

ZONING ORDINANCE

**SECTION 14
ADMINISTRATION AND ENFORCEMENT**

14.1 ZONING ADMINISTRATOR

The specific duties of the Zoning Administrator include:

14.1.1 PROVIDING ZONING INFORMATION:

Providing zoning information upon request.

14.1.2 RECEIVING / REFERRING APPLICATIONS:

Receiving applications for Conditional Use Permits, variances, amendments and appeals, referring such applications to the appropriate official body, notifying affected property owners of required public hearings, and publishing notice of such hearings.

14.1.3 NOTIFYING APPLICANTS:

Notifying applicants for Conditional Use Permits, variances, amendments and appeals of actions taken by the official bodies relative to their application.

14.1.4 INSPECTIONS:

Conducting inspections to determine and assure compliance with Ordinance provisions.

14.1.5 VIOLATIONS:

Investigate violations, notifying persons guilty of violations and describing the nature of such, and initiating appropriate actions against violators as provided by law.

14.1.6 RECORDS:

Maintaining permanent and current records of this Ordinance and the official Zoning Map including, but not limited to, Conditional Use Permits, variances, amendments, appeals and applications therefor.

14.2 BOARD OF APPEALS

Minnesota Statutes, Section 462.354, require any municipality having in effect a Zoning Ordinance to provide by Ordinance for a Board of Appeals and Adjustments. Such statutes also state that the governing body may provide alternatively that there be a separate Board of Appeals and Adjustments or that the governing body, the Planning Commission, or a committee of the Planning Commission serve as the Board of Appeals and Adjustments, and it may provide an appropriate name for the board. The board may be given such other duties as the governing body may direct.

14.2.1 ESTABLISHMENT:

The Governing Body is hereby established as the required Board of Appeals and Adjustments, such Board to be hereinafter referred to as the Board of Appeals or

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the Board. The Governing Body acting as the Board of Appeals, shall be vested with such administrative authority as is hereinafter provided or as provided by State Law.

14.2.2 DUTIES:

The duties of the Board of Appeals shall be:

- a) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by the Zoning Administrator;
- b) To interpret the meaning of the Ordinance in cases of ambiguity and to make rulings with respect to the application of the Ordinance.

14.2.3 PROCEEDINGS:

The Board of Appeals shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the chairperson and at such other times as the Board may determine. The chairperson, or in his/her absence, the acting chairperson, may request the attendance of witnesses. All meetings shall be open to the public.

The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the City Clerk.

14.2.4 APPEALS:

Appeals to the Board of Appeals may be taken by any person aggrieved, or by any official or department of the City affected by any decision of the Zoning Administrator. Such appeals shall be taken within 60 days of such decision by filing with the Zoning Administrator a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. The Zoning Administrator is hereby designated as the representative of the Planning Agency who shall review and report on said appeal to the Board.

The Board shall fix a time for the hearing of appeal, which hearing shall be held not less than ten (10) days nor more than 45 days after filing of said appeals. Hearings before the Board under Minnesota Statutes Sec. 462.359 Subd. (4) (Official Maps) shall require notice published in the official newspaper ten (10) days before the hearing; for all other hearings before the Board, notice of the date, time and place of such hearing shall be given to all interested parties. A decision on said appeal by the Board shall be made within a reasonable time after the hearing. At the hearing, any party may appeal in person by agent or attorney.

14.3 PLANNING COMMISSION DUTIES IN ZONING ADMINISTRATION

14.3.1 PUBLIC HEARINGS:

To hold public hearings on applications for amendments to this Ordinance. The Commission shall not have the authority to make changes or amendments to this

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Ordinance; it shall act in a purely advisory manner to the City Council making its recommendations in all cases referred to it, and transmitting them to such Council for final action.

14.3.2 APPLICATIONS FOR CONDITIONAL USE PERMITS:

To consider applications for Conditional Use Permits provided for within this Ordinance and to transmit its recommended action to the City Council for final action.

14.3.3 VARIANCE REQUESTS:

To hear requests for variance from the literal provisions of this Ordinance and to make recommendations thereon to the City Council.

14.4 PERMITS

14.4.1 BUILDING PERMIT:

Hereafter, no person shall erect, alter, remodel, demolish or move any kind of a structure or building, or part thereof, without first securing a building permit therefore as provided for by Minnesota State Building Code or other applicable code or ordinances.

14.4.2 OCCUPANCY PERMIT:

Hereafter, no new building or addition and no land whose use has been changed shall be occupied other than for a public utility use until an occupancy permit has been issued by the Building Official. Every such permit shall state that the new occupancy complied with all provisions of this Ordinance. The Building Official may issue a temporary Certificate of Occupancy in cases where no substantial hazard will result or where certain site improvements have not been completed such as landscaping due to weather conditions.

