

ARLINGTON PLANNING & ZONING BOARD
MEETING MINUTES
APRIL 2, 2009

The meeting was called to order at 7:00 p.m., Chairman Nagel presiding.

Members Present: Grabitske, Kreft, Chairman Nagel, Pinske, Councilmember Reetz, Rosenfeld
Members Absent: Haggenmiller
Also Present: PZ Adm. Smith-Strack

Motion by Reetz, seconded by Pinske, and passed by unanimous vote to approve the agenda with the following addition:

7B) Jeff Klehr Building Permit Application.

Motion by Grabitske, seconded by Rosenfeld, and passed by unanimous vote to approve the minutes from the March 5, 2009 meeting as presented.

Smith-Strack reviewed the details of proposed Ordinance No. 241 – An Ordinance Amending Ordinance 169, The Arlington Zoning Ordinance, by Repealing Existing Sign Regulations and Replacing Them with Section 13.5. She stated that there would be a fee of \$15 (same as land use permit fee) for all sign permits (illuminated or non-illuminated). It was noted that signs 18 sq. ft. or smaller were exempt from needing a permit. Smith-Strack commented that any structure (includes signs) greater than six feet in height is required to get a building permit, which insures that a footing/load inspection is done. Smith-Strack explained that the information presented at the previous meeting regarding portable/illuminated signage was a policy, not an ordinance, and therefore was not enforceable by the zoning ordinance. She added that it was also not permitted under State Law because it violates first amendment rights as it gives preferential treatment to non-profit groups, which is not allowed. She explained that certain signs fall under the Interim Use Permit guidelines. It was noted that the proposed ordinance would allow signs on public property, but would have to be setback five feet from a property line, except in the Downtown area. It was also noted that there must be a viewing triangle at all street intersections measured from a triangle drawn a distance of 25 ft. from the center of the curb intersection must be kept free of view obstruction.

Rosenfeld introduced the following resolution and moved for its adoption:

RESOLUTION NO. 1-2009

A RESOLUTION RECOMMENDING THE CITY COUNCIL APPROVE ORDINANCE 241, AN ORDINANCE AMENDING ORDINANCE 169, THE ARLINGTON ZONING ORDINANCE, BY REPEALING STANDARDS RELATING TO SIGNAGE AND REPLACING THEM WITH SECTION 13.5

WHEREAS, the City of Arlington placed Ordinance 169 into effect several years ago; and

WHEREAS, the Arlington Planning Commission finds portions of Ordinance 169 relating to signage within the City are not up to date; and

WHEREAS, an amendment to Ordinance 169, the Arlington Zoning Ordinance to repeal existing language relating to signage and replace them with that contained in Ordinance 241 has been developed; and

WHEREAS, the Arlington Planning Commission has reviewed and studied proposed Ordinance 241; and

WHEREAS, a public hearing was properly noticed and held on March 5, 2009 by the City of Arlington Planning Commission.

NOW, THEREFORE, BE IT RESOLVED, that the Arlington Planning Commission recommends the City Council approve Ordinance 241, entitled “An Ordinance Amending Ordinance 169, the Arlington Zoning Ordinance, by Repealing Standards Relating to Signage and Replacing them with Section 13.5” a copy of which is attached as Exhibit A.

The motion for the adoption of the foregoing resolution was duly seconded by Grabitske and upon poll being taken thereon the following voted in favor thereof: Grabitske, Kreft, Nagel, Pinske, Councilmember Reetz, Rosenfeld; and the following voted against the same: None; and the following abstained from voting: None; and the following were absent: Haggemiller.

Adopted by the Planning & Zoning Committee of the City of Arlington this 2nd day of April, 2009.

Signed: /s/ Lowell Nagel
Chairperson

Attest: /s/ Cynthia Smith-Strack
Planning & Zoning Administrator

Whereupon the resolution was declared duly passed and executed.

EXHIBIT A

**CITY OF ARLINGTON
ORDINANCE 241**

AN ORDINANCE AMENDING ORDINANCE 169, THE ARLINGTON ZONING ORDINANCE BY REPEALING EXISTING STANDARDS RELATING TO SIGNAGE AND REPLACING THEM WITH SECTION 13.5

SEE ATTACHED FOR COMPLETE COPY.

Discussion was held on proposed Ordinance No. 240 – An Ordinance Repealing and Replacing Ordinance 117, 136, and 138 Relating to Management of Flood Plains within the City of Arlington. Smith-Strack commented that she had been contacted by the DNR Floodplain Unit regarding the City’s floodplain ordinance. She explained that she had provided the DNR with copies of the ordinances regulating floodplains in city limits and upon review of the three ordinances, the DNR suggested that the City revise them (combine into a single district and bring up to current standards). It was noted that the proposed ordinance clarifies and cleans up the existing ordinances and is not more restrictive; but defines the flood plain areas, which entitles property owners to secure flood insurance. Smith-Strack stated that it does allow for certain properties to qualify for flood insurance; allows for waivers from floodplain management; and regulates uses within the floodplain.

Reetz introduced the following resolution and moved for its adoption:

RESOLUTION NO. 2-2009

A RESOLUTION RECOMMENDING THE CITY COUNCIL APPROVE ORDINANCE 240, AN ORDINANCE REPEALING AND REPLACING ORDINANCE 117, 136 AND 138 RELATING TO MANAGEMENT OF FLOOD PLAINS WITHIN THE CITY OF ARLINGTON

WHEREAS, the City of Arlington placed Ordinance 117, 136 and 138 into effect several years ago; and

WHEREAS, the Minnesota Department of Natural Resources has instructed the City that an update of Ordinance 117, 136, and 138 regarding flood plain management is in order; and

WHEREAS, an Ordinance repealing and replacing Ordinance 117, 136, and 138 has been developed; and

WHEREAS, the proposed Ordinance repealing and replacing Ordinance 117, 136, and 138 is Ordinance 240, entitled “An Ordinance Relating to Management of Flood Plains Within the City of Arlington”; and

WHEREAS, the Arlington Planning Commission has reviewed and studied proposed Ordinance 240; and

WHEREAS, a public hearing was properly noticed and held on March 5, 2009 by the City of Arlington Planning Commission.

