



AGENDA OF THE  
REGULAR MEETING OF THE PLANNING  
COMMISSION  
CITY OF BIRCHWOOD VILLAGE  
207 BIRCHWOOD AVENUE  
WASHINGTON COUNTY, MINNESOTA  
FEBRUARY 28, 2012  
7:00 P.M.

**CALL TO ORDER**

**APPROVE AGENDA**

1. Approve minutes of the August 2, 2011 Planning Commission meeting
2. **ORDINANCE CHANGES & ADDITIONS:** Review of drafts and recommendation to the City Council
  - a. Ordinance 203: City Building Regulations (see exhibit)
  - b. Ordinance 205: Contractor's Licenses and Bonding (see exhibit)
  - c. Ordinance 301, 305, and 306: Interim Use Ordinances (see exhibit)
  - d. Ordinance 618: Complaints (see exhibit)
  - e. Ordinance 619: Penalties and Enforcement (see exhibit)

**ADJOURN**

1 CITY OF BIRCHWOOD VILLAGE  
2 PLANNING COMMISSION MEETING  
3 August 2, 2011  
4

5 MINUTES  
6

7 COMMISSIONERS PRESENT: Chair Len Pratt (@7:11); Randy Felt, Don Hankins, and John Winters  
8

9 COMMISSIONERS ABSENT: Doug Danks  
10

11 STAFF PRESENT: City Planner Samantha Crosby, White Bear Lake Community Development Director  
12 Anne Kane, and City Clerk Dale Powers  
13

14 OTHERS PRESENT: Jim Greeley, Jane Harper, Bea Krinke, Douglas Krinke, Roger Kropelnicki, and John  
15 Wyland  
16

17 Hankins called the regular meeting to order @ 7:00pm.  
18

19 APPROVAL OF MINUTES OF THE JUNE 7, 2011 MEETING: *Felt/Winters 3-0 (Pratt & Danks absent) to*  
20 *approved the minutes of the June 7, 2011 Planning Commission meeting.*  
21

22 CONDITIONAL USE PERMIT REQUEST – 501 WILDWOOD AVENUE – PID # 30.030.21.13.0047 – KAREN  
23 CHARPENTIER & ROGER KROPELNICKI: Hankins opened the public hearing at 7:03. Crosby reviewed  
24 with the Commission the staff report on this matter, and mentioned that Mr. Kropelnicki has been  
25 constructing kitchen cabinets out of his detached garage at 501 Wildwood Avenue. The City Council,  
26 after much discussion, decided this use qualified for a conditional use permit (CUP). Kropelnicki did  
27 apply for the CUP. In his application, he requested to operate the business from 8am to 5pm Monday  
28 through Saturday; he requested a dumpster, and staff added a condition that the dumpster be no larger  
29 than 3 yards in size, and all the trash receptacles are to be screened by a privacy fence. Kropelnicki has  
30 agreed to close the garage door when he is using power tools, and staff extended that condition to the  
31 use of a hammer or whenever the stereo is on. Crosby continued by saying that staff received letters  
32 from Doug Krinke and John Wyland, which have been distributed to your review. Crosby said that many  
33 of the issues raised by Krinke and Wyland are accounted for in the proposed conditions. Crosby further  
34 noted that these conditions will apply to any activity in the garage; this is due to the inability of staff to  
35 differentiate between which projects are personal projects and which projects are commissioned  
36 projects. Crosby continued by advising the Commission that an annual review is not a condition of the  
37 use, and as long as the conditions attached to the use are adhered to the CUP remains in force.  
38 Addressing the noise issue, Crosby noted that the draft resolution references city ordinance that  
39 reference state statutes for noise, and Kropelnicki would be responsible for adhering to those standards.  
40 Crosby concluded her formal remarks by stating that with these conditions in place, staff recommends  
41 approval of the home occupation CUP with the conditions listed in the draft Resolution 2011-16 [a copy  
42 of which is attached to these minutes as an exhibit].  
43

44 Hankins asked Kropelnicki if he had any testimony for the Commission. Kropelnicki asked if this means I  
45 can't work in my garage at all? I can't go out and do my own crafts? I'm being railroaded here. Crosby  
46 responded that the hours are limited to 8-5 Monday-Saturday for any construction. Kropelnicki  
47 responded that it's not right that he can't work with power tools after 5 when other neighbors can.

48 **Hankins** said that he doesn't believe the Commission is railroading Kropelnicki; we're just trying to come  
49 up with a solution that would be the best situation for you and your neighbors.

50

51 **Doug Krinke** addressed the Commission on the topic of noise, and stated that from 8-5 he can work on  
52 anything involving his power tools. After 5, he can't. How are we going to know the difference between  
53 commercial activities and recreational activities? **Doug Krinke** continued by saying that in order to get a  
54 permit, you have to give up something. He's got 54 hours a week to operate his equipment – that ought  
55 to be enough time. This permit should apply to all activities, regardless of whether they are associated  
56 with the business or for personal reasons. **Doug Krinke** concluded by saying that condition 5 should read  
57 to include windows and doors (in addition to the garage) need to be closed when the stereo is on or  
58 when a hammer or any power tool is being utilized.

59

60 Hearing no other testimony, **Hankins** closed the public hearing @ 7:10pm. Pratt arrived @7:11pm and  
61 **Hankins** conducted a summary review of the meeting in order to bring Pratt up to speed.