Prior to an occupancy permit being granted in the Flood Plain area, the applicant shall be required to submit certification by a registered professional engineer or land surveyor, as appropriate, or other qualified person designated by the governing body, that the finished fill and building floor elevations, flood proofing, or other flood protection measures were accomplished in compliance with the provisions of this Ordinance.

The Building Official shall maintain a record of the elevation of the first floor (including basement) of all new structures or additions to existing structures in the flood plain districts. He shall also maintain a record of the elevations to which structures or additions to structures are flood proofed.

14.4.3 EXHIBITS:

Each application for a building permit and for an occupancy permit for the use of land shall be accompanied by the following exhibits unless waived by the Building Official.

14.4.3.1 One and two family dwellings

a) Two copies of Certificate of Survey, as recorded at Carver County, showing proposed location of easements for wooded natural slopes 18% grade or

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greater and proposed location of building improvement with exact setback requirements to property lines. House and garage elevations to be shown, minimum 18 inches above street elevation;

- i) Where municipal utilities are not available, location of well, septic tank and drainfield are to be shown.
 - ii) Where municipal utilities are available, house to be elevated accordingly and so indicated.
- b) Two complete sets of building plans including footing plan, framing detail cross-section, floor plans and elevations. Window sizes to be shown on floor plan;
 - c) One copy of the Average "U" computations.

14.4.3.2 Multi-family dwellings, commercial, industrial and public buildings

- a) Boundary survey, prepared by a registered surveyor of an area including the property in question and 100 feet beyond its outer boundaries showing existing property lines and dimensions, platting and easements, buildings, street and railroad rights-of-way, utilities, topography, waterways, and ownership of all parcels. Vegetation and soil borings to be included if pertinent (4 copies);
- b) Site plan indicating location, size and placement of proposed structures and yards, parking and loading facilities, vehicular access and egress, pedestrian walkways, landscaping, utilities, grading and drainage (4 copies);
- c) Exterior elevation drawings of the proposed structure which accurately indicate the height, size, design, and appearance of all elevations of the proposed structure, floor plans, and a description of the construction and materials to be used (4 copies);
- d) Complete construction plans prepared by a registered architect or engineer as required by State Law including footing plan, framing detail cross-section, floor plans and elevations. Window size to be shown on floor plan. Average "U" computation (2 copies).

14.4.4 PERMIT APPLICATION PROCEDURE:

The procedure for applying for a building permit and an occupancy permit shall be as follows:

14.4.4.1 Procedures / Applications

The property owner or his agent shall meet with the Building Official to explain his situation, learn the procedures, and obtain an application form.

14.4.4.2 Completed Application / Exhibits

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The applicant shall file the completed application form together with the required exhibits with the Building Official

- a) For dwellings up to and including eight units:

The Building Official shall review the exhibits and issue a building permit if the proposed project complies with the Building Code, this Ordinance and all other applicable codes and ordinances.

- b) For multi-family structures over eight units, and principal commercial, industrial and public buildings:

The Building Official shall refer plans to the Planning Staff for review, after which the plans and staff reports shall be submitted to the Planning Commission, which body shall make recommendations to the City Council for its final action. The Building Official may then issue a building permit if the proposed project complies with all applicable codes and ordinances as well as with any requirements established by the City Council.

- c) Additions:

Building permit applications for commercial and industrial additions not exceeding 30% of the size of the existing structure, or 25,000 square feet, whichever is less, shall not require Planning Commission or City Council review unless a variance is required or other special circumstances are involved. Such applications will be reviewed and acted upon by the Community Development Department. Such applications also must be accompanied by complete site development and building design plans, as required by Subsection 14.4.3.2 of this Ordinance.

14.4.4.3 Financial Security

All applicants, prior to being issued a building permit for multiple family dwellings and commercial, industrial and public buildings, shall submit to the City a cash escrow or bank Letter of Credit, in a form approved by the City Attorney, in an amount equal to 110% of the City Engineer's estimated cost of any requirements placed on the building permit, to guarantee the performance of such requirements. If a Letter of Credit is utilized, the Letter of Credit shall be irrevocable for a period of at least one year. At any time within the period of one year after the issuance of such building permit, the City may, after having given the applicant ten (10) days written notice, draw upon said Letter of Credit or cash escrow, and contract for or order the completion of any uncompleted requirements of said building permit. The City may further draw upon said cash or Letter of Credit for all of its costs and administrative expenses, including but not limited to, administrative time, engineering time, planning time, attorney's time and other costs and expenses expended by the City for the purpose of enforcing or attempting to enforce said building permit requirements. Should the cost of said completion or the City's costs and administrative expenses be greater than the amount of the cash escrow or Letter of Credit, the applicant shall be obligated to pay the City the difference within 30 days of written notification thereof. If the applicant fails to make such payment, the City may, at its option,

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commence legal suit to collect the difference, together with all costs and expenses related to said collection, including reasonable attorney's fees.