NOW, THEREFORE, BE IT RESOLVED, that the Arlington Planning Commission recommends the City Council approve Ordinance 240, entitled “An Ordinance Repealing and Replacing Ordinance 117, 136 and 138 Relating to Management of Flood Plains within the City of Arlington” a copy of which is attached as Exhibit A.

The motion for the adoption of the foregoing resolution was duly seconded by Pinske and upon poll being taken thereon the following voted in favor thereof: Grabitske, Kreft, Nagel, Pinske, Councilmember Reetz, Rosenfeld; and the following voted against the same: None; and the following abstained from voting: None; and the following were absent: Haggemiller.

Adopted by the Planning & Zoning Committee of the City of Arlington this 2nd day of April, 2009.

Signed: /s/ Lowell Nagel
Chairperson

Attest: /s/ Cynthia Smith-Strack
Planning & Zoning Administrator

Whereupon the resolution was declared duly passed and executed.

EXHIBIT A

**CITY OF ARLINGTON
ORDINANCE 240**

AN ORDINANCE REPEALING AND REPLACING ORDINANCE 117, 136, AND 138 RELATING TO MANAGEMENT OF FLOOD PLAINS WITHIN THE CITY OF ARLINGTON

SEE ATTACHED FOR COMPLETE COPY.

Discussion resumed on urban beekeeping. Smith-Strack stated that she has continued to be in contact with the resident who wishes to keep bees on his property in city limits. She explained that he has found a location outside city limits for this summer, but would like to move them to his property at some point; and therefore was requesting that the City pursue an ordinance relating to same. Smith-Strack reviewed the details of an ordinance that she had drafted. Some educational information was presented as well about raising bees. Smith-Strack noted that in addition to having the ordinance in place, Interim Use Permits would have to be issued to anyone wishing to raise bees on their property in city limits. It was suggested to bring in someone who does bee keeping in the area to speak to the group at the next meeting. No action was taken.

Discussion was held on Interim Use Permits. Smith-Strack listed some examples of IUP's. She explained the difference between a CUP (Conditional Use Permit – runs with the life of the property) and IUP (Interim Use Permit - a temporary use of property until a particular date, until a particular event occurs, or until zoning regulations no longer permit such a use). She stated that IUP's would be processed just like a CUP in that residents have to apply for same, a public hearing is held and a fee is charged.

Motion by Rosenfeld, seconded by Reetz, and passed by unanimous vote to call a public hearing on Interim Use Permits at the next regular meeting.

Some discussion was held on signage (on public property or in the right-of-way) and what the City's responsibility (liability) is regarding them if they are damaged.

Ordinance 154 – An Ordinance Regulating Fire Limits in the City of Arlington was reviewed. Smith-Strack handed out a map of Arlington showing which areas of downtown it was most likely applicable to. She

stated that the ordinance may not be enforceable as it references a section of the Uniform Building Code that no longer exists, and that current State Building Code prohibits cities from approving language that conflicts with (or is more restrictive than) state building code that regulates components or systems of any structure. Building Official Haslip recommended updating the ordinance so that it does not conflict with the Building Code. It was suggested to approach exterior building materials in the downtown area as a component of the effort to promote Main Street viability (establish preservation districts and regulate design standards).

Nagel stated that he had been contacted by Jeff Klehr (East Brooks Street) about building an addition onto his shed, but it would be within 2 feet of the property line, and inquired if the Zoning Committee would allow it. It was noted that the lots are larger than normal. Discussion was held and it was decided that Smith-Strack will meet with the property owner.

It was noted that the March Building Permit Report from Building Official Haslip was not ready in time for the meeting.

Smith-Strack commented that she would be providing an update on the Neisen CUP compliance at the May meeting. She would also invite Jeff Klehr to the meeting to discuss his proposed addition. Smith-Strack will do a follow up visit with After Burner Auto to see how he is coming with his CUP compliance and report back at the next meeting also.

Reetz commented on the junk (vehicles) accumulating near the old Noack building (West Main Street and 6th Avenue) again.

Motion by Rosenfeld, seconded by Grabitske, and passed by unanimous vote to adjourn the meeting.

PZ Adm. Cynthia Smith-Strack

Chairman Lowell Nagel

EXHIBIT A

CITY OF ARLINGTON
ORDINANCE 241

AN ORDINANCE AMENDING ORDINANCE 169, THE ARLINGTON ZONING ORDINANCE BY
REPEALING EXISTING STANDARDS RELATING TO SIGNAGE AND REPLACING THEM WITH
SECTION 13.5

THE CITY COUNCIL OF THE CITY OF ARLINGTON, MINNESOTA TO PROMOTE THE PUBLIC
SAFETY, HEALTH, AND WELFARE, HEREBY ORDAINS ORDINANCE 169 SHALL BE AMENDED BY
ADDING SECTION 13.5 AS FOLLOWS:

SUBDIVISION 1. FINDINGS.

The City Council hereby finds:

- A. Exterior signs have a substantial impact on the character and quality of the environment.
- B. Signs provide an important medium through which individuals may convey a variety of messages.
- C. Signs can create traffic hazards, aesthetic concerns, and detriments to property values, thereby threatening the public health, safety, and welfare.
- D. The City has previously regulated signs in an effort to provide adequate means of expression and to promote the economic viability of the business community while protecting the city and citizens from a proliferation of signs of a type, size, location, and character that would adversely impact the public health, safety, and welfare.

SUBDIVISION 2. PURPOSE AND INTENT.