62

63 **Pratt** thanked **Hankins** for the update and noted that the Planning Commission's philosophy has always  
64 been to try to have things occur, while having quiet enjoyment in the home. **Pratt** noted that this is a  
65 tricky issue, and a question I have is if the noise is any different depending on whether it's personal or  
66 business? **Kropelnicki** responded that he is satisfied with his business hours of 8-5, but if I want to work  
67 on something for my grandkids on my free time, I should be able to. **Pratt** asked **Doug Krinke** what his  
68 main issue is with whether he works on personal projects after hours. **Doug Krinke** responded that  
69 we've been at this issue for 2 years, trying to get cooperation from **Kropelnicki** and, so far, been  
70 unsuccessful. **Doug Krinke** said that if he's working on his projects and it gets to 5 and he says he wants  
71 to work until 7, how do we know he's not doing commercial cabinetry? **Doug Krinke** concluded by saying  
72 that in order to receive a permit to operate what we consider to be an illegitimate business in the City of  
73 Birchwood, we are willing to go with this CUP and that 54 hours a week is enough to get his projects  
74 done.

75

76 **Bea Krinke** shared with the Commission that the past few weeks when **Kropelnicki** hasn't worked in the  
77 garage have been wonderful. **Hankins** asked whether the noise is as bad with the garage doors closed.  
78 **Doug Krinke** answered that when the doors are closed, the noise is still there but it's greatly reduced,  
79 and noted that **Kropelnicki** overstated the amount of time he has worked with the doors closed; it's  
80 been rare.

81

82 **Kropelnicki** shared with the Commission the fact that, since he has another job that he would not be  
83 able to work all of the 54 hours allocated to the use. **Hankins** comments that he believes the concerns of  
84 the neighbors involve working after 5pm.

85

86 **Felt** commented that while he respects **Kropelnicki's** entrepreneurial spirit, he is surprised that the  
87 neighbors are even considering this CUP. **Felt** further shared a concern about the precedent this may be  
88 setting for the City, which is 100% residential.

89

90 **Pratt** had a concern about Condition #7 (noise), and asked what are the standards of the state statute  
91 on noise. **Crosby** noted that the rule has differing noise levels for daytime and nighttime. **Pratt**  
92 responded that a chart be provided so everyone has a better idea of what types of equipment generate  
93 certain levels of noise, and **Crosby** responded that an exhibit can be attached to the resolution stating  
94 what those standards are.

95

96 **Winters** commented that he thinks the City is on a slippery slope, and noted that he and Felt were  
97 involved in the writing of the revisions to the home occupation ordinance. **Winters** noted that the intent  
98 of the revisions was to make home occupations invisible to the neighbors, and stated that he thinks  
99 Crosby's argument is pretty valid in limiting the activity to these hours. **Winters** continued by saying that  
100 we don't know what is going on after these hours – whether it's a gun cabinet as a gift or a gun cabinet  
101 as part of the business. **Winters** concluded by stating that if the City is going to do this, it should do it as  
102 it's written here.

103  
104 **Wyland** addressed the Commission saying that if bird houses are being built as part of his wife's  
105 business, then by working on them after 5:00 it would violate the spirit of the condition. **Wyland** stated  
106 that we can't tell whether he making cabinets or bird houses – that's why we want to restrict the hours.  
107 **Wyland** also recommended that the 4<sup>th</sup> paragraph on the 1<sup>st</sup> page of the resolution state that the  
108 business is "in" the detached garage (not "out of"), so there is no misunderstanding about where the  
109 business can be conducted. **Wyland** also recommended that the 12<sup>th</sup> condition be amended to state  
110 "hosed out, blown out or blown out with compressed air". **Crosby** interjected with a recommendation  
111 that the phrase read "hosed out, blown out, or swept out". **Wyland** wants to make sure that the debris  
112 issuing from the business be either contained in the garage or put in the dumpster.

113  
114 **Hankins** commented on Condition # 5 should be amended to include "all doors and windows".

115 **Kropelnicki** objected, stating that the window is in the rear of the garage 20 feet from a neighbor who  
116 hasn't complained about the noise. **Doug Krinke** noted that there is a marked difference in the noise  
117 levels with the window open and if Kropelnicki wants fresh air he can get an air exchange system  
118 installed on the roof of the garage. **Kropelnicki** testified that the garage is cooler when the doors are  
119 closed than when they are open.

120  
121 **Hankins** polled the Commission on the proposed amendment, and the consensus was to include closing  
122 the windows.

123  
124 **Felt** commented that if we step back from the particulars and look at the request, we'd see that this  
125 doesn't fit with Birchwood. **Hankins** addressed Kropelnicki, stating that since we are asked to consider a  
126 CUP for a use that really doesn't fit; we are getting into some restrictions that deal with ventilation,  
127 cooling, that wouldn't be addressed if a permit wasn't being asked for. **Winters** stated that, since home  
128 occupations are to be invisible to the neighbors and this is on the edge, conditions are to be expected.  
129 **Winters** further stated that a few years ago, an HVAC company was operating out of a house with  
130 commercial vehicles on the property – he wasn't granted a permit and has to relocate.