14.4.5 EXPIRATION OF BUILDING PERMIT:

If the work described in any building permit has not begun within 90 days from the date of issuance thereof, said permit shall expire; it shall be canceled by the Building Official; and written notice thereof shall be given to the persons affected.

If the work described in any building permit has not been substantially completed within two years of the date of issuance thereof, said permit shall expire and be canceled by the Building Official, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building permit has been obtained.

14.5 PUBLIC HEARINGS

State Law requires public hearings for Zoning Administration as follows:

14.5.1 AMENDMENTS:

No Zoning Ordinance or amendment thereto shall be adopted until a public hearing has been held thereon by the Planning Commission or by the City Council. A notice of the time, place and purpose of the hearing shall be published in Chaska's official newspaper at least ten (10) days prior to the day of the hearing. When an amendment involves changes in district boundaries affecting an area of five (5) acres or less, a similar notice shall be mailed at least ten (10) days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates. For the purpose of giving mailed notice, the person responsible for mailing the notice may use any appropriate records to determine the names and addresses of owners. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the records of the proceedings. Failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this Subdivision has been made. (Minnesota Statutes 462.357, Subdivision 3)

14.5.2 CONDITIONAL USE PERMITS:

Public hearings are required by the State for Conditional Use Permits in the manner provided for amendments, except that mailed notice to surrounding property owners is not required. Nonetheless, the City of Chaska has determined that mailed notices shall be given to property owners within 150 feet of the subject property.

14.5.3 VARIANCES:

Public hearings are not required by the State for variances; however, the City of Chaska has determined that public hearings shall be held for variances which exceed the applicable zoning requirements by more than 30 percent. In such event, notice shall be published in the official newspaper as provided for

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amendments, and a similar notice shall be mailed to each owner of property which abuts the property to which the variance relates.

14.6 AMENDMENTS

14.6.1 ADOPTION:

This Ordinance may be amended, changed or altered only by a favorable two-thirds (2/3) vote of all the members of the City Council, and only after a public hearing has been duly advertised and held by the Planning Commission or City Council.

14.6.2 KINDS OF AMENDMENTS:

An amendment to this Ordinance may be one of the following:

- a) A change in a district's boundary (rezoning);
- b) A change in a district's regulations;
- c) A change in any other provision of this Ordinance.

14.6.3 INITIATION OF PROCEEDINGS:

Proceedings for amending this Ordinance shall be initiated by at least one of the following three methods:

- a) By petition of an owner or owners of property which is proposed to be rezoned, or for which district regulation changes are proposed;
- b) By recommendation of the Planning Commission;
- c) By action of the City Council.

An amendment not initiated by the Planning Commission shall be referred to the Planning Commission for study and report and may not be acted upon by the City Council until it has received the recommendation of the Planning Commission on the proposed amendment or until 60 days have elapsed from the date of reference of the amendment without a report by the Planning Commission.

14.6.4 PROCEDURES:

The procedure for a property owner to initiate a rezoning or district regulation change applying to his property is as follows:

- a) The property owner or his agent shall meet with the Zoning Administrator to explain his situation, learn the procedures, and obtain an application form;
- b) The applicant shall file the completed application form with the Zoning Administrator and shall pay the required filing fee;
- c) The Zoning Administrator shall transmit the application together with staff/consultant reports to the Planning Commission and shall give notice of the public hearing as required by Subsection 14.5.1 above;

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- d) The Planning Commission shall hold the public hearing and shall, within 60 days of filing, recommend one of three actions: approval, denial, or conditional approval;
- e) The City Council shall act upon the application within 45 days after receiving the recommendation of the Planning Commission.

14.7 CONDITIONAL USE PERMITS

14.7.1 PURPOSE:

In order to give the district use regulations of this Ordinance the flexibility necessary to achieve the objectives of the Comprehensive Plan, certain uses are permitted subject to the granting of a Conditional Use Permit. Because of their unusual characteristics, such conditional uses require special consideration so they may be located properly with respect to the objectives of the Comprehensive Plan and with respect to their effects on surrounding properties. In order to achieve these purposes, the City Council is empowered to grant and to deny applications for Conditional Use Permits and to impose reasonable conditions upon the granting of these permits.