The purpose and intent of this Section is to:

- A. Regulate the number, location, size, type, illumination, and other physical characteristics of signs within the city in order to promote the public health, safety, and welfare.
- B. Maintain, enhance, and improve the aesthetic environment of the city by preventing visual clutter that is harmful to the appearance of the community.
- C. Provide an effective means of communication, consistent with constitutional guarantees and the city's goals of public safety and aesthetics.
- D. Provide for fair and consistent enforcement of sign regulations under the zoning authority of the city.
- E. It is not the purpose or intent of this sign ordinance to regulate the message displayed on any sign, to regulate any building design or display not defined as a sign, or any sign which cannot be viewed from outside of a building.

SUBDIVISION 3. EFFECT.

The effect of this Section is to:

- A. Allow a wide variety of sign types in commercial zones and a more limited variety of signs in other zones subject to the standards herein.
- B. Allow certain small, unobtrusive signs incidental to the principal use of a site in all zones when in compliance with the requirements of this Section.
- C. Prohibit signs whose location, size, type, illumination, or other physical characteristics negatively affect the environment and where the communication can be accomplished by means having lesser impact on the environment and the public health, safety, and welfare.
- D. Provide for enforcement of this Section through the enforcement provisions contained in the Zoning Ordinance.
- E. A sign may be erected, displayed, or maintained in the city if it is in conformance with the provisions of these regulations.

SUBDIVISION 4. DEFINITIONS.

Commercial Speech: Speech advertising a business, profession, commodity, service, or entertainment.

Multiple Tenant Site: A site which has more than one tenant and each tenant has a separate ground level exterior public entrance.

Non-Commercial Speech: Dissemination of messages not classified as Commercial Speech which include, but are not limited to, messages concerning political, religious, social, ideological, public service, and informational topics.

Sign: **Any letter, word, symbol, poster, picture, statuary, reading matter, or representation in the nature of advertisement, announcement, message, or visual communication whether painted, posted, printed, affixed, or constructed, including all associated brackets, braces, supports, wires, and structures, which is displayed for informational or communicative purposes.** A name, identification, display, illustration or device which is affixed to or represented directly or indirectly upon a building, structure, or land in view of the general public and which directs attention to a product, place, activity, purpose, institution or business.

Sign, Abandoned: A sign shall be defined as abandoned when one of the following occurs:

- A. **A sign and/or supporting structure remains without a message or whose display surface remains blank for a period of one or more years.**
- B. **A sign pertains to a time, event, or purpose which no longer applies.**
- C. **A sign remains after demolition of a principal structure and a building permit has not been issued for construction of a replacement principal structure.**

Sign, Advertising: A sign which directs attention to a business, commodity, service, activity or entertainment not necessarily conducted, sold or offered upon the premises where such sign is located.

Sign, Awning: A building sign or graphic printed on or in some fashion attached directly to the material of an awning which projects over a window, walk, or the like. Any part of an awning which also extends over a door shall be considered an awning.

Sign, Business: A sign attached to or supported by any structure used or intended for supporting or sheltering any use or occupancy. A sign which directs attention to a business or profession or a commodity, service or entertainment sold or offered upon the premises where such sign is located.

Sign, Canopy: A sign that is part of or attached to a canopy or structural protective cover over a door or entrance.

Sign, Face: The surface of the sign upon, against, or through which the message of the sign is exhibited.

Sign, Flashing: Any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use.

Sign, Freestanding: A sign which has supporting framework that is placed on, or anchored in, the ground and which is independent from any building or other structure.

Sign, Ground: A freestanding sign with its sign face mounted on the ground or mounted on a base at least as wide as the sign and which has a total height not exceeding eight feet.

Sign, Height: The vertical distance measured from the base of the sign at average grade to the top of the highest attached component of the sign.

Sign, Illuminated: Any sign which has characters, letters, figures, designs, or outlines illuminated by internal or external electric lights or luminous tubes as part of the design.

Sign, Monument: A freestanding sign with its sign face mounted on the ground or mounted on a base at least as wide as the sign and which has a total height not exceeding eight feet.

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.

Sign, Non-Conforming: A sign and its support structure lawfully erected prior to the effective date of this ordinance which fails to conform to the requirements of this ordinance.

Sign, Off-premise: A commercial speech sign which directs the attention of the public to a business, activity conducted, or product sold or offered at a location not on the same premises where such business sign is located. Easements shall be considered to be outside such platted parcels of land and any sign located or proposed to be located in an easement or shall be considered an off-premise sign.

Sign, On-premise: A sign which identifies or advertises an establishment, person, activity, goods, products, or services located on the premises where the sign is installed.

Sign, Portable: A sign purposefully designed to be transported, including by trailer or on its own wheels.

Sign, Projecting: Any sign which is affixed to a building or wall in such a manner that its leading edge extends more than two feet beyond the surface or such building or wall face.

Sign, Pylon (pole sign): A freestanding sign which has its supportive structure(s) anchored in the ground and which has a sign face elevated above ground level by pole(s) or beam(s) and with the area below the sign face open.

Sign, Roof: A sign erected and constructed wholly on and above the roof of a building, supported by the roof structure, and extending vertically above the highest portion of the roof.

Sign, Rotating: A sign which revolves or rotates on its axis by mechanical means.

Sign, Structure: Any structure including the supports, uprights, bracing, and framework which supports or is capable of supporting any sign.

Sign, Stringer: A line of string, rope, cording, or an equivalent to which is attached a number of pennants.

Sign, Surface Area of: The entire area within a single continuous perimeter enclosing the extreme limits of the actual sign surface, not including any structural elements outside the limits of such sign and not forming an integral part of the display, (only one side of a double-face or V-type structure shall be used in computing total surface area.)

Sign, Suspended: A building sign that is suspended from the underside of a horizontal plane surface and is connected to this surface.

Sign, Wall: A building sign attached parallel to but within two feet of a wall, painted on the wall surface, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign face.

Sign, Window: A building sign, pictures, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service, that is placed inside a window or upon the window panes/glass and is visible from the exterior of the window.

Total Site Signage: The maximum permitted combined area of all freestanding and wall identification signs allowed on a specific property.

SUBDIVISION 5. PERMIT/FEE REQUIRED.

