1) Effect and accomplish the protection, enhancement, and preservation of such improvements, sites and districts which represent or reflect elements of the city's cultural, social, economic, political and architectural history.
- (2) Safeguard the city's historic, prehistoric and cultural heritage, as embodied and reflected in such historic structures, sites and districts.
- (3) Stabilize and improve property values, and enhance the visual and aesthetic character of the City.
- (4) Protect and enhance the city's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry.

26.02 DEFINITIONS. The definitions shall be as follows:

- (1) CERTIFICATE OF APPROPRIATENESS means the certificate issued by the committee approving alteration, rehabilitation, construction, reconstruction or demolition of a historic structure, historic site or any improvement in a historic district.
- (2) COMMITTEE means the Historic Preservation Committee or Committee created under this Section.
- (3) HISTORIC DISTRICT is an area designated by the Common Council on recommendation of the committee, that contains two or more historic improvements or sites.
- (4) HISTORIC SITE means any parcel of land of historic significance due to a substantial value in tracing the history or prehistory of man, or upon which a historic event has occurred, and which has been designated as a historic site under this section, or an improvement parcel, part thereof, on which is situated a historic structure and any abutting improvement parcel, or part thereof, used as and constituting part of the premises on which the historic structure is situated.
- (5) HISTORIC STRUCTURE means any improvement which has a special character or special historic interest or value as part of the development, heritage or cultural characteristics of the city, state, or nation and which has been designated as a historic structure pursuant to the provisions of this chapter.
- (6) IMRPOVEMENT means any building, structure, place, work of art or other object constituting a physical betterment of real property, or any part of such betterment, including, streets, alleys, sidewalks, curbs, lighting fixtures, signs and the like.

26.03 HISTORIC PRESERVATION COMMITTEE COMPOSITION. Historic Preservation Committee is hereby created, consisting of six members. Of the membership, two shall be alderpersons; and four shall be citizen members. The Mayor shall appoint the committee subject to confirmation by the Common Council.

26.04 HISTORIC STRUCTURE, HISTORIC SITE AND HISTORIC DISTRICT DESIGNATION CRITERIA.

- (1) For purposes of this ordinance, a historic structure, historic site, or historic district designation may be placed on any site, natural or improved, including any building, improvement or structure located thereon, or any area of particular historic, architectural, archeological or cultural significance to the City such as historic structure, sites, or districts which:
- (a) Exemplify or reflect the broad cultural, political, economic or social history of the nation, state or community; or
 - (b) Are identified with historic personages or with important events in national, state or local history; or
 - (c) Embody the distinguishing characteristics of an architectural type or specimen inherently valuable for a study of a period, style, method of construction, or of indigenous material or craftsmanship; or
 - (d) Are representative of the notable work of a master builder, designer or architect who influenced his age; or
 - (e) Have yielded, or may be likely to yield, information important to prehistory or history.
 - (f) The Committee shall adopt specific operating guidelines for historic structure, historic site and historic district designation providing such are in conformance with the provisions of this ordinance.

26.05 POWERS AND DUTIES.

- (1) Designation. The Committee shall have the power, subject to Section VI, to designate historic structures and or historic buildings and historic sites and to recommend designation of historic districts within the city limits. Such designations shall be made based on Section IV. Historic districts and historic buildings, shall be approved by the Common Council. Once designated, such historic structures, sites, and districts shall be subject to all the provisions of this ordinance.
- (a) Regulation of Construction, Reconstruction, Alteration and Demolition.

1. No owner or person in charge of a historic structure, historic site or structure within a historic district shall reconstruct, alter or demolish all or any part of the exterior of such property or construct any improvement upon such designated property or properties or cause or permit any such work to be performed upon such property or demolish such property unless a Certificate of Appropriateness has been granted by the Historic Preservation Committee. Also, unless such certificate has been granted by the committee, the building inspector shall not issue a permit for any such work.
2. Upon filing of any application for a Certificate of Appropriateness with the committee, the committee shall approve the application unless:
 - a. In the case of a designated historic structure or historic site, the proposed work would detrimentally change, destroy or adversely affect any exterior feature of the improvement or site upon which said work is to be done;
 - b. In the case of the construction of a new improvement upon a historic site, or within a historic district, the exterior of such improvement would adversely affect or not harmonize with the external appearance of other neighboring improvements on such site or within the district;
 - c. In the case of any property located in a historic district, the proposed construction, reconstruction, exterior alteration or demolition does not conform to the purpose and intent of this section and to the objectives and design criteria of the historic preservation plan for said district;
 - d. The building or structure is of such architectural or historical significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the people of the city and state;
 - e. In the case of a request for the demolition of a deteriorated building or structure, any economic hardship or difficulty claimed by the owner is self-created or is the result of any failure to maintain the property in good repair.
- (3) If the committee determines that the application for a Certificate of Appropriateness and the proposed changes are consistent with the character and features of the property or district, it shall issue the Certificate of Appropriateness. The committee shall make this decision within forty-five (45) days of the filing of the application.
- (4) The issuance of a Certificate of Appropriateness shall not relieve the applicant from obtaining other permits and approvals required by the city. A building permit or other municipal permit shall be

invalid if it is obtained without the presentation of the Certificate of Appropriateness required for the proposed work.

- (5) Ordinary maintenance and repairs may be undertaken without a Certificate of appropriateness provided that the work involves repairs to existing features of a historic structure or identical in appearance and provided that the work does not change the exterior appearance of the structure or site and does not require the issuance of a building permit.
 - (a) Appeals. Should the committee fail to issue a Certificate of appropriateness due to the failure of the proposal to conform to the guidelines, the applicant may appeal such decision to the Common Council within thirty (30) days. In addition, if the committee fails to issue a Certificate of Appropriateness, the committee shall, with the cooperation of the applicant, work with the applicant in an attempt to obtain a Certificate of Appropriateness within the guidelines of the ordinance.
 - (b) Recognition of Historic Structures, Sites and Districts. At such time as a historic structure, site or district has been properly designated, the committee, in cooperation with the property owner, may cause to be prepared and erected on such property at city expense, a suitable plaque declaring that such property is a historic structure, site or district.

26.06 PROCEDURES.

- (1) Designation of Historic Structures and Historic Sites
 - (a) The Committee may, after notice and public hearing, designate historic structures and historic sites, or rescind such designation or recommendation, after application of the criteria in Section IV above. At least ten (10) days prior to such hearing, the Committee shall notify the owners of record, as listed in the office of the city assessor, who are owners of property in whole or in part situated within two hundred (200) feet of the boundaries of the property affected.
 - (b) The Committee shall then conduct such public hearing and, in addition to the notified person, may hear expert witnesses and shall have the power to subpoena such witnesses and records as it deems necessary. The Committee may conduct an independent investigation into the proposed designation or rescission. Within ten (10) days after the close of the public hearing, the Committee may designate the property as either a historic structure, or a historic site, or rescind the designation. After the designation or rescission has been made, notification shall be sent to the property owner or owners. Notification shall also be given to the City Clerk, Building Inspector, Plan Commission, and the Assessor. The Committee shall cause the

designation or rescission to be recorded, at City expense, in the County Register of Deeds Office.

(2) Creation of Historic District

- (a)** For preservation purposes, the Historic Preservation Committee shall select geographically defined areas within the City to be designated as Historic Districts and shall prepare a historic preservation plan for each area. A Historic District may be designated for any geographic area of particular historic, architectural or cultural significance to the City, after application of the criteria in Section IV above. Each historic preservation plan prepared for or by the Historic Preservation Committee shall include a cultural and architectural analysis supporting the historic significance of the area, the specific guidelines for development, and a statement of preservation objectives.

(3) Review and Adoption Procedure

- (a)** Historic Preservation Committee. The Historic Preservation Committee shall hold a public hearing when considering the plan for a Historic District. Notice of the time, place and purpose of the public hearing shall be sent by the City Clerk to the Alderpersons of the Aldermanic District or Districts in which the Historic District is located, and the owner of record, as listed in the office of the City Assessor, who are owners of the property within the proposed Historic District or are situated in whole or part within two hundred (200) feet of the boundaries of the proposed Historic District. Said notice is to be sent at least ten (10) days prior to the date of the public hearing. Following the public hearing, the Historic Preservation Committee shall vote to recommend, reject or withhold action on the plan.
- (b)** The Common Council. The Common Council, upon receipt of the recommendation from the Historic Preservation Committee shall either designate or reject the Historic District. Designation of the Historic District shall constitute adoption of the plan prepared for that district and direct the implementation of said plan.

26.07 INTERIM CONTROL. No building permit shall be issued by the building inspector for alteration, construction, demolition, or removal of a nominated historic structure, historic site, or any property or structure within a nominated historic district from the date of the meeting of the Historic Preservation Committee at which a nomination form is first presented until the final disposition of the nomination by the Historic Preservation Committee.

26.08 SEPARABILITY. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.

CHAPTER 27
RECORDS RETENTION ORDINANCE

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27.01 GENERAL PROVISION. Under §19.21 (4)(a), municipalities shall notify the State Historical Society of Wisconsin (SHSW) prior to destroying records.

- (1) Retention Period. Refers to the time that the identified records must be kept until destruction.
- (2) Authority. Source which specifies the period of time for retaining records.

WMRM	Wisconsin State Municipal Records Manual
§	State Statutes
SCR	Supreme Court Rule
PSC	Public Service Commission
NR	Natural Resources

(3) SHSW notice refers to whether or not the State Historical Society of Wisconsin has waived the required statutory notification prior to destruction of records.

W	(waived) means records are not historical and the required 60-day notification is waived.
N	(nonwaived) means the records may have secondary historical value and therefore SHSW notification is required on a case-by-case basis prior to destruction.
N/A	Means not applicable and refers to those circumstances where a local unit of government is retaining a record permanently.

27.02 RETENTION SCHEDULES.

(1) ELECTED OFFICIALS. The following public records may be destroyed after the expiration of the designated retention period:

Records	Period of Retention	Authority	SHSW Notice
All records in their possession unless delegated in writing to the Town Clerk or his/her designee	1 year following termination of term	§19.33(1)	N

(2) CLERK'S OFFICE RECORDS. The following public records may be destroyed after the expiration of the designated retention period:

Records Retention Ordinance

Records	Period of Retention	Authority	SHSW Notice
Meeting Agenda	7 years	WMRM	W
Minutes Books	Permanent	WMRM	N/A
Audio Tapes	90 days if made solely for the purpose of drafting the minutes	WMRM and §19.21(7)	W
Ordinances	Permanent	WMRM	N/A
Resolutions	Permanent	WMRM	N/A
Municipal Code	Permanent	WMRM	N/A
Affidavits of Publication	3 Years	WMRM	W
Affidavits of Publication for ordinances and resolutions for budget amendments	Permanent	WMRM	N/A
Claims	7 Years		W
Lawsuits	Permanent		N/A
Insurance Policies and Certifications of Insurance	Permanent		N/A
Oaths of Office	7 Years after term of oath ends	WMRM	W
Title Insurance Policies	Permanent	WMRM	N/A
Easements	Permanent	WMRM	N/A
Leases	7 years following termination of lease	WMRM	W
Liquor and beer applications and licenses	4 Years	§125.04 (3)(i)	W
Other applications and licenses/permits issued by Town Clerk	4 Years	WMRM	W
Dog license reports to County Clerk	7 Years	WMRM	W
Proceedings of Board of Review on audio tapes or as stenographic notes, including transcriptions	7 Years (after final action by board of review or completion of appeal)	§70.47(8)(f)	W

Notice of determinations of the Board of Review	7 Years (after final action by board of review or completion of appeal)	§70.47(8)(f)	W
Legal Opinions	Permanent	WMRM	N/A
Contracts	7 Years	WMRM	W

(3) ELECTION RECORDS. All materials and supplies associated with an election may be destroyed according to the following schedule, unless there is a recount or litigation pending with respect to the election:

Records	Period of Retention	Authority	SHSW Notice
Unused ballots and materials	3 business days after the canvass is completed	§7.23(a)	W
Voter serial number slips	3 business days after the canvass is completed	§7.23(a)	W
Ballots (state, county, local)	30 Days after the election	§7.23(h)	W
Ballots (federal offices)****	EVT (22 months after election)	§7.23(f)	W
Application for absentee ballots	90 Days after the election (22 months after the election for federal offices)	§7.23(k) §7.23(f)	W
Forms associated with election such as tally sheets, inspector's statements, and nomination papers	90 Days after the election (22 months after the election for federal offices)	§7.23(k) §7.23(f)	W
Official canvass statements	10 Years after the election	§7.23(i)	W
Registration and poll lists- Nonpartisan primaries and election	2 Years after the election in which they were created for	§7.23(e)	W
Registration and poll lists- Partisan primaries and general elections	4 Years after the election	§7.23(e)	W
Cancelled registration cards	4 Years after cancellation	§7.23(c)	W