14.7.2 EXHIBITS:

The following exhibits shall be required:

- a) The boundary survey, site plan and preliminary building plans as required for building permits in Subsection 14.4.3.2 above;
- b) Other material as may be required by the Zoning Administrator.

14.7.3 PROCEDURES:

The procedure for obtaining a Conditional Use Permit is as follows:

- a) The property owner or his agent shall meet with the Zoning Administrator to explain his situation, learn the procedures, and obtain an application form;
- b) The applicant shall file the completed application form together with the required exhibits with the Zoning Administrator and shall pay the required filing fee;
- c) The Zoning Administrator shall transmit the application and exhibits together with staff/consultant reports to the Planning Commission and shall give notice of the public hearing as required by Subsection 14.5.1 above;
- d) The Planning Commission shall study the application to determine possible adverse effects of the proposed special use and to determine what additional requirements may be necessary to reduce such adverse effects, and within 45 days of filing shall recommend one of three actions: approval, denial, or conditional approval;
- e) The City Council shall act on the application within 45 days after receiving the recommendation of the Planning Commission.

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14.7.4 STANDARDS FOR GRANTING CONDITIONAL USE PERMITS:

A Conditional Use Permit may be granted by the City Council after demonstration by evidence that:

- a) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, comfort or general welfare;
- b) The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood;
- c) The establishment of the special use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district;
- d) Adequate utilities, access roads, drainage, and necessary facilities have been or will be provided;
- e) Adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets;
- f) The special use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

The Planning Commission may recommend, and the City Council may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the special use as deemed necessary for the protection of the public interest and to secure compliance with the requirements specified in this Ordinance.

14.7.5 LAPSE:

A Conditional Use Permit shall lapse and become null and void one year following the date on which the Conditional Use Permit became effective, unless prior to the expiration of one year a building permit is issued by the Building Inspector and construction is commenced and diligently pursued toward completion on the subject site, or a Certificate of Occupancy is issued by the Building Inspector for the subject site or structure. A Conditional Use Permit may be renewed by the Council for good cause for a period not to exceed one year.

14.7.6 REVOCATION:

A violation of any condition set forth in a Conditional Use Permit shall be a violation of this Ordinance and shall automatically terminate the Conditional Use Permit. A Conditional Use Permit shall be deemed to authorize only one particular use and shall expire if that use shall cease for more than 12 consecutive months.

14.7.7 USES BY CONDITIONAL USE PERMIT NOT NON-CONFORMING USES:

Uses authorized by Conditional Use Permit under this Section shall not be deemed a non-conforming use, but shall without further action be considered a

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conforming use, but only in accordance with the conditions set forth in the Conditional Use Permit.

14.7.8 FILING:

A certified copy of any Conditional Use Permit shall be filed with the Carver County Recorder or Registrar of Titles and shall include a legal description of the subject property.

14.8 VARIANCES

14.8.1 PURPOSE / STANDARDS:

The City Council may grant variances from the literal provisions of this Ordinance where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of this Ordinance.

“Undue hardship” as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under conditions required by the official controls, the plight of the landowner is due to circumstances unique to his property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Undue hardship also includes, but is not limited to, inadequate access to direct sunlight for solar energy systems.

Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of this Ordinance. Variances shall be granted for earth sheltered construction as defined herein when in harmony with this Ordinance.

The City Council may not permit as a variance any use that is not permitted under the Ordinance for property in the district where the affected person’s land is located. The City Council may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The City Council may impose conditions in the granting of a variance to insure compliance and to protect adjacent properties.

14.8.2 EXHIBITS:

Applications for variances shall describe the undue hardships and unique circumstances claimed as a basis for the variance. In addition, the following exhibits shall be submitted if required by the Zoning Administrator:

- a) A boundary survey and/or site plan as required for building permits;
- b) Other material as may be required by the Zoning Administrator.