- A. **No sign shall be erected, altered, reconstructed, maintained, or moved in the city without first securing a permit from the city. The content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit. Application for a permit shall be in writing and shall contain the following information:**

- 1. Name(s) and address(es) of the owners of the display structure and property;**
- 2. The address at which sign is/are to be erected;**
- 3. The legal description of the subject property;**

4. The type of sign;
 5. The cost of the sign;
 6. The proposed sign dimensions and placement on the subject property;
 7. If adjacent to a state trunk highway prove the applicant has obtained a permit from the state for the sign.
- B. The permit application shall be accompanied by the required fee as specified by the fee schedule.
- C. The city shall approve or deny the permit within the time period under Mn. Stat. 15.99. If the requirements of this Section and other applicable standards contained within the Zoning Ordinance are met the permit shall be approved.

SUBDIVISION 6. EXCEPTIONS.

- A. The following signs shall not require a permit. Although exempt from permitting requirements, this Subdivision shall not relieve the owner of the sign from the responsibility of its erection and maintenance, and compliance with the provisions of this ordinance or any other law or ordinance regulating the same.
1. The changing of the display surface on a painted or printed sign, except a sign painted directly on a building.
 2. Signs eighteen (18) square feet or less in size.

SUBDIVISION 7. GENERAL PROVISIONS.

- A. A sign shall not be greater than 250 square feet in area.
- B. A sign shall project no more than two feet over a sidewalk or public right-of-way.
- C. Any sign located in the city which becomes out of order, rotten, or unsafe shall be removed or otherwise properly secured by the owners of the sign or the owner(s) of the property on which the sign is located.
- D. Electrical signs must be installed in accordance with the current electrical code.
- E. The following are unauthorized signs:
1. Any sign, signal, marking, or device which is similar to or imitates an official traffic control device, railroad sign or signal, and/or emergency vehicle signal.
 2. Signs painted, attached, or in any way affixed to trees, public utility poles, bridges, towers, or similar structures.
 3. Signs obstructing any window, door, fire escape, stairway, or opening intended to provide light, air, or access to any building.
- F. Setbacks.
1. Signs shall be setback a minimum of five feet from a property line, except within the Central Business.
 2. Signs shall not be placed in municipal easements unless an interim use permit is approved.
 3. Signs shall not obstruct a clear sight triangle at each corner of any intersection of two public streets and/or the intersection of a public street and a railway. Said clear sight triangle shall be defined as beginning at the intersection of the projected curb lines of two intersection streets or a street and a railway, then proceeding twenty-five feet along one curb line, then proceeding diagonally to a point of twenty-five feet from the point of beginning on the other curb line and then proceeding to the point of beginning.
- G. Calculation of Sign Area.
1. The area within the sign frame shall be used to calculate the square footage.
 2. Square footage of signs mounted directly on a wall, window, or other structural surface without a sign frame shall be determined by drawing a box around the outermost periphery of letters or graphics. The square footage shall be that of the box surrounding the said letters or graphics.
 3. Each surface used to display a message or to attract attention shall be measured as a separate sign and shall be calculated in the overall square footage.
- H. External illumination for signs shall be constructed and maintained so that the source of light (e.g. bulb or illumination tube) is not visible from the public right-of-way or residential property.
- I. Notwithstanding any other provision of this Section, all signs of any size containing non-commercial speech as defined in Subdivision 4 of this Section, may be posted from August 1 in any general election year until ten days following the general election and thirteen weeks prior to any special election until ten days following the special election.

SUBDIVISION 8. PERMITTED SIGNS BY ZONING DISTRICT.

A. R1/R2 Agriculture/Residence District; R-1 Single and Two Family Residential District; R-2 Multiple Family Residential District

1. **The following types of signs are not permitted:**

- a. **Awning signs;**
- b. **Balloon signs;**
- c. **Canopy signs;**
- d. **Flashing or rotating signs; and,**
- e. **Pylon (or pole) signs.**

2. **Maximum sign area:**

- a. **Lots 10,000 square feet or less: eight square feet per surface with total area of all signs not to exceed sixteen square feet.**
- b. **Lots greater than 10,000 square feet but less than one acre: ten square feet per surface with total area of all signs not to exceed twenty square feet.**
- c. **Lots greater than one acre but less than ten acres: twelve square feet per surface with total area of all signs not to exceed twenty-four square feet.**
- d. **Lots greater than ten acres: sixteen square feet per surface with total area of all signs not to exceed thirty-two square feet.**

3. ~~A nameplate sign identifying the owner or occupant of a building or dwelling unit, provided such sign does not exceed two (2) square feet in surface area.~~

4. ~~One additional sign not to exceed thirty-two (32) square feet in area.~~

1. ~~A sign pertaining to the lease or sale of the building or property, provided such sign does not exceed four (4) square feet in surface area. Such signs shall not be illuminated.~~

2. ~~Temporary signs identifying an engineer, architect, contractor, product engaged in or used in the construction of a building, provided such signs do not exceed four (4) square feet in surface area and are removed prior to the occupancy of the building. Such signs shall not be illuminated.~~

3. ~~One identification sign not to exceed 24 square feet in surface area displaying directional information for churches, schools, hospitals, sanitariums, clubs, libraries or similar uses provided that each use shall be limited to one (1) such sign per thoroughfare approach or similar use. Such signs may be illuminated.~~

4. ~~Directional, unilluminated signs not exceeding two (2) square feet in surface area displaying directional information for churches, schools, hospitals, sanitariums, clubs, libraries or similar uses provided that each use shall be limited to one (1) such sign per thoroughfare approach.~~

5. ~~Public street identification signs, traffic signs, and directional signs in any parking area where such signs are necessary for the orderly movement of traffic.~~

6. ~~All signs exceeding sixty-four (64) square feet shall require a sign permit.~~