Records Retention Ordinance

Election notices	1 Year after the election (22 months for federal election)	§7.23(i) §7.23(f)	W
Proofs of publication and correspondence relative to publications	1 Year after the election (22 months for federal election)	§7.23(i) §7.23(f)	W
Campaign registration statement	6 Years after termination by the registrant	§7.23(d)	W
Campaign finance reports	6 Years after the date of receipt	§7.23(d)	W

**** Federal offices are President of the United States, U.S. Senator, and Congress

(4) FINANCE RECORDS. The following public records may be destroyed after the expiration of the designated retention period:

Records	Period of Retention	Authority	SHSW Notice
Bank statements, deposit books, slips, and stubs	7 years	WMRM	W
Bonds and/or coupons	7 Years after maturity	WMRM	W
Employment Records	7 Years following termination	WMRM	W
Applications for employment and resumes of persons not hired	7 Years		W
Receipt forms	7 Years	WMRM	W
Special assessment records	7 Years	WMRM	W
Tax levy certification of the school district clerk	3 Years (after audited)	WMRM	W
Certificates of apportionment	3 Years (after audited)	WMRM	W
State shared aid payment notices	6 Years (after audited)	WMRM	W
Final worksheet for determining allowable levy	5 Years (after audited)	WMRM	W
Statement of Taxes	Permanent	WMRM	N/A
Statement of new special assessments	5 Years (after audited)	WMRM	W
Statement of new sewer service charges	5 Years (after audited)	WMRM	W
General property tax credit certification	5 Years (after audited)	WMRM	W

Explanation of property tax credit certification	5 Years (after audited)	WMRM	W
Real property tax roll	15 Years	WMRM	N
Personal property tax roll	15 Years	WMRM	N
Financial reports (other than annual reports)	7 Years	WMRM	W

(5) PUBLIC WORKS RELATED RECORDS. The following public records may be destroyed after the expiration of the designated retention period:

Records	Period of Retention	Authority	SHSW Notice
Notice to contractors	7 Years (after completion of project) 2 Years (unsuccessful bidders)	WMRM	W
Bid bond	7 Years (after completion of project) 2 Years (unsuccessful bidders)	WMRM	W
Bidders proof of responsibility	7 Years (after completion of project) 2 Years (unsuccessful bidders)	WMRM	W
Bids	7 Years (after completion of project) 2 Years (unsuccessful bidders)	WMRM	W
Bid tabulations	2 Years	WMRM	W
Performance bond	7 Years (after completion of project)	WMRM	W
Contract	7 Years (after completion of project)	WMRM	W
Street vacation and dedications	Permanent	WMRM	N/A
Benchmark books	Permanent	WMRM	N/A
Section corner monument logs	Permanent	WMRM	N/A
Water, Storm, and Sanitary Sewer Main maps	Permanent	WMRM	N/A

(6) ASSESSMENT RECORDS. The following documents may be destroyed after the expiration of the designated retention period:

Records	Period of Retention	Authority	SHSW Notice
Master property record folders	5 Years after life of structure	WMRM	W
Index to owners	Until superseded	WMRM	W
Wisconsin real estate transfer returns	5 Years after information is transferred to master property record folders	WMRM	W
Tax exemption reports	10 Years	WMRM	W
Notice of increased assessment	5 Years unless assessment is appealed, retain 7 years after final BOR action or appeal completion	WMRM	W
Assessor's final report supplement – real and personal property	5 Years	WMRM	W
Assessor's final report real and personal property	5 Years	WMRM	W
Certified survey maps	Permanent	WMRM	N/A
Final Subdivision plats	Permanent	WMRM	N/A
Annexation plats	Permanent	WMRM	N/A
Assessor's plats	Permanent	WMRM	N/A
Conditional use permits	Permanent	WMRM	N/A

(7) ENGINEERING RECORDS. The following public records may be destroyed after the expiration of the designated retention period:

Records	Period of Retention	Authority	SHSW Notice
Annual Reports	Permanent	WMRM	N/A
Field Notes	Permanent	WMRM	N/A
Benchmark books (horizontal and vertical survey control in SE Wis.)	Permanent	WMRM	N/A
Section of corner monument logs	Permanent	WMRM	N/A
Official city maps	Permanent	WMRM	N/A
Water, storm, and sanitary sewer main maps	Permanent	WMRM	N/A
Profile and grade books	Permanent	WMRM	N/A
Excavation plans and private utilities	Permanent	WMRM	N/A
Index to maps	Permanent	WMRM	N/A
Applications to permits	Permanent	WMRM	N/A
Asbuilts (Sewer and Water)	Permanent	WMRM	N/A
Structure plans for municipal buildings and bridges	Life of structure	WMRM	W
Permits for excavation of streets including private utility companies	3 Years	WMRM	W
Fuel usage reports	2 Years	WMRM	W
Heavy equipment and vehicle (maintenance records)	Life of equipment	WMRM	W
Vehicle maintenance histories	Life of vehicle	WMRM	W
Storm sewer maps	Until superseded by asbuilts	WMRM	W
Quarter section maps	Until superseded	WMRM	W

(8) BUILDING INSPECTION RECORDS. The following records may be destroyed after the expiration of the designated retention period:

Records	Period of Retention	Authority	SHSW Notice
Address file	Permanent	WMRM	N/A
Certificates of occupancy	Until superseded	WMRM	W
Energy calculation worksheets	3 Years	WMRM	W
State approved commercial building plans	4 Years	WMRM	W
Permit fee receipts	7 Years	WMRM	W
Permit Ledger	7 Years	WMRM	W
Quarter section maps, copies	Until superseded	WMRM	W
Building Plans	1 Year after built	Uniform Dwelling Code	W
Applications and permits	Permanent	WMRM	N/A
Code compliance inspection reports	Permanent	WMRM	N/A
Weights and measures field reports	3 Years	WMRM	W

(9) PARK RECORDS. The following public records may be destroyed after the expiration of the designated retention period:

Records	Period of Retention	Authority	SHSW Notice
Master park plan	Permanent	WMRM	N/A
Plats	Permanent	WMRM	N/A
Aerial photographs	Permanent	WMRM	N/A
Reservation requests	30 Days. If payment receipts are attached: 7 Years	WMRM	W
Master reservation book	2 Years	WMRM	W

(10) PLANNING AND DEVELOPMENT DEPARTMENT RECORDS. The following public records may be destroyed after the expiration of the designated retention period:

Records	Period of Retention	Authority	SHSW Notice
Comprehensive master plan	Permanent	WMRM	N/A
Neighborhood plans	7 Years	WMRM	W
Storm water plans	7 Years	WMRM	W
Design manual and guides	7 Years	WMRM	W

(11) COURT RECORDS.

- (a) Responsibility:** You have the ultimate responsibility of maintaining court records, but you may delegate much of the actual recordkeeping duties to a clerk or assistant. (755.11) (19.33) (1)
- (b) Types of Records:** Records means all of the records subject to Supreme Court Rule 72 and includes both paper and non-paper records, such as emails and audio recordings. (755.001) (3)
- (c) A record must be maintained and include all information listed in §800.11. You may use the back of the citation or you can create your own recordkeeping form provided it contains all the legally required information.**

Description:	Retention Period:	Authority:
Records	5 Years after the entry of final judgment	Page 2-A for relevant Supreme Court Rules SCR 72.01 (24a), (24m)
Audio Recordings	10 Years	SCR 72.01 (47)
Exhibits	1 Year after the time for appeal has expired and the party who submitted the exhibit must be offered the return of the exhibit	
Ant records defined as confidential by rule or statute such as: non-traffic juvenile records	Must be destroyed by shredding, burning, or other means that will obliterate the record	SCR 72.02 (2)

***Court records should be kept in certain areas

(12) ELECTRIC, WATER AND SEWER UTILITY RECORDS. Kiel Utilities adopts the Wisconsin Public Service Commission Records Retention Regulations for Electric, Natural Gas, and Water Utilities retention schedule for utility records.

(13) POLICE RECORDS.

(a) Purpose. The purpose of this section is to establish records retention schedules for police records and authorize destruction of police records pursuant to the schedule on an annual basis. Records custodians do not have the authority to destroy records prior to the established retention period unless such records have been photographically or electronically reproduced as original records pursuant to Wis. Stats. § 16.61(7) and under this section.

(b) Destruction after request for inspection. No requested record may be destroyed until after the request is granted or 60 days after the request is denied. If an action is to commence under Wis. Stats. § 19.37, the requested record may not be destroyed until a court order is issued and all appeals have been completed.

(c) Destruction pending litigation. No record subject to pending litigation shall be destroyed until the litigation has been resolved.

(d) Microfilming records. Any police department records can be kept on microfilm provided the applicable standards established in Wis. Stats. § 16.61(7) are met. Factors such as retention periods and estimated costs and benefits of converting records between different medias should be considered in deciding whether or not to microfilm. The retention periods identified in this article apply to records in any media.

(e) Electronic records. Any Police Department records may be kept on an electronic content management (ECM) software, provided the applicable standards established in § 16.61(7), Wis. Stats., are met. Factors, such as retention periods and estimated costs and benefits of converting records between different media, should be considered in deciding whether or not to digitize. The retention periods identified in this section apply to electronic records.

Description:	Retention Period:	SHSW Notice:
Video recordings of patrol activities	CR + 120 days	W
Personnel files	7 years following end of employment	W
Department employee schedules	EVT + 7 years	W

Records Retention Ordinance

Incident and arrest reports, including supporting documents	PERMANENT	N/A
Parking violations	EVT + 1 year	W
Municipal ordinance citations	EVT + 8 years	W
Uniform traffic citations	EVT + 8 years	W
Traffic accident reports	EVT + 8 years	W
Written warnings and false alarm notices	EVT + 1 year	W
Memorandums	CR +7 Years	W
Purchase orders	EVT + 7 years	W
Bicycle licenses	EVT + 3 years	W
Administrative reports and statistics	CR + 7 years	W
Property inventory reports	EVT (until superseded)	W
Police department office logs	CR + 8 years	W
Patrol officer logs	CR + 8 years	W
Vehicle maintenance records	EVT (life of vehicle)	W

(13.1) VIDEO RECORDINGS.

(a) Except for Kiel Police Department policies related to video recording, city-owned video recording equipment will retain video footage for 45 days, except for matters under investigation.

(14) ALL OTHER RECORDS. Public records not identified in this Records Retention Schedule shall be retained seven (7) years in accordance with §19.21(5)(c), Wisconsin State Statutes, and Chapter 27 of the City of Kiel Municipal Code of the City of Kiel and may then be destroyed subject to SWHS authorization.

CHAPTER 28
SMALL CELL ATTACHMENTS

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28.01 DEFINITIONS. For the purposes of this Chapter, the terms below shall have the following meanings:

- (1) GENERAL MANAGER OF UTILITIES means the General Manager of Utilities or his or her designee.
- (2) APPLICATION means a formal request, including all required and requested documentation and information, submitted by an Applicant to the City of Kiel for a wireless permit.
- (3) APPLICANT means a person filing an application for placement or modification of a wireless telecommunications facility in the right-of-way.
- (4) BASE STATION means the same as in 47 C.F.R. § 1.6100(b)(1), which defines the term to mean a structure or wireless telecommunications equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. This definition does not include towers.
- (5) ELIGIBLE FACILITIES REQUEST means the same as in 47 C.F.R. § 1.6100(b)(3), which defines the term to mean any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
 - (a) collocation of new transmission equipment;
 - (b) removal of transmission equipment; or
 - (c) replacement of transmission equipment.
- (6) FCC means the Federal Communications Commission.
- (7) RIGHT-OF-WAY means the surface of, and the space above and below the entire width of an improved or unimproved public roadway, highway, street, bicycle lane, landscape terrace, shoulder, side slope, and public sidewalk over which the City of Kiel exercises any rights of management and control or in which the City of Kiel has an interest.
- (8) SMALL WIRELESS FACILITY consistent with 47 C.F.R. §1.6002 (1), means a facility that meets each of the following conditions:
 - (a) The structure on which antenna facilities are mounted:
 1. is 50 feet or less in height, or is no more than 10 percent taller than other adjacent structure,
or
is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height, whichever is greater, as a result of the collocation of new antenna facilities;
 2. Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume;

3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is cumulatively no more than 28 cubic feet in volume;
 4. The facility does not require antenna structure registration;
 5. The facility is not located on Tribal lands; and
 6. The facility does not result in human exposure to radiofrequency radiation in.
- (9) SUPPORT STRUCTURE means any structure capable of supporting wireless telecommunications equipment.
- (10) TOWER means the same as in 47 C.F.R. § 1.6100(b)(9), which defines the term as any structure built for the sole or primary purpose of supporting any Federal Communication Commission (FCC) licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.
- (11) UNDERGROUND AREAS means those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages more than 35,000 volts.
- (12) UTILITY POLE means a structure in the right-of-way designed to support electric, telephone, and similar utility distribution lines and associated equipment. A tower is not a utility pole.
- (13) WIRELESS INFRASTRUCTURE PROVIDER means a person that owns, controls, operates, or manages a wireless telecommunications facility or portion thereof within the right-of-way.
- (14) WIRELESS PERMIT OR PERMIT means a permit issued pursuant to this Chapter and authorizing the placement or modification of a wireless telecommunications facility of a design specified in the permit at a particular location within the right-of-way, and the modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.
- (15) WIRELESS REGULATIONS means those regulations adopted pursuant to Section 28.05(2) to implement the provisions of this Chapter.
- (16) WIRELESS SERVICE PROVIDER means an entity that provides wireless services to end users.