131  
132 **Hankins/Pratt 3-1 (Felt opposed, Danks absent) to recommend approval of the conditional use permit**  
133 **as presented by City Planner Samantha Crosby in Resolution 2011-16 and modified by the Planning**  
134 **Commission as follows: (1) Page 1, 4<sup>th</sup> paragraph: replace "out of the detached garage" with "in the**  
135 **detached garage"; (2) Page 2, Condition 2 amended to read "Hours of operation for all woodworking**  
136 **activities...."; (3) Page 2, Condition 5 amended to read "All doors and windows must be closed when**  
137 **the stereo is on, or when a hammer or any power tool is being utilized"; (4) Pages 2-3, Condition 12,**  
138 **2<sup>nd</sup> sentence to read "The garage shall not be hosed-out, blown-out, or swept-out to send particulate**  
139 **matter into the yard or towards the city street."; (5) Add a condition authorizing an annual review of**  
140 **the use; (6) Attach an exhibit graphically portraying what types of tools cause certain noise level; (7)**  
141 **Correcting spelling and typing errors; (8) Attach a statement from the City Attorney on the legality of**  
142 **the City taking away rights enjoyed by other property owners as a condition placed on a conditional**  
143 **use permit.**

144

145 **MASTER PARKING PLAN – LAKE AVENUE AND PARK AVENUE & TIGHE-SCHMITZ PARK:** Powers stated  
146 that this matter comes before the Commission on request of the City Council, which recently adopted  
147 additional parking restriction in that area. The Council identified a larger concern about parking in the  
148 general area of Tighe-Schmitz Park and asked that the expertise of the Planning Commission be used to  
149 develop a master parking plan for the area.

150

151 **Greeley** addressed the Commission stating that the matter was adequately addressed by the action of  
152 the Council and that there was no formal motion made by the Council to bring this matter to the  
153 Commission's attention. **Harper** noted that while there wasn't a motion made as Greeley suggested, it  
154 still is the consensus of the Council to have the Commission review the parking situation in that area and  
155 make recommendations to the Council. **Harper** concluded by saying that there isn't a great deal of  
156 urgency to this request -- more of giving the Commission an opportunity to voice an opinion on the  
157 issue.

158

159 **EXTERIOR STORAGE (CITY CODE SECTION 615) - REVIEW OF ORDINANCE:** Powers said that this matter  
160 comes before the Commission on request of the City Council. The Council, in responding to an exterior  
161 storage complaint, identified some parts of the ordinance in which there is a level of discomfort. The  
162 first is that, according to the plain language of the ordinance, the types of outdoor lawn furniture and  
163 other items commonly found outside on residential properties would be a violation. The second issue  
164 has to do with the ordinance authorization of "seasonal" storage of boat lifts in the "rear yard" area of  
165 the property. With the lower water levels of White Bear Lake, many residents are unable to use their  
166 boats and consequently, their lifts are not in the water but on their property. In addition, storage in the  
167 rear yard area may also prove to be an eyesore -- especially if the rear yard is adjacent to a side yard  
168 area.

169

170 **Powers** also identified an additional concern over enforcement, stating that the ordinance requirement  
171 that a council member investigate the complaint and report back to the Council unnecessarily politicizes  
172 the process.

173

174 **Harper** noted that she had heard concerns about the ability of lakeshore property owners to store their  
175 lifts on their property without screening, and also why are boat lifts are allowed to be seasonally stored  
176 with screening but not other types of things that are uglier. As for enforcement, the ordinance  
177 essentially codified past practice. **Harper** suggested that the enforcement recommendation be brought  
178 before the Council for direction before spending a lot of time on that part of the amendment process.

179

180 **Winters** suggested a change to 615.020 to authorize seasonal storage of boat lift and docks in the rear  
181 yard area. **Winters** also commented that lifts and docks are ugly year round. **Winters** continued by  
182 saying that the reference to visitors in Section 9 of 615.020 should be struck, because residents have  
183 their motor home in their yard for a few days -- and would add a 10<sup>th</sup> subsection allowing lawn furniture  
184 as an exception. As for enforcement, **Winters** recommends replacing all references to council person to  
185 staff.

186

187 **Harper** commented on the travel trailer section by stating that the reason it was "visitors" was that it  
188 implied that someone was actually visiting and living it, as opposed to someone who has it on their  
189 driveway vacant.

190

191 The consensus of the Commission was that was the extent of their desired input and they did not need  
192 to see any revisions before they go to the Council.

193

194 **ADJOURN: Winters/Felt 4-0 (Danks absent) to adjourn the meeting @ 8:50pm.**

195

196

197

198

199

200 Dale Powers

201 City Clerk

DRAFT



## EXPLANATION OF PROPOSED AMENDMENTS TO CHAPTER 203

Chapter 203 of the Birchwood City Code is the chapter that adopts the State Building Code. The State Building Code was adopted in 1984 and Birchwood first adopted the State Building Code as a city ordinance sometime after that. The last amendments to the city ordinance were adopted by the City Council in 2004.

The reason for amending Chapter 203 at this time is to update the references to the State Building Code and to eliminate the provisions relating to fees since fees are addressed generally in chapter 701 and the amount of the fees is now established in a permit fee schedule adopted by the City Council from time to time by resolution.

The following explanation addresses each of the proposed amendments to chapter 203.