B. B-1 Service Business District

1. **The following types of signs are not permitted:**

- a. **Flashing or rotating signs.**

2. Maximum sign area:

a. The total area of all signs shall not exceed two (2) square feet per lineal foot of lot frontage, ten (10) percent of the building's front façade, or seventy-five (75) square feet, whichever is greater. For corner lots, the "lot frontage" used to determine allowable sign area shall be the least dimension along a street, but an equivalent sign area shall be allowed facing the intersecting street. ~~Such signs may be illuminated.~~

b. **The number of off-premise Advertising signs shall be limited to one (1) per one-hundred (100) feet of lot frontage.** ~~for a lot of one hundred (100) foot frontage or less and to only one (1) for each additional one hundred (100) feet of additional lot frontage; Such off-premise signs may contain up to two (2) signs per facing; however, each sign face shall not exceed fifty-five (55) feet in total length. No off-premise advertising sign may be erected within one hundred (100) feet of an adjoining Residential District. Such signs may be illuminated.~~

c. No sign shall project higher than six (6) feet above the height of the building, or thirty-two (32) feet above average grade at the building line, whichever is greater.

d. ~~Rotating signs or flashing signs shall not be permitted.~~

e. ~~Signs painted on a building shall be governed by the square footage limitations specified above. Such signs shall be maintained in good condition and shall be repainted, removed, or painted out when, in the opinion of the City Council, they are not so maintained.~~

- ~~f. No sign shall be placed that resembles any official marker erected by a governmental agency or displaying such words as "stop" or "danger".~~
 - ~~g. No sign shall be permitted to obstruct any window, door, fire escape, stairway, or opening intended to provide light, air, or access to any building.~~
 - ~~h. Political signs may be permitted for a period of not more than thirty (30) days before and ten (10) days after an election.~~
 - ~~i. Upon notification by the City Council that a sign is rotted, unsafe, or unsightly, the owner of said sign or owner of property thereunder shall remove or repair same.~~
 - ~~j. Where a sign is illuminated, the source of light shall not be visible from any public right of way and such light shall be directed away from any Residential District.~~
 - ~~k. Signs that exceed sixty four (64) square feet shall require a sign permit.~~
- C. B-2 Central Business District
1. **The following types of signs are not permitted:**
 - a. **Flashing or rotating signs.**
 - b. **Off-premise signs.**
 2. The total area of all signs shall not exceed two (2) square feet per lineal foot of lot frontage, ten (10) percent of the building's front façade, or seventy-five (75) square feet, whichever is greater. For corner lots, the "lot frontage" used to determine allowable sign area shall be the least dimension along a street, but an equivalent sign area shall be allowed facing the intersecting street. ~~Such signs may be illuminated.~~
 - ~~3. Advertising signs for a lot of one hundred (100) foot frontage or less and to only one (1) for each additional one hundred (100) feet of additional lot frontage; Such off-premise signs may contain up to two (2) signs per facing; however, each sign face shall not exceed fifty five (55) feet in total length. No off-premise advertising sign may be erected within one hundred (100) feet of an adjoining Residential District. Such signs may be illuminated.~~
 4. No sign shall project higher than six (6) feet above the height of the building, or thirty-two (32) feet above average grade at the building line, whichever is greater.
- D. I-1 Light Industrial District
1. **The following types of signs are not permitted:**
 - a. **Flashing or rotating signs.**
 2. The total area of all business signs on a lot shall not exceed three (3) square feet of each lineal foot of lot frontage or twenty (20) percent of the building frontage or three hundred (300) square feet in area, whichever is greater. Such signs may be illuminated.
 3. Advertising signs structures shall be limited to one (1) for a lot of one hundred (100) foot frontage or less and to only one (1) for each additional one hundred (100) feet of additional lot frontage. Such structures shall not exceed fifty-five (55) feet in length. No advertising sign may be erected within one hundred (100) feet of a Residential District. Such signs may be illuminated.
 4. Sign lighting shall not be directed toward a public right of way or any Residential District.
 - ~~1) Any sign exceeding sixty four (64) square feet shall require a sign permit. (permit process not defined, doesn't allow setback check for smaller signs, all signs higher than 6' require building permit)~~
- E. I-2 Heavy Industrial District
1. **The following types of signs are not permitted:**
 - a. **Flashing or rotating signs.**
 2. Signs as regulated in Subdivision 8, (D), 2 (Light Industrial District) of this Section.

SUBDIVISION 9. NON-CONFORMING SIGNS.

- A. Signs pertaining to or advertising products sold on the premises of a non-conforming building or use may be continued only when the non-conforming use is permitted to continue and such signs shall not be expanded in number, area, height, or illumination. New signs shall not exceed the maximum allowed under the City's sign ordinance, and may be erected only after all other signs existing at the time of the adoption of this Ordinance have been removed. The accumulated square footage of new signs installed shall not exceed the square footage of signs previously on site, or the amount allowed in the City's sign ordinance, whichever is less. New signs may not be illuminated unless the previous sign was illuminated, but flashing intermittent or moving illumination shall not be permitted.
- B. The standards of Section 14 of the Zoning Ordinance (Non-Conformance) shall apply to signs.

SUBDIVISION 10. VIOLATION/PENALTY.

Violation of this Section shall be subject to violation and penalty as prescribed in Section 19 of the Zoning Ordinance (Violations and Penalty).

SUBDIVISION 11. SEVERABILITY.

If any Subdivision, subsection, sentence, clause, or phase of this Section is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Section.

SUBDIVISION 12. SUBSTITUTION.

The owner of any sign which is otherwise allowed by this sign ordinance may substitute non-commercial copy in lieu of any other commercial or non-commercial copy. This substitution of copy may be made without any additional approval or permitting.

SUBDIVISION 13. REPEALER.

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SUBDIVISION 14. EFFECTIVE DATE.

This Section shall be effective upon publication.

Adopted by the City of Arlington on the ____ day of _____, 2009.