(17) WIRELESS TELECOMMUNICATIONS EQUIPMENT means equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network.

(18) WIRELESS TELECOMMUNICATIONS FACILITY OR FACILITY means a facility at a fixed location in the right-of-way consisting of a base station, antennas and other accessory equipment, and a tower and underground wiring, if any, associated with the base station.

*Definitions in this Section may contain quotations or citations to 47 C.F.R. §§ 1.6100 and 1.6002. If any referenced section is amended, creating a conflict between the definition as set forth in this Chapter and the amended language of the referenced section, the definition in the referenced section, as amended, shall control.

28.02 PURPOSE. In the exercise of its police powers, the City of Kiel has priority over all other uses of the right-of-way. The purpose of this Chapter is to provide the City of Kiel with a process for managing, and uniform standards for acting upon, requests for the placement of wireless telecommunications facilities within the right-of-way consistent with the City of Kiel's obligation to promote the public health, safety, and welfare; to manage the right-of-way; and to ensure that the public's use is not obstructed or incomed by the use of the right-of-way for the placement of wireless telecommunications facilities. The City of Kiel recognizes the importance of wireless telecommunications facilities to provide high-quality communications and internet access services to residents and businesses within the City of Kiel. The City of Kiel also recognizes its obligation to comply with applicable Federal and State laws regarding the placement of wireless telecommunications facilities in the right-of-way including, without limitation, the Telecommunications Act of 1996 (47 U.S.C. § 151 et seq), Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Wis. Stat. § 182.017, and Wis. Stat. § 196.58, and this Chapter shall be interpreted consistent with those provisions.

28.03 SCOPE. Applicability. Unless exempted by 28.03(2), below, every person who wishes to place a wireless telecommunications facility in the right-of-way or modify an existing wireless telecommunications facility in the right-of-way must obtain a wireless permit under this Chapter.

Exempt Facilities. The provisions of this Chapter (other than Sections 28.10-14) shall not be applied to applications for the following:

(1) Installation of a small wireless facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand shall not exceed 1 cubic foot, and provided

further that the installation does not require replacement of the strand, or excavation, modification, or replacement of either of the utility poles.

- (2) Installation of a mobile cell facility (commonly referred to as "cell on wheels" or "cell on truck") for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
- (3) Placement or modification of a wireless telecommunications facility on structures owned by or under the control of the City of Kiel. See Section 28.13 of this Chapter.

Placement or modification of a wireless telecommunications facility by City of Kiel staff or any person performing work under contract with the City of Kiel.

- (4) Modification of an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work does not change the visual or audible characteristics of the wireless telecommunications facility.

28.04 NONDISCRIMINATION. In establishing the rights, obligations, and conditions set forth in this Chapter, it is the intent of the City of Kiel to treat each applicant and right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, while taking into account the unique technologies, situation, and legal status of each applicant or request for use of the right-of-way.

28.05 ADMINISTRATION. General Manager of Utilities. The General Manager of Utilities is responsible for administering this Chapter.

- (1) Powers. As part of the administration of this Chapter, the General Manager of Utilities may:
 - (a) Adopt wireless regulations governing the placement and modification of wireless telecommunications facilities in addition to but consistent with the requirements of this Chapter, including regulations governing collocation, the resolution of conflicting applications for placement of wireless telecommunications facilities, and aesthetic standards.
 - (b) Interpret the provisions of the Chapter and the wireless regulations.
Develop forms and procedures for submission of applications for wireless permits consistent with this Chapter.
 - (c) Collect any fee required by this Chapter.

(d) Require, as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless telecommunications facility that is the subject of the wireless permit application.

(e) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations.

Issue notices of incompleteness or requests for information in connection with any wireless permit application.

(f) Select and retain an independent consultant or attorney with expertise in telecommunications to review any issue that involves specialized or expert knowledge in connection with any permit application.

Coordinate and consult with other City of Kiel staff, committees, and governing bodies to ensure timely action on all other required permits under Section 28.06(2)(h) of this Chapter.

(g) Subject to appeal as provided in Section 28.08(4) of this Chapter, determine whether to grant, grant subject to conditions, or deny an application.

(h) Take such other steps as may be required to timely act upon wireless permit applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

28.06 APPLICATION. Format. Unless the wireless regulations provide otherwise, the applicant must submit both a paper copy and an electronic copy (in a searchable format) of any application, as well as any amendments or supplements to the application or responses to requests for information regarding an application, to the General Manager of Utilities. An application is not complete until both the paper and electronic copies are received by the General Manager of Utilities.

(1) Content. In order to be considered complete, an application must contain:

(a) All information required pursuant to the wireless regulations.

(b) A completed application cover sheet signed by an authorized representative of the applicant, listing all standard permit conditions.

(c) The name of the applicant (including any corporate or trade name), and the name, address, email address, and telephone number of a local representative. If the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider(s) that will be using the wireless telecommunications facility must also be provided.

- (d)** A statement of which shot clock or shot clocks apply to the application and the reasons the chosen shot clocks apply.
- (e)** A separate and complete description of each proposed wireless telecommunications facility and the work that will be required to install or modify it, including but not limited to detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and facilities at the site before and after installation or modification and identifying the owners of such preexisting structures and facilities; and describing the distance to the nearest residential dwelling unit. Before and after 360-degree photo simulations must be provided for each facility.
- (f)** Proof that the applicant has mailed to the owners of all property within 300 feet of the proposed wireless telecommunications facility a notice that the applicant is submitting an application to the City of Kiel for placement or modification of a wireless telecommunications facility in the right-of-way, which notice must include:

 1. the proposed location of the facility,
 2. a description and scale image of the proposed facility, and
 3. an email address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.
- (g)** A copy of the FCC license for the facility or a sworn written statement from the applicant attesting that the facility will comply with current FCC regulations.
- (h)** To the extent that filing of the wireless permit application establishes a deadline for action on any other permit that may be required in connection with the wireless telecommunications facility, the application must include complete copies of applications for every required permit (including without limitation electrical permits, building permits, traffic control permits, and excavation permits), with all engineering completed and with all fees associated with each permit.
- (i)** A certification by a registered and qualified engineer that the installation can be supported by and does not exceed the tolerances of the structure on which it will be mounted and that all elements of the wireless telecommunications facility comply with applicable safety standards.
- (j)** If an applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all evidence on which the applicant relies in support of that claim.

Applicants are not permitted to supplement this evidence if doing so would prevent the City of Kiel from complying with any deadline for action on an application.

- (k)** If the application is an eligible facilities request, the application must contain information sufficient to show that the application qualifies as an eligible facilities request under 47 C.F.R. § 1.6100(b)(3), including evidence that the application relates to an existing tower or base station that has been approved by the City of Kiel. Before and after 360-degree photo simulations must be provided with detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved tower or base station.
- (l)** Waivers. Requests for waivers from any requirement of Section 28.06 shall be made in writing to the General Manager of Utilities. The General Manager of Utilities may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of the waiver, the City of Kiel will be provided with all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the wireless permit sought.
- (m)** Fees. Applicant must provide an application fee and shall be required to pay all costs reasonably incurred in reviewing the application, including costs incurred in retaining outside consultants. Fees shall be reviewed periodically and raised or lowered based on the costs the city expects to incur, with a review commencing by the first anniversary of the effective date of this Chapter.

 1. Permit Application Fee: \$150 fee per site in 2020, with a 3% increase on January 1 of the prior year's fee, each year thereafter.
 2. Unauthorized Attachment Fee: 4x the Permit Application Fee for each unauthorized attachment in the year of discovery.
- (n)** Public Records. Applications are public records that may be made publicly available pursuant to state and federal public records law. Notwithstanding the foregoing, the applicant may designate portions of the application materials that it reasonably believes contain proprietary or confidential information by clearly marking each portion of such materials accordingly, and the City of Kiel shall endeavor to treat the information as proprietary and confidential, subject to applicable state and federal public records law and the General Manager of Utilities' determination that the applicant's request for confidential or proprietary treatment of the application materials is reasonable. The City of Kiel shall not be required to incur any costs to protect the application from disclosure.

28.07 GENERAL STANDARDS. Generally. Wireless telecommunications facilities shall meet the minimum requirements set forth in this Chapter and the wireless regulations, in addition to the requirements of any other applicable law or regulation.

(1) REGULATIONS The wireless regulations and decisions on wireless permits shall, at a minimum, ensure that the requirements of this Chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of a telecommunications or personal wireless services, or otherwise violate applicable laws or regulations.⁸ If that determination is made, the requirements of this Chapter and the wireless regulations may be waived, but only to the extent required to avoid the prohibition.

(2) STANDARDS

(a) Wireless telecommunications facilities shall be installed and modified in a manner that:

1. Minimizes risks to public safety;
2. Ensures that placement of facilities on existing structures is within the tolerance of those structures;
3. Avoids placement of aboveground facilities in underground areas, installation of new support structures or equipment cabinets in the public right-of-way, or placement in residential areas when commercial areas are reasonably available;
4. Maintains the integrity and character of the neighborhoods and corridors in which the facilities are located;
5. Ensures that installations are subject to periodic review to minimize the intrusion on the right-of-way;
6. Ensures that the City of Kiel bears no risk or liability as a result of the installations; and
7. Ensures that applicant's use does not inconvenience the public, interfere with the primary uses of the right-of-way, or hinder the ability of the City of Kiel or other government entities to improve, modify, relocate, abandon, or vacate the right-of-way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right-of-way.

(b) No wireless permit shall be issued unless (i) the wireless service provider applicant has immediate plans to use the proposed facility or (ii) the wireless infrastructure applicant has a contract with a wireless service provider that has immediate plans to use the proposed facility.

- (c) In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic and at all times must comply with the requirements of the Americans with Disabilities Act of 1990.
- (3) STANDAR PERMIT CONDITIONS All wireless permits under this Chapter are issued subject to the following minimum conditions:
- (4) COMPLIANCE The permit holder shall at all times maintain compliance with all applicable Federal, State, and local laws, regulations, and other rules.
- (5) TERM A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five years from the date of issuance unless revoked pursuant to Section 28.09(1) of this Chapter.
- (6) CONTACT INFORMATION. The permit holder shall at all times maintain with the City of Kiel accurate contact information for the permit holder and all wireless service providers making use of the facility, which shall include a phone number, mailing address, and email address for at least one natural person.
- (7) EMERGENCIES The City of Kiel shall have the right to support, repair, disable, or remove any elements of the facilities in emergencies or when the facility threatens imminent harm to persons or property.
- (8) INDEMNITIES The permit holder, by accepting a permit under this Chapter, agrees to indemnify, defend, and hold harmless the City of Kiel, its elected and appointed officials, officers, employees, agents, representatives, and volunteers (collectively, the "Indemnified Parties") from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature in any manner caused in whole or in part, or claimed to be caused in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of the permit holder or anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on one or more of the Indemnified Parties. The obligation to indemnify, defend, and hold harmless the Indemnified Parties shall be applicable even if the liability results from an act or failure to act on the part of one or more of the Indemnified Parties. However, the obligation does not apply if the liability results from the willful misconduct of an Indemnified Party.
- (9) ADVERSE IMPACTS ON ADJACENT PROPERTIES The permit holder shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility.

- (10) GERNERAL MAINENANCE The wireless communications facility and any associated structures shall be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
- (11) GRAFFITI REMOVAL All graffiti on facilities shall be removed at the sole expense of the permit holder within 48 hours after notification from the City of Kiel.
- (12) RELOCATION At the request of the City of Kiel pursuant to Section 28.10 of this Chapter, the permit holder shall promptly and at its own expense permanently remove and relocate any wireless telecommunications facility in the right-of-way.
- (13) ABANDONMENT The permit holder shall promptly notify the City of Kiel whenever a facility has not been in use for a continuous period of 60 days or longer and must comply with Section 28.11 of this Chapter.
- (14) RESTORATION A permit holder who removes or relocates a facility from the right-of-way must restore the right-of-way in accordance with Section 28.12 of this Chapter.
- (15) RECORD RETENTION The permit holder shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the permit or regulatory approval. In the event the City of Kiel cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permit holder fails to retain full and complete records in the permit holder's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permit holder.
- (16) RADIO FREQUENCY EMISSIONS Every wireless facility shall at all times comply with applicable FCC regulations governing radio frequency emissions, and failure to comply with such regulations shall be treated as a material violation of the terms of the permit.
- (17) CERTIFICATE OF INSURANCE A certificate of insurance sufficient to demonstrate to the satisfaction of the General Manager of Utilities that the applicant has the capability to cover any liability that might arise out of the presence of the facility in the right-of-way.