### **203.010. STATE BUILDING CODE ADOPTED.**

The changes here recognize that the State has renumbered the statutes where the State Building Code is found. Those statutes are now Minnesota Statutes §§ 326B.01 to 326B.153. (Sections 326B.163 to 326B.191 apply to elevators and are not proposed for inclusion in the Birchwood ordinance.) Also, language is proposed to be added to this section to simply recognize that this chapter 203 is called the Birchwood Building Code.

Language is also proposed to be added to recognize that the Birchwood Building Code includes any optional chapters the City decided to adopt. Section 203.020 does include optional requirements relating to grading. Finally, while it is not a change in the present language, it is pointed out that the city ordinance provides that any changes adopted by the Commissioner of the Department of Administration to the State Building Code are automatically included in the Birchwood Code. This allows the city ordinance to change as the State requirements change without requiring the City Council to specifically amend the ordinance. The Commissioner cannot change the state requirements, however, without completing a state rulemaking process, which does require notice to the public and written explanation and justification of the changes.

### **203.020. BUILDING CODE OPTIONAL CHAPTERS.**

The primary change here is to recognize that the optional requirements of the State Building Code that are being adopted are the requirements for Grading that are now found in Appendix J of the 2006 International Building Code. These grading requirements used to be found in Appendix K of the 2002 Supplement of the 2000 International Building Code and that reference was included in the city ordinance.

Another optional requirement relates to fire protection systems and is found in chapter 1306 of the rules of the Commissioner of the Department of Administration. These are not proposed for

adoption because they apply to larger buildings and to commercial structures, which are not found in Birchwood.

**203.030. APPLICATION, ADMINISTRATION AND ENFORCEMENT.** The proposed changes here simply strike language about a Building Official and a City Building Department. The City of White Bear Lake acts as Birchwood's building and planning agent and administers the Birchwood Building Code so any references to a city building official or a building department are unnecessary.

The present ordinance provides that the State Building Code shall be enforced within the incorporated limits of the city. That State Building Code, section 326B.121, does allow a city to enforce its building code in neighboring townships, but this provision has no application in a situation like Birchwood's.

**203.040. PERMITS REQUIRED.**

There are no changes proposed for this section.

**203.050 PERMIT FEES.**

The first paragraph of this provision simply states that the City of Birchwood has authority to impose fees for the consideration and issuance of building permits under the Birchwood Building Code. The language sets forth the statutory and rule authority for cities like Birchwood to impose fees. The citations have been updated to reflect the proper references to statute and rule. The fact that Birchwood charges fees for the issuance of building permits is not a change in existing practice nor is it unique to Birchwood; all governmental bodies have the authority and do charge fees for issuing building permits.

Presently there are eight (8) subsections in section 203.050. Most of them are proposed to be deleted. Discussed first below are the subsections that are proposed to be retained, which requires renumbering in some situations. Then the reasoning behind deleting those subsections that are proposed for repeal is discussed.

First, the rationale for the subsections that will be retained.

1. **PERMIT FEES.** The change proposed here is to indicate that the City Council has now decided to establish permit fees not in this ordinance but in a fee schedule promulgated by the Council from time to time by resolution. This fee schedule will not only show the building permit fees but will contain all other fees, such as dog licenses and conditional use permit applications as well.
2. **VALUATION.** This language is taken from the present subsection 4. It is proposed to be kept because it explains how the value of a building project will be determined. The value is important because in many instances the amount of the permit fee is

based on the value. The language is reworded slightly to eliminate any possible confusion over whether Birchwood has a separate building official besides the City of White Bear Lake.

3. FEE REFUND. This is the present subsection 8. It is renumbered as subsection 3. This provision is proposed to be kept because it provides more detail than the fee schedule promulgated by the City Council for granting refunds. Because these fees can be more substantial than other types of fees that are required, it is appropriate to allow a longer period of time than the normal 15 days to seek a refund. Also, the language has been modified slightly to eliminate the reference to a city building official and recognizes that the City Council will appoint a person who has the authority to approve a fee refund. Presently, that person would be the director of the City of White Bear Lake's building department, Ben Eggan.

The changes discussed above relate to those provisions that will continue to be in chapter 203. Several subsections are proposed to be deleted, however. Those are discussed below, under their present numbers in the existing ordinance.

2. PLAN REVIEW. This provision is proposed to be deleted because there no longer will be a separate fee for reviewing plans.
3. STATE SURCHARGE FEES. This provision is proposed to be deleted because it will now be included in the fee schedule adopted by the City Council by resolution. The obligation to pay a surcharge, however, will continue. This obligation is found in Minnesota Statutes § 326B.148 and the money goes to the state. The surcharge is equivalent to one-half mil of the fee, or \$5.00, whichever amount is greater.
5. MECHANICAL PERMIT FEES. This is existing subsection 5. It is proposed to be deleted because it is really more of a permit requirement than a permit fee. The fee for plumbing, heating, electrical, and fire suppression are set forth in the permit fee schedule that the Council adopts. The obligation to obtain a permit for such work is set forth in chapter 205.
6. INVESTIGATION FEE. This provision is no longer necessary since it will be included in the fee schedule or in chapter 701 relating to fees generally. The City Council does intend to continue the provision that the fees will double if work starts before the necessary permit or permits are issued.
7. ADDITIONAL CHARGES. This provision is presently untitled. It is proposed to be deleted for the same reason other provisions are proposed to be deleted – the requirement will be included in the fee schedule or in chapter 701. It is unnecessary to repeat it here.