James R. Kreft, Mayor

Attest: _____
Matthew Jaunich, City Administrator

EXHIBIT A

CITY OF ARLINGTON ORDINANCE 240

AN ORDINANCE REPEALING AND REPLACING ORDINANCE 117, 136, AND 138 RELATING TO MANAGEMENT OF FLOOD PLAINS WITHIN THE CITY OF ARLINGTON

SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

1.1 Statutory Authorization. The Legislature of the State of Minnesota has, in Minnesota Statutes Chapters 103F and Chapter 462 delegated the authority to local governmental units to adopt regulations designed to minimize flood losses. Minnesota Statute, Chapter 103F further stipulates that communities subject to recurrent flooding must participate and maintain eligibility in the National Flood Insurance Program. Therefore the City of Arlington, Minnesota does ordain as follows:

1.2 Statement of Purpose. The purpose of this Ordinance is to maintain the Community's eligibility in the National Flood Insurance Program and to minimize potential losses due to periodic flooding including loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

1.3 Warning of Disclaimer of Liability. This Ordinance does not imply that areas outside of the flood plain district or land uses permitted within such districts will be free from flooding and flood damages. This Ordinance shall not create liability on the part of the City of Arlington or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decisions lawfully made thereunder.

1.4 National Flood Insurance Program Compliance. This Ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the Community's eligibility in the National Flood Insurance Program.

SECTION 2.0 GENERAL PROVISIONS

2.1 Adoption of Flood Insurance Rate Map. The Flood Insurance Rate Map for the City of Arlington, dated June 17, 1986, and Panel 270620 0075B of the Flood Insurance Rate Map for Sibley County, dated January 6, 1988, developed by the Federal Emergency Management Agency are hereby adopted by reference as the Official Flood Plain Zoning District Map and made a part of this ordinance. The Flood Insurance Rate Map for the City of Arlington was previously entitled the Flood Hazard Boundary map dated May 17, 1974. The Official Zoning Map shall be on file in the office of the City Clerk-Administrator and the office of the Zoning Administrator.

2.2 Lands to Which Ordinance Applies. This Ordinance shall apply to all lands designated as flood plain within the jurisdiction of Arlington. Flood plain areas within Arlington shall encompass all areas designated as Zone A, Zone AE, Zone AO, or Zone AH as shown on the Flood Insurance Rate Map adopted in Section 2.1 of this Ordinance.

2.3 Interpretation. The boundaries of the flood plain district shall be determined by scaling distances on the Official Flood Plain Zoning District Map. Where interpretation is needed as to the exact location of the boundaries of the flood plain district, the City Council shall make the necessary interpretation based on the ground elevations that existed on the site at the time the community adopted its initial floodplain ordinance or the date of the first National Flood Insurance Program map that placed the site in the floodplain if earlier and the regional (100-year) flood profile, if available. If 100-year flood elevations are not available, the community shall: 1) Require a flood plain evaluation consistent with Section 4.3 of this Ordinance to determine a 100-year flood elevation for the site; or 2) base its decision on available hydraulic/hydrologic or site elevation survey data which demonstrates the likelihood the site is within or outside of the flood plain.

2.4 Definitions. Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Ordinance its most reasonable application.

- 2.41 Accessory Use or Structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- 2.42 Basement - means any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.
- 2.43 Flood Fringe - that portion of the flood plain outside of the floodway.
- 2.44 Flood Plain - the channel or beds proper and the areas adjoining a wetland, lake or watercourse that have been or hereafter may be covered by the regional flood. Flood plain areas within Arlington shall encompass all areas designated as Zone A, Zone AE, Zone AO, or Zone AH on the Flood Insurance Rate Map adopted in Section 2.1 of this Ordinance.
- 2.45 Floodway - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain that are reasonably required to carry or store the regional flood discharge.
- 2.46 Lowest Floor – the lowest floor of the lowest enclosed area (including basement).
- 2.47 Manufactured Home – a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include the term “recreational vehicle.”
- 2.48 Obstruction - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, dredged spoil, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, stockpile of sand or gravel or other material, or matter in, along, across, or projecting into any channel, watercourse, lake bed, or regulatory flood plain which may impede, retard, or change the direction of flow, either in itself or by catching or collecting debris carried by floodwater.
- 2.49 Recreational Vehicle – a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this Ordinance, the term recreational vehicle shall be synonymous with the term travel trailer/travel vehicle.
- 2.50 Regional Flood - a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristics of what can be expected to occur on an average frequency in magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used on the Flood Insurance Rate Map.
- 2.51 Regulatory Flood Protection Elevation. The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.
- 2.52 Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, travel trailers/vehicles not meeting the exemption criteria specified in Section 12.1 of this Ordinance and other similar items.
- 2.53 Substantial Damage – means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

2.54 Substantial Improvement – within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
- (b) Any alteration of an “historic structure,” provided that the alteration will not preclude the structure’s continued designation as an “historic structure.” For the purpose of this Ordinance, “historic structure” shall be as defined in 44 Code of Federal Regulations, Part 59.1.

2.5 Annexations: The Flood Insurance Rate Map panels adopted by reference into Section 2.1 above may include floodplain areas that lie outside of the corporate boundaries of the City of Arlington at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the City of Arlington after the date of adoption of this ordinance, the newly annexed floodplain lands shall be subject to the provisions of this ordinance immediately upon the date of annexation into the City.

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

SECTION 3.0 CONFLICT WITH PRE-EXISTING ZONING REGULATIONS AND GENERAL COMPLIANCE

3.1 The Flood Plain District as Overlay Zoning District. The flood plain zoning district shall be considered an overlay zoning district to all existing land use regulations of the Community. The uses permitted in Sections 4.0 and 5.0 of this Ordinance shall be permitted only if not prohibited by any established, underlying zoning district. The requirements of this Ordinance shall apply in addition to other legally established regulations of the Community and where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall apply.