28.08 APPLICATION PROCESSING AND APPEAL. Rejection for Incompleteness. Notices of incompleteness shall be provided in conformity with state, local, and federal law, including 47 C.F.R. § 1.6003(d), as amended.

- (1) PROCESSING TIMELINE Wireless permit applications (including applications for other permits under Section 28.06(2)(h) necessary to place or modify the facility) and appeals will be processed in conformity with the shot clocks set forth in state, local, and federal law, as amended.
- (2) WRITTEN DECISION In the event an application is denied (or approved with conditions beyond the standard permit conditions set forth in Section 28.07(4)), the General Manager of Utilities shall issue a written decision with the reasons therefor, supported by substantial evidence contained in a written record.
- (3) APPEAL TO CITY OF KIEL COMMON COUNCIL Any person adversely affected by the decision of the General Manager of Utilities may appeal that decision to the Common Council, which may decide the issues de novo, and whose written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility.
- (4) DEADLINE TO APPEAL
 - (a) Appeals that involve eligible facilities requests must be filed within three business days of the written decision of the General Manager of Utilities.
 - (b) All other appeals not governed by Section 28.08(5)(a), above, must be filed within ten business days of the written decision of the General Manager of Utilities, unless the General Manager of Utilities extends the time therefor. An extension may not be granted where extension would result in approval of the application by operation of law.
- (5) DECISION DEADLINE All appeals shall be conducted so that a timely written decision may be issued in accordance with the applicable shot clock.

28.09 EXPIRATION AND REVOCATION.

- (1) EXPIRATION A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five years from the date of issuance. Upon expiration of the wireless permit, the permit holder must either:
 - (a) Remove the wireless telecommunications facility; or,
 - (b) Submit an application to renew the permit at least 90 days prior to its expiration. The facility must remain in place until the renewal application is acted on by the City of Kiel and any appeals from the City of Kiel's decision are exhausted.

- (2) REVOCACTION FOR BREACH A wireless permit may be revoked for failure to comply with the conditions of the permit or applicable federal, state, or local laws, rules, or regulations. Upon revocation, the wireless telecommunications facility must be removed within 30 days of receipt of written notice from the City of Kiel. All costs incurred by the City of Kiel in connection with the revocation, removal, and right-of-way restoration shall be paid by the permit holder.
- (3) FAILURE TO OBTAIN PERMIT Unless exempted from permitting by Section 28.03(2) of this Chapter, a wireless telecommunications facility installed without a wireless permit must be removed within 30 days of receipt of written notice from the City of Kiel. All costs incurred by the City of Kiel in connection with the notice, removal, and right-of-way restoration shall be paid by entities who own or control any part of the wireless telecommunications facility.

28.10 RELOCATION. Except as otherwise prohibited by state or federal law, a permit holder must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate any of its wireless telecommunications facilities in the right-of-way whenever the City of Kiel requests such removal and relocation. The City of Kiel may make such a request to prevent the facility from interfering with a present or future City of Kiel use of the right-of-way; a public improvement undertaken by the City of Kiel; an economic development project in which the City of Kiel has an interest or investment; when the public health, safety, or welfare require it; or when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a permit holder shall not be required to remove or relocate its facilities from any right-of-way that has been vacated in favor of a non-governmental entity unless and until that entity pays the reasonable costs of removal or relocation to the permit holder.

28.11 ABANDONMENT.

- (1) CESSATION OF USE In the event that a permitted facility within the right-of-way is not in use for a continuous period of 60 days or longer, the permit holder must promptly notify the City of Kiel and do one of the following:
- (a) Provide information satisfactory to the General Manager of Utilities that the permit holder's obligations for its facilities under this Chapter have been lawfully assumed by another permit holder.

(b) Submit to the General Manager of Utilities a proposal and instruments for dedication of the facilities to the City of Kiel. If a permit holder proceeds under this Section 28.11(a)(2), the City of Kiel may, at its option:

1. Accept the dedication for all or a portion of the facilities;

(c) Require the permit holder, at its own expense, to remove the facilities and perform the required restoration under Section 28.12; or

(d) Require the permit holder to post a bond or provide payment sufficient to reimburse the City of Kiel for reasonably anticipated costs to be incurred in removing the facilities and undertaking restoration under Section 28.12.

(e) Remove its facilities from the right-of-way within one year and perform the required restoration under Section 28.12, unless the General Manager of Utilities waives this requirement or provides a later deadline.

(2) ABANDONED FACILITIES Facilities of a permit holder who fails to comply with Section 28.11(1) and which, for one year, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City of Kiel may, at its option:

(a) abate the nuisance and recover the cost from the permit holder or the permit holder's successor in interest;

(b) take possession of the facilities; and/or

(c) require removal of the facilities by the permit holder or the permit holder's successor in interest.

28.12 RESTORATION. In the event that a permit holder removes or is required to remove a wireless telecommunications facility from the right-of-way under this Chapter (or relocate it pursuant to Section 28.10, the permit holder must restore the right-of-way to its prior condition in accordance with City of Kiel specifications. However, a support structure owned by another entity authorized to maintain that support structure in the right-of-way need not be removed but must instead be restored to its prior condition. If the permit holder fails to make the restorations required by this Section 28.12, the City of Kiel at its option may do such work. In that event, the permit holder shall pay to the City of Kiel, within 30 days of billing therefor, the cost of restoring the right-of-way.

28.13 PLACEMENT ON CITY OF KIEL-OWNED OR CONTROLLED STRUCTURES. The City of Kiel may negotiate agreements for placement of wireless telecommunications facilities on City of Kiel-owned or-

controlled structures in the right-of-way. The agreement shall specify the compensation to the City of Kiel for use of the structures. The person or entity seeking the agreement shall reimburse the City of Kiel for all costs the City of Kiel incurs in connection with its review of and action upon the request for an agreement.

28.14 SEVERABILITY. If any section, subsection, clause, phrase, or portion of this Chapter is for any reason held to be illegal or otherwise invalid by any court or administrative agency of competent jurisdiction, such illegal or invalid portion shall be severable and shall not affect or impair any remaining portion of this Chapter, which shall remain in full force and effect.

RELEVANT LAWS AND REGULATIONS

Federal Statutes:

47 U.S.C. § 253

47 U.S.C. § 332(c)(7)

Federal Regulations:

47 C.F.R. § 1.6002

47 C.F.R. § 1.6003

47 C.F.R. § 1.6100

Wisconsin Statutes:

Wis. Stat. § 66.0404

Wis. Stat. § 182.017

Wis. Stat. § 196.58

CHAPTER 29**EROSION CONTROL AND STORM MANAGEMENT**

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29.01 AUTHORITY.

- (1) This chapter is adopted under the authority granted by Wis. Stat. § 62.234, for cities. This chapter supersedes all provisions of an ordinance previously enacted under Wis. Stat. § 62.23, that relate to construction site erosion control. Except as otherwise specified in Wis. Stat. § 62.234, Wis. Stat. § 62.23 applies to this chapter and to any amendments to this chapter.
- (2) The provisions of this chapter are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The Common Council hereby designates the General Manager Utilities and Building Inspector to administer and enforce the provisions of this chapter.
- (4) The requirements of this chapter do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals, including those authorized under Wis. Stat. §§ 281.16 and 283.33.
 - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under Wis. Admin. Code § NR 151.004.

29.02 FINDINGS OF FACT. The Common Council acknowledges that runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in the City of Kiel.

29.03 PURPOSE. It is the purpose of this chapter to maintain safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion and sediment discharge; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state in the City of Kiel.

29.04 APPLICABILITY AND JURISDICTION

(1) APPLICABILITY.

- (a) Except as provided under par. (b), this chapter applies to any construction site as defined under 29.05 (6).
- (b) This chapter does not apply to the following:

1. Transportation facilities, except transportation facility construction projects that are part of a larger common plan of development such as local roads within a residential or industrial development.
2. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under Chapter 40, Code of Federal Regulations, part 122, for land disturbing construction activity.
3. Nonpoint discharges from agricultural facilities and practices.
4. Nonpoint discharges from silviculture activities.
5. Routine maintenance for project sites that have less than 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
6. Land disturbing construction activity that includes the construction of one and two-family residential dwellings that are not part of a larger common plan of development or sale and that result in less than one acre of disturbance. These construction sites are regulated by the Wisconsin Department of Safety and Professional Services under Wis. Admin. Code § SPS 321.125.

(c) Notwithstanding the applicability requirements in par. (a), this chapter applies to construction sites of any size that, as determined by the Administering Authority, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, or that increases water pollution by scouring or transporting of particulate.

(2) JURISDICTION. This chapter applies to land disturbing construction activities on lands within the boundaries and jurisdiction of the City of Kiel.

(3) EXCLUSIONS. This chapter is not applicable to activities conducted by a state agency, as defined under Wis. Stat. § 227.01(1).

29.05 DEFINITIONS. For the purpose of this chapter, the following terms, phrases and words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

- (1) ADMINISTERING AUTHORITY. The General Manager Utilities, or such other governmental employee empowered under Wis. Stat. § 62.234, that is designated by the Common Council to administer this chapter.
- (2) AGRICULTURAL FACILITIES AND PRACTICES. The meaning is given in Wis. Stat. §81.16(1).
- (3) BEST MANAGEMENT PRACTICE or BMP. Structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.
- (4) BUSINESS DAY. A day the office of the Administering Authority is routinely and customarily open for business.
- (5) CEASE AND DESIST ORDER. A court-issued order to halt land disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the Administering Authority or Building Inspector.
- (6) CONSTRUCTION SITE. An area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A long-range planning document that describes separate construction projects, such as a 20-year transportation improvement plan, is not a common plan of development.
- (7) DESIGN STORM. A hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.
- (8) EROSION. The process by which the land's surface is worn away by the action of wind, water, ice or gravity.
- (9) EROSION AND SEDIMENT CONTROL PLAN. A comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.
- (10) FINAL STABILIZATION. All land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least seventy percent (70%) of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
- (11) GOVERNING BODY. The Common Council.
- (12) LAND DISTURBING CONSTRUCTION ACTIVITY. Any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non- vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters

of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

- (13) LANDOWNER. Any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of stormwater BMPs on the property.
- (14) MAXIMUM EXTENT PRACTICABLE. The highest level of performance that is achievable but is not equivalent to a performance standard identified in this chapter as determined in accordance with 29.1.6 of this chapter.
- (15) PERFORMANCE STANDARD. A narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (16) PERMIT. A written authorization made by the Administering Authority to the applicant to conduct land disturbing construction activity or to discharge post- construction runoff to waters of the state.
- (17) POLLUTANT. The meaning is given in Wis. Stat. § 283.01(13).
- (18) POLLUTION. The meaning is given in Wis. Stat. § 281.01(10).
- (19) RESPONSIBLE PARTY. The landowner or any other entity performing services to meet the requirements of this chapter through a contract or other agreement.
- (20) RUNOFF. Stormwater or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (21) SEDIMENT. Settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.
- (22) SILVICULTURE ACTIVITY. Activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.
- (23) SITE. The entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.
- (24) STOP WORK ORDER. An order issued by the Administering Authority or Building Inspector or designee which requires that all construction activity on the site be stopped.
- (25) TECHNICAL STANDARD. A document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.
- (26) TRANSPORTATION FACILITY. A highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under Wis. Stat. § 85.095(1)(b). "Transportation facility" does not include building

sites for the construction of public buildings and buildings that are places of employment that are regulated by the Department of Natural Resources pursuant to Wis. Stat. § 281.33.

(27) WATERS OF THE STATE. Those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

29.06 APPLICABILITY OF MAXIMUM EXTENT PRACTICABLE. Maximum extent practicable applies when a person who is subject to a performance standard of this chapter demonstrates to the General Manager Utilities satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

29.07 TECHNICAL STANDARDS.

(1) All BMPs required for compliance with this chapter shall meet design criteria, standards and specifications based on any of the following:

- (a)** Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under Subch. V of Wis. Admin. Code Ch. NR 151.
- (b)** Soil loss prediction tools [such as the Universal Soil Loss Equation (USLE)] when using an appropriate rainfall or runoff factor (also referred to as the R factor) or an appropriate design storm and precipitation distribution, and when considering the geographic location of the site and the period of disturbance.
- (c)** City of Kiel Erosion Control Reference Guide.
- (d)** Technical standards and methods approved by the Administering Authority.