**203.060. SCHEDULE OF PERMIT FEES.**

This is the section that sets forth the fees that are required when a permit is applied for. This section is no longer necessary because the fees will now be set forth in a fee schedule adopted by the City Council by resolution, so it is proposed to be repealed.

It can be mentioned here that the City Council is considering making the Birchwood fees identical to what the City of White Bear Lake charges so that it is easier for White Bear Lake to implement the Birchwood requirements. Not only does it makes sense to make Birchwood's fees consistent with the fee structure in White Bear Lake, but also, the present Birchwood ordinance does not even set forth fees for certain types of construction that require review and a permit and the new fee schedule will address that. Moreover, the fees charged by White Bear Lake are reasonable fees that cover the costs of administration.

**CITY OF BIRCHWOOD VILLAGE  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA**

**ORDINANCE 2011-06**

**AN ORDINANCE AMENDING CHAPTER 203 (CITY BUILDING REGULATIONS) TO  
MAKE THE PROVISIONS CONSISTENT WITH THOSE OF THE CITY OF WHITE  
BEAR LAKE SINCE WHITE BEAR LAKE ADMINISTERS THE ZONING AND  
PERMITTING REQUIREMENTS OF BIRCHWOOD**

**WHEREAS**, the City of Birchwood Village has adopted chapter 203 adopting the State Building Code and establishing requirements and fees for construction in the city; and

**WHEREAS**, the references to the State Building Code need to be updated; and

**WHEREAS**, since the City Council has elected to promulgate all permit fees by resolution adopting a permit fee schedule rather than set the permit fees in the ordinance

NOW, THEREFORE, the City Council of the City of Birchwood Village ordains that chapter 203 is hereby amended to read as follows:

**203 CITY BUILDING REGULATIONS**

AN ORDINANCE ADOPTING THE MINNESOTA STATE BUILDING CODE PROVIDING FOR THE APPLICATION, ADMINISTRATION, AND ENFORCEMENT BY REGULATING THE ERECTION, CONSTRUCTION, ENLARGEMENT, ALTERATION, REPAIR, MOVING, REMOVAL, DEMOLITION, CONVERSION, OCCUPANCY, AND MAINTENANCE OF ALL BUILDINGS AND/OR STRUCTURES WITHIN THE CITY OF BIRCHWOOD VILLAGE; PROVIDING FOR THE ISSUANCE OF PERMITS 203.010. STATE BUILDING CODE ADOPTED. The Minnesota State Building Code, as adopted by the Commissioner of Administration pursuant to Minnesota Statutes Sections 326B.01 through 326B.16, including all optional chapters hereinafter specifically adopted by the City Council and including all of the amendments, rules and regulations established, adopted and published from time to time by the Minnesota Commissioner of Administration, through the Building Codes and Standards Division, is hereby adopted by reference and incorporated in this ordinance as if fully set out herein, and shall be known as the Birchwood Building Code.

203.020. BUILDING CODE OPTIONAL CHAPTERS. The following optional provisions identified in the most current edition of the State Building Code are hereby adopted and incorporated as part of the building code for Birchwood Village:

Chapter 1305, Grading Appendix chapter J of the 2006 International Building Code.

203.030. APPLICATION, ADMINISTRATION AND ENFORCEMENT. The application, administration, and enforcement of the code shall be in accordance with Minnesota State Building Code. The Birchwood Building Code shall be enforced within the incorporated limits of the City.

203.040. PERMITS REQUIRED.

1. No person, firm or corporation shall erect, construct, enlarge, alter, repair, move, improve, convert, or demolish any building or structure in the City or cause the same to be done, without first obtaining from the city a separate building permit for each such building or structure.

2. It shall be unlawful for any person, partnership, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, convert, demolish, equip, use, occupy or maintain any building or structure in the City of Birchwood Village or cause the same to be done contrary to, or in violation of any of the provisions of this Code. Any person, partnership, firm or corporation violating any of the provisions of this Code shall be guilty of a misdemeanor, and shall be guilty of a separate offense for each and every day, or portion thereof, during which any violation of the provisions of this Code is committed, continued or permitted.

203.050 PERMIT FEES. The city is authorized pursuant to Minnesota Statutes, section 326B.121, and the Minnesota State Building Code , Minnesota Rules part 1300.0160, to establish fees for the consideration and issuance of building permits under the Birchwood Building Code.

1. PERMIT FEES. The City shall establish appropriate permit fees for the various activities conducted under the Birchwood Building Code by resolution and promulgate such fees in a fee schedule.

2. VALUATION. The Chart of Estimated Construction Cost as annually provided by the Minnesota Department of Administration State Building Codes and Standards Division shall be utilized to compute building valuations for the purposes of establishing the appropriate permit fee. Permit valuation shall include total value of all construction work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment, and permanent systems. Permit fees for prefabricated structures shall be based on a valuation of on-site work only.