3.2 Compliance: No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, repaired, maintained, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance. Within the Floodway and Flood Fringe, all uses not listed as permitted uses in Section 4.0 shall be prohibited. In addition, a caution is provided here that:

- 3.21 New manufactured homes, replacement manufactured homes and certain recreational vehicles are subject to the general provisions of this Ordinance and specifically Sections 4.0 and 12.0;
- 3.22 Modifications, repair and maintenance, additions, structural alterations or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this Ordinance and specifically Section 9.0; and
- 3.23 As-built elevations for elevated structures must be certified by elevation surveys as stated in Section 7.0 of this Ordinance.

SECTION 4.0 PERMITTED USES, STANDARDS, AND FLOOD PLAIN EVALUATION CRITERIA

4.1 Permitted Uses in the Flood Plain. The following uses of land are permitted uses in the flood plain district:

- 4.11 Any use of land which does not involve a structure, a fence, an addition to the outside dimensions to an existing structure (including a fence) or an obstruction to flood flows such as fill, excavation, or storage of materials or equipment.
- 4.12 Any use of land involving the construction of new structures, a fence, the placement or replacement of manufactured homes, the addition to the outside dimensions of an existing structure (including a fence) or obstructions such as fill or storage of materials or equipment, provided these activities are located in the flood fringe portion of the flood plain. These uses shall be subject to the development standards in Section 4.2 of this Ordinance and the flood plain evaluation criteria in Section 4.3 of this Ordinance for determining floodway and flood fringe boundaries.
- 4.13 Recreational vehicles are regulated by Section 12.0 of this Ordinance.

4.2 Standards for Flood Plain Permitted Uses.

- 4.22 Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- 4.23 Storage of Materials and Equipment:
- (a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
 - (b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning or if placed on fill to the regulatory flood protection elevation.
- 4.24 No use shall be permitted which will adversely affect the capacity of the channels or floodways of any tributary to the main stream, or of any drainage ditch, or any other drainage facility or system.
- 4.25 All structures, including accessory structures, additions to existing structures and manufactured homes, shall be constructed on fill so that the lowest floor, including basement floor, is at or above the regulatory flood protection elevation. The finished fill elevation must be no lower than one foot below the regulatory flood protection elevation and shall extend at such elevation at least 15' beyond the limits of the structure constructed thereon.
- 4.26 This Section reserved for future use.
- 4.27 Commercial and Manufacturing Uses. Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four (4) upon occurrence of the regional flood.
- 4.28 On-site Sewage Treatment and Water Supply Systems: Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.

- 4.29 All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

4.3 Flood Plain Evaluation

- 4.31 Upon receipt of an application for a permit for a use or other approval within the Flood Plain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator for the determination of the regulatory flood protection elevation and whether the proposed use is within the floodway or flood fringe.
- (a) A typical valley cross-section(s) showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.
 - (b) Plan (surface view) showing elevations or contours of the ground, pertinent structure, fill, or storage elevations, the size, location, and spatial arrangement of all proposed and existing structures on the site, and the location and elevations of streets.
 - (c) Photographs showing existing land uses, vegetation upstream and downstream, and soil types.
 - (d) Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.
- 4.32 The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the floodway or flood fringe and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources' Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:
- (a) Estimate the peak discharge of the regional flood.
 - (b) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
 - (c) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than .5' shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.
- 4.33 The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the Governing Body. The Governing Body must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary or deny the permit application. The Governing Body, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency, the Department of Natural Resources or the Planning Commission for review and comment. Once the Floodway and Flood Fringe District Boundaries have been determined, the Governing Body shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of this Ordinance.

SECTION 5.0 UTILITIES, RAILROADS, ROADS AND BRIDGES IN THE FLOOD PLAIN DISTRICT

All utilities and transportation facilities, including railroad tracks, roads and bridges, shall be constructed in accordance with state flood plain management standards contained in Minnesota Rules 1983 Parts 6120.5000 - 6120.6200.

SECTION 6.0 SUBDIVISIONS

6.1 No land shall be subdivided and no manufactured home park shall be developed or expanded where the site is determined to be unsuitable by the City Council for reason of flooding, inadequate drainage, water supply or sewage

treatment facilities. The City Council shall review the subdivision/development proposal to insure that each lot or parcel contains sufficient area outside of the floodway for fill placement for elevating structures, sewage systems and related activities.

6.2 In the flood plain district, applicants for subdivision approval or development of a manufactured home park or manufactured home park expansion shall provide the information required in Section 4.31 of this Ordinance. The Council shall evaluate the proposed subdivision or mobile home park development in accordance with the standards established in Sections 4.2, 4.3 and 5.0 of this Ordinance.

6.3 For all subdivisions in the flood plain, the floodway and flood fringe boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.

6.4 Removal of Special Flood Hazard Area Designation: The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

SECTION 7.0 ADMINISTRATION

7.1 Permit Required. A Permit issued by the Building Official shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building or structure or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the construction of a dam, fence, or on-site septic system, prior to the change or extension of a nonconforming use, prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source, and prior to the placement of fill, excavation of materials or the storage of materials or equipment within the flood plain.

7.2 State and Federal Permits. Prior to granting a permit or processing an application for a variance, the Zoning Administrator shall determine that the applicant has obtained all necessary state and federal permits.

7.3 Certification of Lowest Floor Elevations. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Ordinance. The Building Official shall maintain a record of the elevation of the lowest floor (including basement) for all new structures and alterations or additions to existing structures in the flood plain district.

7.4 Notifications for Watercourse Alterations. The Zoning Administrator shall notify, in riverine situations, adjacent communities and the Commissioner of the Department of Natural Resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to Minnesota Statute, Chapter 103G, this shall suffice as adequate notice to the Commissioner of Natural Resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

7.5 Notification to FEMA When Physical Changes Increase or Decrease the 100-year Flood Elevation. As soon as is practicable, but not later than six (6) months after the date such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.

SECTION 8.0 VARIANCES

8.1 A variance means a modification of a specific permitted development standard required in an official control including this Ordinance to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship, practical difficulty or unique

circumstance as defined and elaborated upon in a community's respective planning and zoning enabling legislation and this Ordinance.