14.8.3 PROCEDURE:

The procedure for applying for a variance from the regulations of this Ordinance shall be as follows:

- a) The property owner or his agent shall meet with the Zoning Administrator to explain his situation, learn the procedures, and obtain an application form;

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- b) The applicant shall file the completed application form together with the required exhibits with the Zoning Administrator and shall pay the required filing fee;
- c) The Zoning Administrator shall transmit the application and exhibits together with staff/consultant reports to the Planning Commission and shall give notice of the public hearing, if applicable, as provided by Subsection 14.5.1 above;
- d) Public hearings shall be held for variances which exceed the applicable zoning requirements by more than 30 percent;
- e) The Planning Commission shall transmit its recommended action to the City Council within 45 days of filing;
- f) The City Council shall act on the application within 45 days after receiving the recommendation from the Planning Commission;
- g) Within all shoreland areas defined by Subsection 6.2.2 of this Ordinance, a copy of every variance application along with supporting materials required by Subsection 14.8.2, shall be submitted to the Minnesota Department of Natural Resources and also shall have received at least ten (10) days notice prior to the meeting date to consider the variance.

14.8.4 PROCEDURE FOR MINOR VARIANCE:

A property owner may file an application for a minor variance if the variance meets any of the following requirements:

- a) If it relates to setbacks for driveway, garage, or swimming pool;
- b) If it is less than five (5) feet; or
- c) If it relates to the size and location of signs that deviate from the Ordinance by less than 10%.

The procedure for applying for a minor variance from the regulations of this Ordinance shall be as follows:

- a) The property owner or his/her agent shall meet with the Zoning Administrator to explain the situation, learn the procedures, and obtain an application form.
- b) The applicant shall file the completed application form together with the required exhibits with the Zoning Administrator and shall pay the required fee.
- c) The applicant shall secure and present signatures from property owners contiguous to the affected yard for which the variance is requested, specifically noting awareness of the minor variance request. The Zoning

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Administrator shall determine the adequacy and accuracy of the names and addresses of such property owners.

- d) The Minor Variance Board shall be composed of the Planning Director (or designee), Community Development/Code Administrator (or designee) and Building Official (or designee).
- e) The Minor Variance Board shall unanimously recommend approval or denial of the application within five (5) days of filing with the Zoning Administrator. In the event the application is not recommended for approval by the Board, the applicant may proceed as provided in Section 14.8.3, and the original fee shall be applied to the fee as required for a standard variance.
- f) If recommended for approval by the Minor Variance Board, the application shall be placed on the City Council's consent agenda within 21 days of filing. The Minor Variance Board may recommend conditions upon the approval which relate directly to the variance request.
- g) Within all shoreland areas defined by Subsection 6.2.2 of this Ordinance, a copy of every variance application along with supporting materials required by Subsection 14.8.2, shall be submitted to the Minnesota Department of Natural Resources and also shall have received at least ten (10) days notice prior to the meeting date to consider the variance. (Ord. No. 644, 10/19/98)

14.8.5 REVOCATION OF VARIANCE:

The granting of a variance from the provisions of this Ordinance shall be subject to the following conditions, which conditions shall apply to all variances granted and said conditions shall be continuing:

- a) The variance shall be effective only for the specific purposes set forth in the variance grant. A violation of any condition set forth in granting a variance shall be a violation of this Ordinance and shall automatically terminate the variance;
- b) The variance shall be personal to the applicant for the specific purpose set forth in the variance grant until the construction or installation of such specific purpose has been completed, at which time said variance shall attach to the land; furthermore, said attachment to the land shall continue until such specific purpose is discontinued, at which time said variance shall be null and void;
- c) The variance shall become null and void without further action by the Planning Commission or City Council upon failure of applicant to utilize such variance by commencement of construction or installation of the specific purpose within 180 days of variance grant and completion within a reasonable time after commencement. A variance may be renewed by the City Council for good cause;
- d) No such variance is transferable without authorization by the City Council while same is personal with applicant.

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14.8.6 FILING:

A certified copy of any variance shall be filed with the Carver County Recorder or Registrar of Titles and shall include a legal description of the subject property.

14.9 FEES

Fees for building permits, occupancy permits, variances, Conditional Use Permits and amendments shall be as established from time to time by resolution of the City Council.

14.9.1 APPLICABLE FEES:

Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal. There shall be no fee in the case of applications filed in public interest by the City Council or by the Planning Commission. In addition to such prescribed fees, staff time and consultant fees for reviewing applications, meeting with applicants, making site visits, and preparing reports may also be charged to the applicant subsequent to the initial filing and fee payment.

14.10 PENALTIES FOR VIOLATION

Violation of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 or imprisoned for not more than 90 days, or both, and in addition shall pay costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

The owner or tenant of any building, structure, premises, or part thereof, and any builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violations may be found guilty of a separate offense and suffer the penalties herein provided.

Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

14.11 JUDICIAL REVIEW

Any person aggrieved by a decision or order of the City Council or Board of Appeals acting pursuant to this Ordinance may have such decision or order reviewed by an appropriate remedy in the district court, subject to the provisions of State Law.