3. FEE REFUNDS. The City may authorize refunding of any paid fee that was erroneously paid or collected. The City may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. When plan review services have been provided, the plan review fee portion of the permit fee shall not be refunded. No portion of any fee paid shall be refunded except upon written application filed by the original applicant not later than 180 days after the date of fee payment. The City shall

designate the person with authority to make the decision to refund a portion of the fee pursuant to this section.

**“AMENDED BY ORDINANCE 2004-5; April 13, 2004.”**

**AMENDED BY ORDINANCE 2012-   DATE**



## EXPLANATION OF PROPOSED AMENDMENTS TO CHAPTER 205

Chapter 205 of the Birchwood City Code sets forth a licensing requirement for persons (the term "person" includes individuals, firms, and corporations) who want to perform certain construction activities within the city limits. The Code requires that those persons who want to perform any of the identified construction activities either obtain a state license to do so, or if a state license is not required, a license from the City of Birchwood. There are thirteen separate activities listed in section 205.020 that require a state or city license, including plastering, masonry, roofing, and carpentry.

The City of White Bear Lake, which acts as the building official for Birchwood, has suggested that Birchwood either make the Birchwood requirements identical to those of White Bear Lake or eliminate the requirements for a city license for certain activities for which neither the state nor White Bear Lake requires a license. White Bear Lake does not require a separate city license for residential building contractors but it does require a separate city license for Commercial General Contractors. White Bear Lake also requires a city license for Heating and Ventilating Contractors and Tree Trimmers. White Bear Code section 1102.010.

The State of Minnesota does not require a state license for every single person who acts as a building contractor. For residential construction, only those persons or firms who engage in two or more of the construction activities identified in the statute are required to obtain a state license. Minnesota Statutes §§ 326B.801 to 326B.805. A person can do plastering or masonry work or carpentry, for example, without a state license, if that is the only work the person engages in. Electricians and plumbers, however, are required to obtain a license. Minnesota Statutes §§ 326B.31 to 326B.399 (electricians) and 326B.41 to 326.49 (plumbers).

It is appropriate to take a fresh look at whether Birchwood wants to require a city license for those persons who are doing work in the city for which neither the state nor the City of White Bear Lake requires a license. The amendments proposed here would eliminate all requirements to have a separate city license from the city of Birchwood. If a state license is required, then, of course, no person can engage in that kind of construction activity in Birchwood without that state license. If, on the other hand, a state license is not required to engage in certain construction activities, then the person can engage in that work without any license at all. In such a circumstance, a Birchwood resident can decide to hire an unlicensed person to do the work. A Birchwood resident may have any number of reasons to hire an unlicensed contractor, including a family relationship, or a previous relationship, or just to save money.

The city of White Bear Lake requires a city license to engage in commercial construction. Birchwood has no property zoned commercial so it is unnecessary to require a separate city license for that kind of work. White Bear Lake also requires a license for heating and ventilating and tree trimming. Birchwood has never required a city license for tree trimming. The present

code, section 205.020, subsection 1.f. does require a city license for heating, ventilation, and refrigeration (HVAC). The proposed amendments would eliminate the requirement to obtain a Birchwood license for heating, ventilation, and refrigeration, but if the contractor selected did work in White Bear Lake and perhaps other nearby cities, a license from White Bear Lake and these other cities would be held by that contractor. Again, a Birchwood homeowner may have any number of reasons to hire an unlicensed heating or air conditioning contractor but the homeowner would at least know that the contractor was unlicensed and did not do work in other cities where a city license was required.

The City of White Bear Lake began providing mechanical inspections for Birchwood in 2008. Most of the local contractors doing HVAC work in Birchwood were licensed by White Bear Lake. The past practice has been for Birchwood to recognize the White Bear licenses.

The White Bear Lake license fees for HVAC contractors are \$35.00 from January 1 through June 30<sup>th</sup> each year. After June 30, the fee drops to \$25.00. All licenses expire on December 31 and must be renewed the following year. Since 2008 White Bear Lake reports that it has licensed the number of contractors and collected the amount of fees shown in the list below.

2008	-	13 Licenses Issued	-	Total Fees = \$375 collected
2009	-	14 Licenses Issued	-	Total Fees = \$410 collected
2010	-	9 Licenses Issued	-	Total Fees = \$255 collected
2011	-	5 Licenses Issued	-	Total Fees = \$135 collected

Total fees collected for licensing since January of 2008 through November 29, 2011 = \$1175.00  
Thus, there is not a significant amount of money involved if Birchwood were to eliminate the requirement to have a separate Birchwood license.

It is important to note that chapter 205 applies to individuals, firms, and corporations – the individuals and entities that are hired to do certain construction work. It does not apply to the obligation to obtain the necessary building permits authorizing the work and ensuring that it is completed in conformance with Birchwood zoning laws and building code. Even if a specific contractor is not required to obtain a city license or a state license, the homeowner undertaking the work must still obtain the necessary building permits. The City of White Bear Lake, as Birchwood's agent administering Birchwood's building code, will still review the permit application and determine whether the contractor is properly licensed by the state or does not need a license.

If what is intended in the ordinance is to eliminate any requirement for a separate Birchwood license and to rely entirely on state licensing requirements, it would probably be sufficient to simply provide in the ordinance that no person may do construction work in Birchwood without a state license if a state license is required. However, the proposed amendment identifies certain

construction activities that cannot be performed in Birchwood without a state license if such a license from the state is required. It is preferable to identify these specific construction activities because they cover the major home construction and remodeling activities that occur and focus homeowners' and contractors' attention on the importance of having a state license if one is required.