8.2 The Board of Adjustment may authorize upon appeal in specific cases such relief or variance from the terms of this Ordinance as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this Ordinance, any other zoning regulations of the Community, and the criteria specified in the respective enabling legislation which justified the granting of the variance. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

8.21 Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

8.22 Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

8.23 Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

8.3 Variances from the provisions of this Ordinance may be authorized where the Board of Adjustment has determined the variance will not be contrary to the public interest and the spirit and intent of this Ordinance. No variance shall allow in any district a use prohibited in that district or permit a lower degree of flood protection than the regulatory flood protection elevation. Variances may be used to modify permissible methods of flood protection.

8.4 The Board of Adjustment shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variance sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing. A copy of all decisions granting a variance shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

8.5 Appeals. Appeals from any decision of the Board of Adjustment may be made, and as specified in this Community's Official Controls and also Minnesota Statutes.

8.6 Flood Insurance Notice and Record Keeping. The zoning administrator shall notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and 2) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. This Community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

SECTION 9.0 NONCONFORMITIES

A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance but which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions. Historic structures, as defined in Section 2.54(b) of this Ordinance, shall be subject to the provisions of Sections 9.1 – 9.4 of this Ordinance.

9.1 No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.

9.2 A structural alteration within the inside dimensions of a nonconforming use or structure is permissible provided it utilizes flood resistant materials so as not to result in increasing the flood damage potential of that use or structure. A structural addition to a structure must be elevated to the regulatory flood protection elevation in accordance with Section 4.25 of this Ordinance.

9.3 The cost of all structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of the structure, then the structure must meet the standards of Section 4.0 of this Ordinance for new structures.

9.4 If any nonconforming use of a structure or land or nonconforming structure is substantially damaged, as defined by Section 2.53 of this Ordinance, it shall not be reconstructed except in conformity with the provisions of this Ordinance. The City Council may issue a permit for reconstruction if the use is located outside the floodway and, upon reconstruction, is adequately elevated on fill in conformity with the provisions of this Ordinance.

9.5 If a substantial improvement occurs, as defined in Section 2.54 of this Ordinance, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition and the existing nonconforming building must meet the requirements of Section 4.0 of this Ordinance for new structures, depending upon whether the structure is in the floodway or flood fringe, respectively.

SECTION 10.0 PENALTIES FOR VIOLATION

A violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variance) shall constitute a misdemeanor.

10.1 In responding to a suspected ordinance violation, the Zoning Administrator and the Community may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The Community must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

10.2 When an ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources' and Federal Emergency Management Agency Regional Office along with the Community's plan of action to correct the violation to the degree possible.

10.3 The Zoning Administrator shall notify the suspected party of the requirements of this Ordinance and all other Official Controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the Community. If the construction or development is already completed, then the Zoning Administrator may either (1) issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls, or (2) notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30-days.

10.4 If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Ordinance and shall be prosecuted accordingly. The Zoning Administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition that existed prior to the violation of this Ordinance.

SECTION 11.0 AMENDMENTS

All amendments to this ordinance, including revisions to the Official Flood Plain Zoning District Map, shall be submitted to and approved by the Commissioner of Natural Resources prior to adoption. The flood plain designation on the Official Flood Plain Zoning District Map shall not be removed unless the area is filled to an elevation at or above the regulatory flood protection elevation and is contiguous to lands outside of the flood plain. Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given 10-days written notice of all hearings to consider an amendment to this Ordinance and said notice shall include a draft of the ordinance amendment or technical study under consideration.

SECTION 12.0 TRAVEL TRAILERS AND TRAVEL VEHICLES

Recreational vehicles that do not meet the exemption criteria specified in Section 12.1 below shall be subject to the provisions of this Ordinance and as specifically spelled out in Sections 12.3-12.4 below.

12.1 Exemption - Recreational vehicles are exempt from the provisions of this Ordinance if they are placed in any of the areas listed in Section 12.2 below and further they meet the following criteria:

12.11 Have current licenses required for highway use.

12.12 Are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks and the recreational vehicle has no permanent structural type additions attached to it.

12.13 The recreational vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.

12.2 Areas Exempted For Placement of Recreational Vehicles:

12.21 Individual lots or parcels of record.

12.22 Existing commercial recreational vehicle parks or campgrounds.

12.23 Existing condominium type associations.

12.3 Recreational vehicles exempted in Section 12.1 lose this exemption when development occurs on the parcel exceeding \$500 for a structural addition to the recreational vehicle or exceeding \$500 for an accessory structure such as a garage or storage building. The recreational vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation requirements and the use of land restrictions specified in Sections 4.0 of this Ordinance. There shall be no development or improvement on the parcel or attachment to the recreation vehicle that hinders the removal of the recreational vehicle to a flood free location should flooding occur.

12.4 New commercial recreational vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five (5) units or dwelling sites shall be subject to the following:

12.41 Any new or replacement recreational vehicle will be allowed in the floodway or flood fringe districts provided said recreational vehicle and its contents are placed on fill above the regulatory flood protection elevation determined in accordance with the provisions of Section 4.3 of this Ordinance and proper elevated road access to the site exists in accordance with Section 4.0 of this Ordinance. No fill placed in the floodway to meet the requirements of this Section shall increase flood stages of the 100-year or regional flood.

12.42 All new or replacement recreational vehicles not meeting the criteria of 12.41 above may, as an alternative, be allowed if in accordance with the following provisions. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100 year flood. Said plan shall be prepared by a registered engineer or other qualified individual, shall demonstrate that adequate time and personnel exist to carry out the evacuation, and shall demonstrate that the provisions of Sections 12.11 and 12.12 of this Ordinance will be met. All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with Section 4.28 of this Ordinance.

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication, as required by law and/or charter.

Adopted by the City of Arlington on the ____ day of _____, 2009.

James R. Kreft, Mayor

Attest:

Matthew Jaunich, City Administrator