29.08 PERFORMANCE STANDARDS FOR CONSTRUCTION SITES UNDER ONE ACRE.

(1) RESPONSIBLE PARTY. The responsible party shall comply with this section.

- (2) EROSION AND SEDIMENT CONTROL PRACTICES. Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:
- (a) The deposition of soil from being tracked onto streets by vehicles
 - (b) The discharge of sediment from disturbed areas into on-site stormwater inlets.
 - (c) The discharge of sediment from disturbed areas into adjacent waters of the state.
 - (d) The discharge of sediment from drainage ways that flow off the site.
 - (e) The discharge of sediment by dewatering activities.
 - (f) The discharge of sediment eroding from soil stockpiles existing for more than 7 days.
 - (g) The transport by runoff into waters of the state of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.
- (3) LOCATION. The BMPs shall be located so that treatment occurs before runoff enters waters of the state.
- (4) IMPLEMENTATION. The BMPs used to comply with this section shall be implemented as follows:
- (a) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.
 - (b) Erosion and sediment control practices shall be maintained until final stabilization.
 - (c) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
 - (d) Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
 - (e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

29.09 PERFORMANCE STANDARDS FOR CONSTRUCTION SITES OF ONE ACRE OR MORE.

- (1) RESPONSIBLE PARTY. The responsible party shall comply with this section and implement the erosion and sediment control plan developed in accordance with 29.11.
- (2) EROSION AND SEDIMENT CONTROL PLAN. A written site-specific erosion and sediment control plan shall be developed in accordance with 29.11 of this chapter and implemented for each construction site.

(3) EROSION AND OTHER POLLUTANT CONTROL REQUIREMENTS. The erosion and sediment control plan required under sub. (2) shall include the following:

(a) Erosion and Sediment Control Practices. Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:

1. The deposition of soil from being tracked onto streets by vehicles.
2. The discharge of sediment from disturbed areas into on-site stormwater inlets.
3. The discharge of sediment from disturbed areas into adjacent waters of the state.
4. The discharge of sediment from drainage ways that flow off the site.
5. The discharge of sediment by dewatering activities.
6. The discharge of sediment eroding from soil stockpiles existing for more than 7 days.
7. The discharge of sediment from erosive flows at outlets and in downstream channels.
8. The transport by runoff into waters of the state of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.
9. The transport by runoff into waters of the state of untreated wash water from vehicle and wheel washing.

(b) Sediment Performance Standards. In addition to the erosion and sediment control practices under par. (a), the following erosion and sediment control practices shall be employed:

1. BMPs that, by design, discharge no more than 5 tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.
2. No person shall be required to employ more BMPs than are needed to meet a performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the requirements of this paragraph. Credit may be given toward meeting the sediment performance standard of this paragraph for limiting the duration or area, or both, of land disturbing construction activity, or for other appropriate mechanisms.
3. Notwithstanding subd. a., if BMPs cannot be designed and implemented to meet the sediment performance standard, the erosion and sediment control plan shall include a

written, site-specific explanation of why the sediment performance standard cannot be met and how the sediment load will be reduced to the maximum extent practicable.

(c) Preventive Measures. The erosion and sediment control plan shall incorporate all of the following:

1. Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.
2. Minimization of soil compaction and preservation of topsoil.
3. Minimization of land disturbing construction activity on slopes of 20 percent or more.
4. Development of spill prevention and response procedures.

(d) Location. The BMPs used to comply with this section shall be located so that treatment occurs before runoff enters waters of the state.

(4) IMPLEMENTATION. The BMPs used to comply with this section shall be implemented as follows:

(a) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin in accordance with the erosion and sediment control plan developed in 29.9(2).

(b) Erosion and sediment control practices shall be maintained until final stabilization.

(c) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.

(d) Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.

(e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

29.10 PERMITTING REQUIREMENTS, PROCEDURES AND FEES. For construction sites with 5,000 square feet or more of land disturbing construction activity, the following is required:

(1) PERMIT REQUIRED No responsible party may commence a land disturbing construction activity subject to this chapter without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Administering Authority or his or her designee.

(2) PERMIT APPLICATION AND FEES The responsible party that will undertake a land disturbing construction activity subject to this chapter shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of 29.11, and shall pay an application fee to the City in the amount specified in 29.12. By submitting an application, the applicant is

authorizing the Administering Authority to enter the site to obtain information required for the review of the erosion and sediment control plan.

- (3) PERMIT APPLICATION REVIEW AND APPROVAL** The Administering Authority shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:
- (a)** Within 30 calendar days of the receipt of a complete permit application, as required by sub. (b), the Administering Authority shall inform the applicant whether the application and erosion and sediment control plan are approved or disapproved based on the requirements of this chapter.
 - (b)** If the permit application and erosion and sediment control plan are approved, the Administering Authority or their designee shall issue the permit.
 - (c)** If the permit application or erosion and sediment control plan is disapproved, the Administering Authority shall state in writing the reasons for disapproval.
 - (d)** The Administering Authority may request additional information from the applicant. If additional information is submitted, the Administering Authority shall have 30 calendar days from the date the additional information is received to inform the applicant that the erosion and sediment control plan is either approved or disapproved.
 - (e)** Failure by the Administering Authority to inform the permit applicant of a decision within 30 calendar days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (4) FINANCIAL GUARANTEE** As a condition of approval and issuance of the permit, the Administering Authority may require the applicant to deposit a surety bond, irrevocable letter of credit, or cash escrow to guarantee a good faith execution of the approved erosion and sediment control plan and any permit conditions.
- (5) PERMIT REQUIREMENTS** All permits shall require the responsible party to:
- (a)** Notify the Administering Authority or designee within 48 hours of commencing any land disturbing construction activity.
 - (b)** Obtain permission in writing from the Administering Authority prior to any modification of the approved erosion and sediment control plan.
 - (c)** Install all BMPs as identified in the approved erosion and sediment control plan.
 - (d)** Maintain all road drainage systems, stormwater drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.

- (e) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in a site inspection log.
 - (f) Inspect the BMPs within 24 hours after each rain of 0.5 inches or more which results in runoff during active construction periods, and at least once each week. Make needed repairs and install additional BMPs as necessary, and document these activities in an inspection log that also includes the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.
 - (g) Allow the Administering Authority or his or her designee and the Building Inspector to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the erosion and sediment control plan. Keep a copy of the erosion and sediment control plan at the construction site.
- (6) PERMIT CONDITIONS Permits issued under this section may include conditions established by Administering Authority in addition to the requirements set forth in sub. (5), where needed to assure compliance with the performance standards in 29.08 or 29.09.
- (7) PERMIT DURATION Permits issued under this section shall be valid for a period of 180 days or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Administering Authority may grant one or more extensions not to exceed 180 days cumulatively. The Administration Authority may require additional BMPs as a condition of an extension if they are necessary to meet the requirements of this chapter.
- (8) MAINTENANCE The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this chapter until the site has undergone final stabilization.
- (9) ALTERNATE REQUIREMENTS The Administering Authority may require a permit for construction sites with less than 5,000 square feet of land disturbing construction activity if he or she deems it necessary to achieve compliance with the purpose of this chapter.

29.11 EROSION AND SEDIMENT CONTROL PLAN, STATEMENT AND AMENDMENTS. For construction sites with 5,000 square feet or more of land disturbing construction activity, the following is required:

- (1) EROSION AND SEDIMENT CONTROL PLAN STATEMENT. For each construction site identified under 29.04(1)(c), an erosion and sediment control plan statement shall be prepared. This statement shall

be submitted to the Administering Authority. The erosion and sediment control plan statement shall briefly describe the site, the development schedule, and the BMPs that will be used to meet the requirements of the chapter. A site map shall also accompany the erosion and sediment control plan statement.

(2) EROSION AND SEDIMENT CONTROL PLAN REQUIREMENTS.

- (a)** An erosion and sediment control plan shall be prepared and submitted to the Administering Authority.
- (b)** The erosion and sediment control plan shall be designed to meet the performance standards in 29.08, 29.09, and other requirements of this chapter.
- (c)** The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:
 - 1.** Name(s) and address(es) of the owner and developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. The application shall also include start and end dates for construction.
 - 2.** Description of the construction site and the nature of the land disturbing construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5 minute series topographic map.
 - 3.** Description of the intended sequence of major land disturbing construction activities for major portions of the construction site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.
 - 4.** Estimates of the total area of the construction site and the total area of the construction site that is expected to be disturbed by land disturbing construction activities.
 - 5.** Calculations to show the compliance with the performance standard in 29.09(3)(b)1.
 - 6.** Existing data describing the surface soil as well as subsoils.
 - 7.** Depth to groundwater, as indicated by Natural Resources Conservation Service soil information where available.
 - 8.** Name of the immediate named receiving water from the United States Geological Service 7.5 minute series topographic maps.

- (f) The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than 100 feet per inch and at a contour interval not to exceed five feet.
1. Existing topography, vegetative cover, natural and engineered drainage systems, roads and surface waters. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site shall be shown. Any identified 100-year flood plains, flood fringes, and floodways shall also be shown.
 2. Boundaries of the construction site.
 3. Drainage patterns and approximate slopes anticipated after major grading activities.
 4. Areas of soil disturbance.
 5. Location of major structural and non-structural controls identified in the erosion and sediment control plan.
 6. Location of areas where stabilization BMPs will be employed.
 7. Areas which will be vegetated following land disturbing construction activities.
 8. Area(s) and location(s) of wetland on the construction site, and locations where stormwater is discharged to a surface water or wetland within one-quarter mile downstream of the construction site.
 9. Areas(s) used for infiltration of post-construction stormwater runoff.
 10. An alphanumeric or equivalent grid overlying the entire construction site map.
- (g) Each erosion and sediment control plan shall include a description of appropriate control BMPs that will be installed and maintained at the construction site to prevent pollutants from reaching waters of the state. The erosion and sediment control plan shall clearly describe the appropriate erosion and sediment control BMPs for each major land disturbing construction activity and the timing during the period of land disturbing construction activity that the erosion and sediment control BMPs will be implemented. The description of erosion and sediment control BMPs shall include, when appropriate, the following minimum requirements:
1. Description of interim and permanent stabilization practices, including a BMP implementation schedule. The erosion and sediment control plan shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.
 2. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise

specifically approved in writing by the Administering Authority, structural measures shall be installed on upland soils.

3. Management of overland flow at all areas of the construction site, unless otherwise controlled by outfall controls.
 4. Trapping of sediment in channelized flow.
 5. Staging land disturbing construction activities to limit exposed soil areas subject to erosion.
 6. Protection of downslope drainage inlets where they occur.
 7. Minimization of tracking at all vehicle and equipment entry and exit locations of the construction site.
 8. Clean-up of off-site sediment deposits.
 9. Proper disposal of building and waste material.
 10. Stabilization of drainage ways.
 11. Installation of permanent stabilization practices as soon as possible after final grading.
 12. Minimization of dust to the maximum extent practicable.
- (h) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.
- (3) EROSION AND SEDIMENT CONTROL PLAN AMENDMENTS. The applicant shall amend the erosion and sediment control plan if any of the following occur:
- (a) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the erosion and sediment control plan.
 - (b) The General Manager Utilities determines that the actions required by the erosion and sediment control plan fail to reduce the impacts of pollutants carried by construction site runoff.
 - (c) The Administering Authority notifies the applicant of changes needed in the erosion and sediment control plan.
- (4) ALTERNATE REQUIREMENTS. The Administering Authority may prescribe alternate erosion and sediment control plan requirements for construction sites with less than 1 acre of land disturbing construction activity.

29.12 FEE SCHEDULE. The fees referred to in other sections of this chapter shall be established by the Common Council and may from time to time be modified by resolution. A schedule of the fees established by the Common Council shall be available for review in City Hall.

29.13 INSPECTION. If land disturbing construction activities are occurring without a permit required by this chapter, the Building Inspector or his or her designee may enter the land pursuant to the provisions of Wis. Stat. §§ 66.0119 (1), (2), and (3).

29.14 ENFORCEMENT.

- (1) The Building Inspector or his or her designee may post a stop work order if any of the following occurs:
 - (a) Land disturbing construction activity regulated under this chapter is occurring without a permit.
 - (b) The erosion and sediment control plan is not being implemented in good faith.
 - (c) The conditions of the permit are not being met.
- (2) If the responsible party does not cease activity as required in a stop work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the Building Inspector may revoke the permit.
- (3) If the responsible party, where no permit has been issued or the permit has been revoked, does not cease the activity after being notified by the Administering Authority, or if a responsible party violates a stop work order posted under sub. (a), the Building Inspector or Administering Authority may request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
- (4) The Building Inspector may retract the stop work order issued under sub. (a) or the permit revocation under sub. (b).
- (5) After posting a stop work order under sub. (1), the Building Inspector may issue a notice of intent to the responsible party of the City's intent to perform work necessary to comply with this chapter. The Administering Authority or Building Inspector may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this subsection by the Administering Authority or Building Inspector, plus interest at the rate authorized by Common Council shall be billed to the responsible party. In the event a responsible party fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect as a special charge or special assessment against the property pursuant to Wis. Stat. §§ 66.0627 or 66.0703 and Chapter 3.09.