The following discussion describes the rationale for the specific changes proposed in chapter 205.

**205.010. Purpose** This provision is proposed to be amended slightly to simply eliminate the recognition that a city license is required for certain construction activities if a state license is not required. The Purpose of the ordinance – to ensure that construction work is properly done in the city – remains the same.

#### **205.020. CONTRACTORS LICENSE.**

**1. State License or Certification.** The language in this section is changed to eliminate any requirement to obtain a license from the city of Birchwood to engage in construction activities. Instead, the language says that if a license is required from the state, then no person can engage in that type of construction work without the appropriate license. A sentence is also included to recognize that the word “license” should be interpreted broadly, to include other forms of authorization from the state, such as certification. In some cases, there are different levels of license, such as a Master Electrician or a Journeyman electrician. Either designation will satisfy the requirement of the ordinance, provided, of course, that the contractor not engage in work outside the limits of the license.

What these changes would do is allow a resident to select a contractor to perform certain tasks at the resident's home even though the contractor was not licensed by the state if a state license were not required to engage in the activities the contractor was hired to do. For example, as explained below, under state law, a license is not required to do plastering work if that is the only kind of work the contractor engaged in. A resident could hire an unlicensed plasterer if the resident wanted to do that. Indeed, White Bear Lake would not require a license to do plastering work either.

**(a) Residential building.** The first category of work listed in the proposed ordinance is “residential building.” A “residential building contractor” is defined in Minnesota Statutes § 326B.802, subd. 11 as “ a person in the business of building residential real estate, or of contracting or offering to contract with an owner to build residential real estate, by providing two or more special skills as defined in this section. A residential building contractor may also contract or offer to contract with an owner to improve existing residential real estate.”

The statute refers to providing two or more special skills. The term "special skills" is defined in section 326B.802, subd. 15 to include the following: excavation, masonry and concrete, carpentry, interior finishing, exterior finishing, drywall and plaster, residential roofing, and general installation specialties including pools, garage doors, and fireplaces.

The mechanism established by state law is that a contractor does not need to obtain a state license for residential building unless the contractor offers two or more special skills. An individual, firm, or corporation engaging in only one of these special skills is not required to obtain a state license except for roofing.

When a license from the state is required to engage in certain construction activities, it is the Commissioner of the Department of Labor and Industry who issues the license. Minnesota Statutes § 326B.805, subd. 1.

**(b) Residential remodeling.** The term "residential remodeling" is defined in section 326B.802, subd. 12 as "a person in the business of contracting or offering to contract with an owner to improve existing residential real estate by providing two or more special skills as defined in this section." Again, the person must engage in two or more of the special skills identified in the statute. A license is not required from the state to engage just in carpentry, or only in plastering, for example.

A person who remodels homes and constructs new homes is not required to hold two licenses. Holding a license as a "residential building contractor" is sufficient to allow the person to engage in home remodeling as well.

**(c) Residential roofing.** Roofing of homes is the only single skill that requires a license. A roofer must be licensed as a residential roofer, a residential remodeler, or a residential building contractor. Minnesota Statutes § 326B.805, subd. 1.

**(d) Electrical work.** Electricians must be licensed. Minnesota Statutes § 326B.33.

**(e) Plumbing work.** Plumbers must be licensed. Minnesota Statutes § 326B.46. That statute does not require a license to do plumbing work at one's own residence unless a local ordinance prohibits it. The proposed amendments here would not prohibit it; nor does the existing code provision prohibit it.

**(f) Fire suppression.** The existing White Bear Lake code recognizes that a state license is required to perform this kind of work, so a similar provision is included here.

**(g) House moving.** The existing White Bear Lake code recognizes that a state license is required to perform this kind of work, so a similar provision is included here.

**(h) Sewer or water installation.** The existing White Bear Lake code recognizes that a state license is required to perform this kind of work, so a similar provision is included here. Although the requirements for licensing plumbers would also require a license to install sewer

and water, it is helpful to list it separately so there is no doubt that such work must be done by a state-certified person if such state certification is required.

**2. Building Permit.** This language is included to emphasize that the licensing requirements of part 1 are independent from the obligation to obtain all necessary building permits and that an important consideration in reviewing a building permit application is to ensure that the contractor either doesn't need a state license or is properly licensed by the state.

**205.030 APPLICATION AND RENEWAL.** This section is proposed to be repealed. Since the proposed amendments would eliminate any requirement to obtain a city license, there is no need to have a section establishing requirements for applying for a city license.

**205.040. REVOCATION OR REFUSAL TO RENEW LICENSE.** This section is proposed to be repealed. Again, since there will be no city licenses required or issued if the amendments are promulgated, there is no need for language regarding revocation of a license or refusal to issue one.

**205.050. EXCEPTIONS FOR HOMEOWNERS.** The title of this section is changed to recognize that homeowners are not required to be licensed to do work on their own homes or property. However, they do have to obtain all necessary building permits and perform the construction in accordance with code requirements.

The present language in this section has a part 2 that applies to manufacturers. It is unclear exactly what this provision is intended to cover and it is proposed to be eliminated. Since the only provision left applies to homeowners, it is appropriate to change the title.