- (6) Any person violating any of the provisions of this chapter shall be subject to a forfeiture as provided in Chapter 25.04 Each day a violation exists shall constitute a separate offense.
- (7) Compliance with the provisions of this chapter may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

29.15 APPEALS.

- (1) **BOARD OF APPEALS** The Board of Appeals created pursuant to Chapter 1.24 of the City's ordinance pursuant to Wis. Stat. § 62.23(7)(e):
 - (a) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Administering Authority or Building Inspector in administering this chapter except for cease and desist orders obtained under 29.14(3).
 - (b) May authorize, upon appeal, variances from the provisions of this chapter which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and
 - (c) Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- (2) **WHO MAY APPEAL** Appeals to the Board of Appeals may be taken by any aggrieved person or by any office, department, board, or bureau of the City of Kiel affected by any decision of the Administering Authority or Building Inspector.

POST-CONSTRUCTION STORMWATER MANAGEMENT

29.16 AUTHORITY.

- (1) This chapter is adopted by the Common Council under the authority granted by Wis. Stat. § 62.234, for cities. This chapter supersedes all provisions of an ordinance previously enacted under Wis. Stat. § 62.23, that relate to stormwater management regulations. Except as otherwise specified in Wis. Stat. § 62.234, Wis. Stat. § 62.23 applies to this chapter and to any amendments to this chapter.
- (2) The provisions of this chapter are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The Common Council hereby designates the Administering Authority to administer and enforce the provisions of this chapter.

- (4) The requirements of this chapter do not pre-empt more stringent stormwater management requirements that may be imposed by any of the following:
- (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under Wis. Stat. §§ 281.16 and 283.33.
 - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under Wis. Admin. Code § NR 151.004.

29.17 FINDINGS OF FACT. The Common Council acknowledges that uncontrolled, post-construction runoff has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can:

- (1) Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.
- (2) Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants.
- (3) Alter wetland communities by changing wetland hydrology and by increasing pollutant loads.
- (4) Reduce the quality of groundwater by increasing pollutant loading.
- (5) Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities.

29.18 PURPOSE AND INTENT.

- (1) **PURPOSE** The general purpose of this chapter is to establish long-term, post- construction runoff management requirements that will diminish the threats to public health, safety, welfare and the aquatic environment. Specific purposes are to:
- (a) Further the maintenance of safe and healthful conditions.
 - (b) Prevent and control the adverse effects of stormwater; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.

- (c) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; and control increases in the scouring and transportation of particulate matter.
 - (d) Minimize the amount of pollutants discharged from the separate storm sewer to protect the waters of the state.
- (2) INENT It is the intent of the Common Council that this chapter regulates post- construction stormwater discharges to waters of the state. This chapter may be applied on a site-by-site basis. The Common Council recognizes, however, that the preferred method of achieving the stormwater performance standards set forth in this chapter is through the preparation and implementation of comprehensive, systems-level stormwater management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional stormwater devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. Where such plans are in conformance with the performance standards developed under Wis. Stat. § 281.16, for regional stormwater management measures and have been approved by the Common Council, it is the intent of this chapter that the approved stormwater management plan be used to identify post-construction management measures acceptable for the community.

29.19 APPLICABILITY AND JURISDICTION.

(1) APPLICABILITY.

(a) Except as provided under par. (18), this chapter applies to all post-construction site

(2) JURISDICTION This chapter applies to post construction sites within the boundaries and jurisdiction of the City of Kiel.

(3) EXCLUSIONS. This chapter is not applicable to activities conducted by a state agency, as defined under Wis. Stat. § 227.01(1).

29.20 DEFINITIONS.

(1) ADEQUATE SOD OR SELF-SUSTAINING VEGETATIVE COVER means maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges, and duff layers of fallen leaves and woody debris.

- (2) ADMINISTERING AUTHORITY means the General Manager Utilities or such other governmental employee that is designated by the Common Council to administer this chapter.
- (3) AGRICULTURAL FACILITIES AND PRACTICES has the meaning given in Wis. Stat. § 281.16(1).
- (4) ATLAS 14 means the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.
- (5) AVERAGE ANNUAL RAINFALL means a typical calendar year of precipitation as determined by the Wisconsin Department of Natural Resources for users of models such as WinSLAMM, P8 or equivalent methodology. The following average annual rainfall is the City's average annual rainfall: Green Bay, 1969 (March 29 – November 25).
- (6) BEST MANAGEMENT PRACTICE or BMP means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.
- (7) BUSINESS DAY means a day the office of the Administering Authority is routinely and customarily open for business.
- (8) CEASE AND DESIST ORDER means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the Administering Authority.
- (9) COMBINED SEWER SYSTEM means a system for conveying both sanitary sewage and stormwater runoff.
- (10) CONNECTED IMPERVIOUSNESS means an impervious surface connected to the waters of the state via a separate storm sewer, an impervious flow path, or a minimally pervious flow path.
- (11) DESIGN STORM means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall. The TP-40, Type II, 24-hour design storms for the City are: 1-year, 2.2 inches; 2-year, 2.5 inches; 5-year, 3.3 inches; 10-year, 3.8 inches; 25-year, 4.4 inches; 50-year, 4.9 inches; and 100-year, 5.4 inches. The Atlas 14, MSE4, 24-hour design storms for the City are: 1-year, 2.23 inches; 2-year, 2.57 inches; 5-year, 3.20 inches; 10-year, 3.81 inches; 25-year, 4.75 inches; 50-year, 5.58 inches; and 100-year, 6.48 inches.
- (12) DEVELOPMENT means residential, commercial, industrial or institutional land uses and associated roads.
- (13) DIRECT CONDUITIS TO GROUNDWATER means wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.

- (14) EFFECTIVE INFILTRATION AREA means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.
- (15) EROSION means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.
- (16) EXCEPTIONAL RESOURCE WATER means waters listed in Wis. Admin. Code § NR 102.11.
- (17) FILTERING LAYER means soil that has at least a 3-foot deep layer with at least 20 percent fines; or at least a 5-foot deep layer with at least 10 percent fines; or an engineered soil with an equivalent level of protection as determined by the regulatory authority for the site.
- (18) FINAL STABILIZATION means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70 percent of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
- (19) FINANCIAL GUARANTEE means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the Administering Authority by the responsible party to assure that requirements of the chapter are carried out in compliance with the stormwater management plan.
- (20) GOVERNING BODY means the Common Council.
- (21) IMPERVIOUS SURFACE means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, gravel or paved parking lots, and streets are examples of areas that typically are impervious.
- (22) IN-FILL means an undeveloped area of land located within an existing urban sewer service area, surrounded by development or development and natural or man-made features where development cannot occur.
- (23) INFILTRATION means the entry of precipitation or runoff into or through the soil.
- (24) INFILTRATION SYSTEM means a device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.
- (25) LAND-DISTURBING CONSTRUCTION ACTIVITY means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters

of the state. Land-disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

- (26) LANDOWNER means any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land-disturbing construction activity or maintenance of stormwater BMPs on the property.
- (27) MAINTENANCE AGREEMENT means a legal document that provides for long-term maintenance of stormwater management practices.
- (28) MAXIMUM EXTENT PRACTICABLE means the highest level of performance that is achievable but is not equivalent to a performance standard identified in this chapter as determined in accordance with 29.2.6 of this chapter.
- (29) NEW DEVELOPMENT means development resulting from the conversion of previously undeveloped land or agricultural land uses.
- (30) NRCS MSE4 DISTRIBUTION means a specific precipitation distribution developed by the United States Department of Agriculture, Natural Resources Conservation Service, using precipitation data from Atlas 14.
- (31) OFF-SITE means located outside the property boundary described in the permit application.
- (32) ON-SITE means located within the property boundary described in the permit application.
- (33) ORDINARY HIGH-WATER MARK has the meaning given in Wis. Admin. Code § NR 115.03(6).
- (34) OUTSTANDING RESOURCE WATERS means waters listed in Wis. Admin. Code § NR 102.10.
- (35) PERCENT FINES means the percentage of a given sample of soil which passes through a # 200 sieve.
- (36) PERFORMANCE STANDARD means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (37) PERMIT means a written authorization made by the Administering Authority or their designee to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
- (38) PERMID ADMINISTRATION FEE means a sum of money paid to the City by the permit applicant for the purpose of recouping the expenses incurred by the City in administering the permit.
- (39) PERVIOUS SURFACE means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.

- (40) POLLUTANT has the meaning given in Wis. Stat. § 283.01(13). Pollution has the meaning given in Wis. Stat. § 281.01(10).
- (41) POST-CONSTRUCTION SITE means a construction site following the completion of land-disturbing construction activity and final site stabilization.
- (42) PRE-DEVELOPMENT CONDITION means the extent and distribution of land cover types present before the initiation of land-disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.
- (43) PREVENTITIVE ACTION LIMIT has the meaning given in Wis. Admin. Code § NR 140.05(17).
- (44) PROTECTIVE AREA means an area of land that commences at the top of the channel of lakes, streams, and rivers or at the delineated boundary of wetlands and that is the greatest of the following widths as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface.
- (45) REDEVELOPMENT means areas where development is replacing older development.
- (46) RESPONSIBLE PARTY means the landowner or any other entity performing services to meet the requirements of this chapter through a contract or other agreement.
- (47) RUNOFF means stormwater or precipitation including rain, snow, or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (48) SEPARATE STORM SEWER means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains which meets all of the following criteria:
- (a) Is designed or used for collecting water or conveying runoff.
 - (b) Is not part of a combined sewer system.
 - (c) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.
 - (d) Discharges directly or indirectly to waters of the state.
- (49) SILVICULTURE ACTIVITY means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.
- (50) SITE means the entire area included in the legal description of the land on which the land-disturbing construction activity occurred.
- (51) STOP WORK ORDER means an order issued by the Administering Authority which requires that all construction activity on the site be stopped.

- (52) STORMWATER MANAGEMENT PLAN means a comprehensive plan designed to reduce the discharge of pollutants from stormwater after the site has undergone final stabilization following completion of the construction activity.
- (53) STORMWATER MANAGEMENT SYSTEM PLAN is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.
- (54) TECHNICAL STANDARD means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.
- (55) TOP OF THE CHANNEL means an edge, or point on the landscape landward from the ordinary high-water mark of a surface water of the state where the slope of the land begins to be less than 12 percent continually for at least 50 feet. If the slope of the land is 12 percent or less continually for the initial 50 feet landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.
- (56) TOTAL MAXIMUM DAILY LOAD or TMDL means the amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.
- (57) TP-40 means Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.
- (58) TR-55 means the United States department of agriculture, natural resources conservation service (previously soil conservation service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986, which is incorporated by reference for this chapter.
- (59) TRANSPORTATION FACILITY means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under Wis. Stat. § 85.095(1)(b). "Transportation facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Department pursuant to Wis. Stat. § 281.33.
- (60) TSS means total suspended solids.
- (61) TYPE II DISTRIBUTION means a rainfall type curve as established in the "United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published in 1973".
- (62) WATERS OF THE STATE includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

29.21 APPLICABILITY OF MAXIMUM EXTENT PRACTICABLE. Maximum extent practicable applies when a person who is subject to a performance standard of this chapter demonstrates to the Administering Authority's satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

29.22 TECHNICAL STANDARDS. The following methods shall be used in designing the water quality, peak discharge, and infiltration components of stormwater practices needed to meet the water quality standards of this chapter:

- (1) Consistent with the technical standards and design guidance identified, developed or disseminated by the Wisconsin Department of Natural Resources under Subch. V of Wis. Admin. Code § Ch. NR 151.
- (2) Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the Administering Authority.
- (3) City of Kiel Stormwater Reference Guide.

29.23 PERFORMANCE STANDARDS.

- (1) RESPONSIBLE PARTY The responsible party shall comply with this section.
- (2) STORMWATER MANAGEMENT PLAN A written stormwater management plan in accordance with 29.25 shall be developed and implemented for each post-construction site with one acre or more of land disturbing construction activity.
- (3) MAINTENANCE OF EFFORT For redevelopment sites where the redevelopment will be replacing older development that was subject to post-construction performance standards of NR 151 in effect on or after October 1, 2004, the responsible party shall meet the total suspended solids reduction, peak flow control, infiltration, and protective areas standards applicable to the older development or meet the redevelopment standards of this chapter, whichever is more stringent.
- (4) REQUIREMENTS

(a) For post-construction sites with one acre or more of land disturbing construction activity, BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:

1. **BMPs** shall be designed in accordance with Table 1 or to the maximum extent practicable as provided in subd. b. The design shall be based on an average annual rainfall as compared to no runoff management controls.

Table 1. TSS Reduction Standards	
Development Type	TSS Reduction
New Development	80 percent
In-fill development	80 percent
Redevelopment	40 percent of load from parking areas and roads

2. If the design cannot meet a total suspended solids reduction performance standard of Table 1, the stormwater management plan shall include a written, site-specific explanation of why the total suspended solids reduction performance standard cannot be met and why the total suspended solids load will be reduced only to the maximum extent practicable.
3. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after 4/11/2023, are required to satisfy the performance standards within 29.23(4)(a)1, regardless of land disturbing construction activity size.
4. When designing BMPs, runoff draining to the BMP from off-site shall be taken into account in determining the treatment efficiency of the practice. Any impact on the efficiency shall be compensated for by increasing the size of the BMP accordingly.

(b) Peak Discharge.

1. For post-construction sites with one acre or more of land-disturbing construction activity, BMPs shall be designed to maintain or reduce the 1-year, 2-year, 10-year, and 100-year, 24-hour post-construction peak runoff discharge rates to the respective 1-year, 2-year, 10-year, and 100-year , 24-hour pre-development peak runoff discharge rates, or to the maximum extent practicable. The runoff curve numbers in Table 2 shall be used to represent the actual pre-development conditions. Peak discharges shall be calculated using TR-55 runoff curve number methodology, Atlas 14 precipitation depths, and the appropriate NRCS

Wisconsin MSE4 precipitation distribution. On a case-by-case basis, the Administering Authority may allow the use of TP-40 precipitation depths and the Type II distribution.

Runoff Curve Number	Hydrologic Soil Group			
	A	B	C	D
Woodland	30	55	70	77
Grassland	39	61	71	78
Cropland	55	69	78	83

- (c) This subsection does not apply to any of the following:
 1. Except as provided under 29.2.8(c), a redevelopment post-construction site less than 5 acres.
 2. An in-fill development area less than 5 acres.
- (5) Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after 4/11/2023 are required to satisfy the performance standards within 29.23(4)(b)1, regardless of land disturbing construction activity size.
- (6) Stormwater runoff from offsite areas shall be taken into account when designing BMPs and stormwater conveyance systems. Any impact on the design efficiency shall be compensated for by increasing the size of the BMP or stormwater conveyance system accordingly.
- (7) Stormwater conveyance systems shall be designed and constructed in accordance with applicable and the most restrictive government regulation, including the following:
 - (a) Storm sewers shall be designed to convey a minimum 10-year design storm with no surcharging at the pavement surface, unless otherwise approved by the Administering Authority.
 - (b) Bridges and culverts shall be designed to convey the following minimum design storms without surcharging or overtopping the pavement surface, unless otherwise approved by the Administering Authority:
 1. Driveways: 10-year design storm.
 2. Minor streets: 25-year design storm.
 3. Collector streets: 50-year design storm.
 4. Arterial streets: 100-year design storm.
 - (c) The maximum stormwater depth at the crown of a public street shall be 6 inches during the 100-year design storm unless otherwise approved by the Administering Authority.

- (d) The 100-year stormwater ponding depth or flow path shall not impact buildings unless otherwise approved by the Administering Authority.
 - (e) Existing stormwater flow onto the site cannot be restricted or modified to impact adjacent properties without a written agreement between landowners.
 - (f) Drainage pipes located within a public street rights-of-way or easement shall be constructed in accordance with City specifications unless otherwise approved by the Administering Authority.
 - (g) Agricultural drain tiles which are disturbed during construction, shall be restored, reconnected, or connected to public storm drainage facilities unless otherwise approved by the Administering Authority.
- (8) INFILTRATION** For post-construction sites with one acre or more of land disturbing construction activity, the following performance standards are applicable:
- (a) Best Management Practices. BMPs shall be designed, installed, and maintained to infiltrate runoff in accordance with the following or to the maximum extent practicable:
 1. Low imperviousness. For development up to 40 percent connected imperviousness, such as parks, cemeteries, and low-density residential development, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90 percent of the pre-development infiltration volume based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than one percent of the post-construction site is required as an effective infiltration area.
 2. Moderate imperviousness. For development with more than 40 percent and up to 80 percent connected imperviousness, such as medium- and high-density residential, multi-family development, industrial and institutional development, and office parks, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 75 percent of the pre-development infiltration volume based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.
 3. High imperviousness. For development with more than 80 percent connected imperviousness such as commercial strip malls, shopping centers, and commercial downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60 percent of the pre-development infiltration volume based on an average annual rainfall. However, when designing appropriate infiltration systems to

meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.

(b) Pre-development. The pre-development condition shall be the same as specified in Table 2 of the Peak Discharge section of this chapter.

(c) Source Areas.

1. Prohibitions. Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the requirements of this section unless demonstrated to meet the conditions identified in 29.23(4)(c)6.

a. Areas associated with a tier 1 industrial facility identified in Wis. Admin. Code § NR 216.21(2)(a), including storage, loading and parking. Rooftops may be infiltrated with the concurrence of the regulatory authority.

b. Storage and loading areas of a tier 2 industrial facility identified in Wis. Admin. Code § NR 216.21(2)(b).

c. Fueling and vehicle maintenance areas. Runoff from rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the regulatory authority.

2. Exemptions. Runoff from the following areas may be credited toward meeting the requirement when infiltrated, but the decision to infiltrate runoff from these source areas is optional:

a. Parking areas and access roads less than 5,000 square feet for commercial development.

b. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the Prohibitions under par. a.

c. Except as provided under 29.23(3), redevelopment post-construction sites.

d. In-fill development areas less than 5 acres.

e. Roads on commercial, industrial and institutional land uses, and arterial residential roads.

d. Location of Practices.

1. Prohibitions. Infiltration practices may not be located in the following areas:

a. Areas within 1000 feet upgradient or within 100 feet downgradient of direct conduits to groundwater.

b. Areas within 400 feet of a community water system well as specified in Wis. Admin. Code § NR 811.16(4) or within the separation distances listed in Wis. Admin. Code § NR 812.08 for any private well or non-community well for runoff infiltrated from commercial,

including multi-family residential, industrial, and institutional land uses or regional devices for one- and two-family residential development.

- c. Areas where contaminants of concern, as defined in Wis. Admin. Code § NR 720.03(2), are present in the soil through which infiltration will occur.

2. Separation distances.

- a. Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock are in accordance with Table 3:

Table 3. Separation Distances and Soil Characteristics		
Source Area	Separation Distance	Soil Characteristics
Industrial, Commercial, Institutional Parking Lots and Roads	5 feet or more	Filtering Layer
Residential Arterial Roads	5 feet or more	Filtering Layer
Roofs Draining to Subsurface Infiltration Practices	1 foot or more	Native or Engineered Soil with Particles Finer than Coarse Sand
Roofs Draining to Surface Infiltration Practices	Not Applicable	Not Applicable
All Other Impervious Source Areas	3 feet or more	Filtering Layer

- b. Notwithstanding par. b., applicable requirements for injection wells classified under Ch. NR 815 shall be followed.

3. Infiltration rate exemptions. Infiltration practices located in the following areas may be credited toward meeting the requirements under the following conditions, but the decision to infiltrate under these conditions is optional:

- a. Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.

- b.** Where the least permeable soil horizon to 5 feet below the proposed bottom of the infiltration system using the U.S. Department of Agriculture method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay.
- (e)** Alternate Use. Where alternate uses of runoff are employed, such as for toilet flushing, laundry, or irrigation or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such alternate use shall be given equal credit toward the infiltration volume required by this section.

(9) GROUNDWATER STANDARDS

- (a)** Infiltration systems designed in accordance with this section shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with Ch. NR 140. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.
- (b)** Notwithstanding par. 1., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.
- (c)** Pretreatment. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subd. 6. Pretreatment options may include but are not limited to oil and grease separation, sedimentation, biofiltration, filtration, swales, or filter strips.
- (d)** Maximum Extent Practicable. Where the conditions of 29.23(3) and 29.23(4) limit or restrict the use of infiltration practices, the performance standard of 29.23(4)(c) shall be met to the maximum extent practicable.

(10) PROTECTIVE AREAS For post-construction sites with one acre or more of land-disturbing construction activity, the following performance standards are applicable:

- (a)** Definition. In this section, "protective area" means an area of land that commences at the top of the channel of lakes, streams, and rivers or at the delineated boundary of wetlands and that is the greatest of the following widths as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this section

"protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert so that runoff cannot enter the enclosure at this location.

1. For outstanding resource waters and exceptional resource waters, 75 feet.
 2. For perennial and intermittent streams identified on a U.S. Geological Survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.
 3. For lakes, 50 feet.
 4. or wetlands not subject to par. 5. or 6., 50 feet.
 5. For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps, and ephemeral ponds.
 6. For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include: degraded wetland dominated by invasive species such as reed canary grass; cultivated hydric soils; and any gravel pits, or dredged material, or fill material disposal sites that take on the attributes of a wetland.
 7. In pars. 4. to 6., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in Wis. Admin. Code § NR 103.03.
 8. Wetland boundary delineation shall be made in accordance with Wis. Admin. Code § NR 103.08(1m). This paragraph does not apply to wetlands that have been completely filled in compliance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in compliance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after a fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.
 9. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.
 10. Notwithstanding pars. 1. to 9., the greatest protective area width shall apply where rivers, streams, lakes and wetlands are contiguous.
- (b)** Applicability. This section applies to post-construction sites located within a protective area, except those areas exempted pursuant to subd. d.
- (c)** Requirements. The following requirements shall be met:
1. Impervious surfaces shall be kept out of the protective area entirely or to the maximum extent practicable. If there is no practical alternative to locating an impervious surface in

the protective area, the stormwater management plan shall contain a written, site-specific explanation.

2. Where land-disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained where no impervious surface is present. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat, and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion such as on steep slopes or where high velocity flows occur.
3. BMPs such as filter strips, swales, or wet detention ponds, that are designed to control pollutants from non-point sources may be located in the protective area.

(d) Exemptions. This section does not apply to any of the following:

1. Except as provided under 29.23(3), redevelopment post-construction sites.
2. In-fill development areas less than 5 acres.
3. Structures that cross or access surface water such as boat landings, bridges, and culverts.
4. Structures constructed in accordance with Wis. Stat. § 59.692(1v).

Areas of post-construction sites from which the runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the local chapter requirements for total suspended solids and peak flow reduction, except to the extent that vegetative ground cover is necessary to maintain bank stability.

(11) FEULING AND MAINTANCE AREAS For post-construction sites with one acre or more of land-disturbing construction activity, fueling and vehicle maintenance areas shall have BMPs designed, installed, and maintained to reduce petroleum within runoff so that the runoff that enters waters of the state contains no visible petroleum sheen or to the maximum extent practicable.

(12) SWALE TREATMENT FOR TRANSPORTAION FACILITIES. For post-construction sites with one acre or more of land disturbing construction activity, the following performance standards are applicable:

(a) Requirement. Except as provided in subd. b., transportation facilities that use swales for runoff conveyance and pollutant removal are exempt from the requirements of local ordinance requirements for peak flow control, total suspended solids control, and infiltration, if the swales are designed to do all of the following or to the maximum extent practicable:

1. Swales shall be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment such as rock riprap stabilization or check dams.
2. Swales shall comply with sections V.F. (Velocity and Depth) and V.G. (Slope Geometry Criteria) with a swale treatment length as long as that specified in section V.C. (Pre-Treatment) of the Wisconsin Department of Natural Resources technical standard 1005 "Vegetated Infiltration Swales," dated May 2007 or a superseding document. Transportation facility swale treatment does not have to comply with other sections of technical standard 1005.

(13) OTHER REQUIREMENTS

- (a) Notwithstanding subd. a., the Administering Authority may, consistent with water quality standards, require that other requirements in addition to swale treatment be met on a transportation facility with an average daily traffic rate greater than 2,500 and where the initial surface water of the state that the runoff directly enters is one of the following:
1. An outstanding resource water.
 2. An exceptional resource water.
 3. Waters listed in section 303(d) of the Federal Clean Water Act that are identified as impaired in whole or in part, due to non-point source impacts.
 4. Water where targeted performance standards are developed pursuant to Wis. Admin. Code § NR 151.004.
- (b) The transportation facility authority shall contact the Administering Authority to determine if additional BMPs beyond a water quality swale are needed under this subsection.
1. An exceptional resource water.
 2. Waters listed in section 303(d) of the Federal Clean Water Act that are identified as impaired in whole or in part, due to non-point source impacts.
 3. Water where targeted performance standards are developed pursuant to Wis. Admin. Code § NR 151.004.
- (c) The transportation facility authority shall contact the Administering Authority to determine if additional BMPs beyond a water quality swale are needed under this subsection.
- (d) General Considerations for Stormwater Management Measures. The following considerations shall be observed in on-site and off-site runoff management:

1. Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.
2. Emergency overland flow for all stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

(e) BMP Location.

1. To comply with the performance standards required under 29.23 of this chapter, BMPs may be located on-site or off-site as part of a regional stormwater device, practice or system but shall be installed in accordance with Wis. Admin. Code § NR 151.003.
2. The Administering Authority may approve off-site management measures provided that all of the following conditions are met:
 - a. The Administering Authority determines that the post-construction runoff is covered by a stormwater management system plan that is approved by the City of Kiel and that contains management requirements consistent with the purpose and intent of this chapter.
 - b. The off-site facility meets all of the following conditions:
 - i. The facility is in place.
 - ii. The facility is designed and adequately sized to provide a level of stormwater control equal to or greater than that which

29.24 PERMITTING REQUIREMENTS, PROCEDURES AND FEES. For post-construction sites with one acre or more of land-disturbing construction activity, the following requirements are applicable:

- (1) PERMIT REQUIRED** No responsible party may undertake a land-disturbing construction activity without receiving a post-construction runoff permit from the Administering Authority prior to commencing the proposed activity.
- (2) PERMIT APPLICATION AND FEES** Unless specifically excluded by this chapter, any responsible party desiring a permit shall submit to the Administering Authority a permit application on a form provided by the Administering Authority for that purpose.
 - (a)** Unless otherwise excluded by this chapter, a permit application must be accompanied by a stormwater management plan, a maintenance agreement, and a non-refundable permit administration fee.

- (b) The stormwater management plan shall be prepared to meet the requirements of 29.23 and 29.24, the maintenance agreement shall be prepared to meet the requirements of 29.25, the financial guarantee shall meet the requirements of 29.26, and fees shall be those established by the Common Council as set forth in 29.26.
- (3) PERMIT APPLICATION REVIEW AND APPROVAL The Administering Authority shall review any permit application that is submitted with a stormwater management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:
- (a) Within 30 calendar days of the receipt of a complete permit application, including all items as required by sub. (1), the Administering Authority shall inform the applicant whether the application, stormwater management plan and maintenance agreement are approved or disapproved based on the requirements of this chapter.
- (b) If the stormwater permit application, stormwater management plan, and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of stormwater management practices is made, the Administering Authority shall issue the permit.
- (c) If the stormwater permit application, stormwater management plan or maintenance agreement is disapproved, the Administering Authority shall detail in writing the reasons for disapproval.
- (d) The Administering Authority may request additional information from the applicant. If additional information is submitted, the Administering Authority shall have 30 calendar days from the date the additional information is received to inform the applicant that the stormwater management plan and maintenance agreement are either approved or disapproved.
- (e) Failure by the Administering Authority to inform the permit applicant of a decision within 30 calendar days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (4) PERMIT REQUIREMENTS. All permits issued under this chapter shall be subject to the following conditions, and holders of permits issued under this chapter shall be deemed to have accepted these conditions. The Administering Authority may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Administering Authority to suspend or revoke this permit may be appealed in accordance with 29.29.
- (a) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.

- (b)** The responsible party shall design and install all structural and non-structural stormwater management measures in accordance with the approved stormwater management plan and this permit.
- (c)** The responsible party shall notify the Administering Authority at least 30 calendar days before commencing any work in conjunction with the stormwater management plan and within 30 calendar days upon completion of the stormwater management practices. If required as a special condition under sub. (5), the responsible party shall make additional notification according to a schedule set forth by the Administering Authority so that practice installations can be inspected during construction.
- (d)** Practice installations required as part of this chapter shall be certified "as built" or "record" drawings by a licensed professional engineer. Completed stormwater management practices must pass a final inspection by the Administering Authority or its designee to determine if they are in accordance with the approved stormwater management plan and ordinance. The Administering Authority or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.
- (e)** The responsible party shall notify the Administering Authority of any significant modifications it intends to make to an approved stormwater management plan. The Administering Authority may require that the proposed modifications be submitted to it for approval prior to incorporation into the stormwater management plan and execution by the responsible party.
- (f)** The responsible party shall maintain all stormwater management practices in accordance with the stormwater management plan until the practices either become the responsibility of the Common Council, or are transferred to subsequent private owners as specified in the approved maintenance agreement.
- (g)** The responsible party authorizes the Administering Authority to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan and consents to a special assessment or charge against the property as authorized under Subch. VII of Wis. Stat. § Ch. 66 or to charging such costs against the financial guarantee posted under 29.26.
- (h)** If so directed by the Administering Authority, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by

runoff where such damage is caused by activities that are not in compliance with the approved stormwater management plan.

- (i) The responsible party shall permit property access to the Administering Authority or its designee for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.
 - (j) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the Administering Authority may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.
 - (k) The responsible party is subject to the enforcement actions and penalties detailed in 29.28 if the responsible party fails to comply with the terms of this permit.
- (5) PERMIT CONDITIONS Permits issued under this subsection may include conditions established by Administering Authority in addition to the requirements needed to meet the performance standards in 29.23 or a financial guarantee as provided for in 29.26.
- (6) PERMIT DURATION Permits issued under this section shall be valid from the date of issuance through the date the Administering Authority notifies the responsible party that all stormwater management practices have passed the final inspection required under sub. (4)(d).
- (7) ALTERNATE REQUIREMENTS The Administering Authority may prescribe permit requirements less stringent than those set forth in this chapter, such as for applicants seeking an exemption to on-site stormwater management performance standards under 29.23(6).

29.25 STORMWATER MANAGEMENT PLAN. For post-construction sites with one acre or more of land-disturbing construction activity, the following requirements are applicable:

- (1) STORMWATER MANAGEMENT PLAN REQUIREMENTS The stormwater management plan required under 29.23(2) shall contain at a minimum the following information:
- (a) Name, address, and telephone number for the following or their designees: landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of stormwater management practices; and person(s) responsible for maintenance of stormwater management practices prior to the transfer, if any, of maintenance responsibility to another party.
 - (b) A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.

(c) Pre-development site conditions, including:

1. One or more legible site maps at a scale of not less than 1 inch equals 10 to 60 feet (or as otherwise approved by Administering Authority). The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed two feet; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all stormwater conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the 100-year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to Wis. Admin. Code § NR 811.16.
2. Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

(d) Post-development site conditions, including:

1. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
2. Explanation of any restrictions on stormwater management measures in the development area imposed by wellhead protection plans and ordinances.
3. One or more legible site maps at a scale of not less than 1 inch equals 10 to 60 feet (or as otherwise approved by Administering Authority) showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; post-construction topographic contours of the site at a scale not to exceed two feet; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all stormwater conveyance sections; location and type of all stormwater management conveyance and

treatment practices, including the on-site and offsite tributary drainage area; location and type of conveyance system that will

4. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
 5. Results of investigations of soils and groundwater required for the placement and design of stormwater management measures. Detailed drawings including cross-sections and profiles of all permanent stormwater conveyance and treatment practices.
- (e) A description and installation schedule for the stormwater management practices needed to meet the performance standards in 29.23.
 - (f) A maintenance plan developed for the life of each stormwater management practice including the required maintenance activities and maintenance activity schedule.
 - (g) Cost estimates for the construction, operation, and maintenance of each stormwater management practice.
 - (h) Other information requested in writing by the Administering Authority to determine compliance of the proposed stormwater management measures with the provisions of this chapter.
 - (i) All site investigations, plans, designs, computations, and drawings shall be certified by a licensed professional engineer to be prepared in accordance with accepted engineering practice and requirements of this chapter.
- (2) ALTERNATE REQUIREMENTS. The Administering Authority may prescribe stormwater management plan requirements less stringent than those set forth in this chapter such as for applicants seeking an exemption to on-site stormwater management performance standards under 29.23(6).

29.26 MAINTENANCE AGREEMENT. For post-construction sites with one acre or more of land-disturbing construction activity, the following requirements are applicable:

- (1) MAINTENANCE AGREEMENT REQUIRED The maintenance agreement required under 29.23(2) for stormwater management practices shall be an agreement between the City and the responsible party to provide for maintenance of stormwater practices beyond the duration period of this permit. The maintenance agreement shall be filed with the County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the stormwater management practices.

- (2) AGREEMENT PROVISIONS** The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by 29.24(1)(f):
- (a)** Identification of the stormwater facilities and designation of the drainage area served by the facilities.
 - (b)** A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under 29.23(2).
 - (c)** Identification of the responsible party(s), organization or city, county, town or village responsible for long-term maintenance of the stormwater management practices identified in the stormwater management plan required under 29.23(2).
 - (d)** Requirement that the responsible party(s), organization, or city, county, town or village shall maintain stormwater management practices in accordance with the schedule included in par. (2).
 - (e)** Authorization for the Administering Authority or their designee to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
 - (f)** A requirement on the Administering Authority to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition.
 - (g)** Agreement that the party designated under par. (3), as responsible for long-term maintenance of the stormwater management practices, shall be notified by the Administering Authority of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Administering Authority.
 - (h)** Authorization of the Administering Authority to perform the corrected actions identified in the inspection report if the responsible party designated under par. (3) does not make the required corrections in the specified time period. The Administering Authority shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Subch. VII of Wis. Stat. Ch. 66.
- (3) ALTERNATE REQUIREMENTS** The Administering Authority may prescribe maintenance agreement requirements less stringent than those set forth in this chapter, such as for applicants seeking an exemption to on-site stormwater management performance standards under 29.23(6).

29.27 FINANCIAL GUARANTEE. For post-construction sites with one acre or more of land-disturbing construction activity, the following requirements are applicable:

- (1) ESTABLISHMENT OF THE GUARANTEE** The Administering Authority may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the Administering Authority. The financial guarantee shall be in an amount determined by the Administering Authority to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the Administering Authority the authorization to use the funds to complete the stormwater management practices if the responsible party defaults or does not properly implement the approved stormwater management plan, upon written notice to the responsible party by the Administering Authority that the requirements of this chapter have not been met.
- (2) CONDITIONS FOR RELEASE** Conditions for the release of the financial guarantee are as follows:

 - (a)** The Administering Authority shall release the portion of the financial guarantee established under this section less any costs incurred by the City to complete installation of practices upon submission of "as built plans" or "record" drawings by a licensed professional engineer. The Administering Authority may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
 - (b)** The Administering Authority shall release the portion of the financial guarantee established under this section to assure maintenance of stormwater practices, less any costs incurred by the City, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

29.28 FEE SCHEDULE. The fees referred to in other sections of this chapter shall be established by the Common Council and may from time to time be modified by resolution. A schedule of the fees established by the Common Council shall be available for review in City Hall.

29.29 ENFORCEMENT.

- (1)** Any land-disturbing construction activity or post-construction runoff initiated after the effective date of this chapter by any person, firm, association, or corporation subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with the requirements of this chapter.

- (2) The Administering Authority shall notify the responsible party by certified mail of any noncomplying land-disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken.
- (3) Upon receipt of written notification from the Administering Authority under sub. (2), the responsible party shall correct work that does not comply with the stormwater management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the Administering Authority in the notice.
- (4) If the violations to a permit issued pursuant to this chapter are likely to result in damage to properties, public facilities, or waters of the state, the Administering Authority may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the Administering Authority plus interest and legal costs shall be billed to the responsible party.
- (5) The Administering Authority is authorized to post a stop work order on all land-disturbing construction activity that is in violation of this chapter or to request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
- (6) The Administering Authority may revoke a permit issued under this chapter for noncompliance with ordinance provisions.
- (7) Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the Administering Authority or by a court with jurisdiction.
- (8) The Administering Authority is authorized to refer any violation of this chapter, or a stop work order or cease and desist order issued pursuant to this chapter, to the City Attorney for the commencement of further legal proceedings in any court with jurisdiction.
- (9) Any person, firm, association, or corporation who does not comply with the provisions of this chapter shall be subject to a forfeiture as provided per Chapter 25.04. Each day that the violation exists shall constitute a separate offense.
- (10) Compliance with the provisions of this chapter may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.
- (11) When the Administering Authority determines that the holder of a permit issued pursuant to this chapter has failed to follow practices set forth in the stormwater management plan, or has failed to comply with schedules set forth in said stormwater management plan, the Administering Authority or a party designated by the Administering Authority may enter upon the land and

perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved stormwater management plan. The Administering Authority shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to 29.27 of this chapter. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

29.30 APPEALS

- (1) **BOARD OF APPEALS** The Board of Appeals, created pursuant to Chapter 1.24 of the City of Kiel ordinances pursuant to Wis. Stat. § 62.23(7)(e), shall hear and decide appeals where it is alleged that there is error in any order, decision, or determination made by the Administering Authority in administering this chapter. The Board shall also use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. Upon appeal, the Bboard may authorize variances from the provisions of this chapter that are not contrary to the public interest and where owing to special conditions a literal enforcement of the chapter will result in unnecessary hardship.
- (2) **WHO MAY APPEAL** Appeals to the Board of Appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the City of Kiel affected by any decision of the Administering Authority.