**205.060 LIABILITY.** The concept here remains the same – that the City of Birchwood shall not be liable for any damages incurred by a homeowner caused by a contractor – but the language is modified since the City of Birchwood will no longer issue any licenses to persons to engage in construction work in the city.

**205.070. PENALTIES.** No changes are proposed for this section. Even though the City of Birchwood would no longer issue any city licenses to contractors, a person could still violate the ordinance by engaging in certain construction activities that required a state license, which the person did not hold. This provision, while still included, is really unnecessary since new chapter 619 sets forth the penalties for any violation of the city code.

**205.080. SEPARABILITY.** No changes are proposed for this section.

**CITY OF BIRCHWOOD VILLAGE  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA**

**Ordinance No. 2011- \_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER 205 (CONTRACTOR LICENSES AND BONDING) TO UPDATE THE REQUIREMENTS AND MAKE THE PROVISIONS CONSISTENT WITH THOSE OF THE CITY OF WHITE BEAR LAKE SINCE WHITE BEAR LAKE ADMINISTERS THE ZONING AND PERMITTING REQUIREMENTS OF BIRCHWOOD**

**WHEREAS**, the City of Birchwood Village has adopted chapter 205 establishing licensing requirements for persons who engage in construction work in the city; and

**WHEREAS**, the City of White Bear Lake has for several years administered the building and licensing requirements of the City of Birchwood Village; and

**WHEREAS**, the state of Minnesota has licensing requirements for persons who engage in certain construction activities; and

**WHEREAS**, the City of Birchwood Village has no commercial facilities and no areas zoned commercial within the city limits and does not need local licensing requirements for commercial contractors; and

**WHEREAS**, the City of Birchwood Village has determined that it is not necessary to require a city license for contractors who are not required to obtain a state license.

**NOW, THEREFORE**, the City Council of the City of Birchwood Village ordains that chapter 203 is hereby amended to read as follows:

**203 CITY BUILDING REGULATIONS**

205.010. PURPOSE. That it is deemed in the interest of the public and residents of the City of Birchwood Village that the work involved in building, altering, repairing, and constructing buildings or structures, and installing major appliances and service facilities including all carpentry work, landscaping, and utility work, be done only by individuals, firms, and corporations that have been properly licensed by the State of Minnesota unless a license from the state is not required.

205.020. CONTRACTORS LICENSE.

Item 1 is repealed and replaced with the following.

1. State License. No individual, firm, or corporation that is required to obtain a license from the State of Minnesota to engage in the following activities shall conduct such activities in the City of Birchwood Village without such a license from the State. The term license shall include license, certification, or other authorization designated by the State.

- (a) Residential building
- (b) Residential remodeling
- (c) Residential roofing
- (d) Electrical work
- (e) Plumbing work
- (f) Fire suppression
- (g) House moving
- (h) Sewer or water installation

2. Building Permit. No building permit of any kind shall be issued to any individual, firm, or corporation required to hold a state license unless the individual, firm, or corporation holds such a license under this ordinance except as hereinafter noted.

205.050. EXCEPTIONS FOR HOMEOWNERS.

Individual home owners shall not be required to obtain a contractor's license for work done by themselves upon or in connection with their own property as long as all applicable codes and ordinances are met and proper inspections obtained and proper permits acquired.

205.060. LIABILITY. This ordinance shall not be construed to affect the responsibility or liability of any party owning, operating, conducting, or installing the above described work for damages to persons or property caused by any defect therein nor shall the City of Birchwood Village be liable for any such damages caused by any person licensed or unlicensed.

205.070. PENALTIES. Any person, firm, or corporation who shall violate any of the provisions of this ordinance shall be guilty of a misdemeanor.

205.080. SEPARABILITY. If any portion of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases might be declared unconstitutional.



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## MEMORANDUM

DATE: January 13, 2012  
TO: Planning Commission  
FROM: Mayor Alan Mitchell  
RE: Explanation of Interim Use Ordinances 301, 305, and 306

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### **INTRODUCTION**

The Birchwood City Code provides for the issuance of Conditional Use Permits. Section 301.070 and chapter 306. The Code recognizes six categories of projects for which a Conditional Use Permit may be issued. These include two types of land disturbance activities, swimming pools, tennis courts, solar energy systems, and home occupations. Section 301.070.

According to the League of Minnesota Cities, in a memorandum on Frequently Asked Questions about Conditional Use Permits published on September 8, 2008, "A conditional use is a land use designated in a zoning ordinance that is specifically allowed in a zoning district so long as certain standards are met." Further, "A conditional use permit is a document a city issues to grant a conditional use when the general and specific ordinance standards have been met by the applicant."

Authorization for municipalities to issue Conditional Use Permits is provided in Minnesota Statutes § 462.3595.

The Minnesota Supreme Court has recognized that conditional uses "run with the land." *Northpointe Plaza v. City of Rochester*, 465 N.W.2d 686, 689 (Minn. 1991). That means that CUPs are perpetual in nature and "remain in effect as long as the conditions agreed upon are observed." Minnesota Statutes § 462.3595, subd. 3. CUPs must be recorded with the county. *Id.*, subd. 4.

In 1989, the Legislature passed a new law creating the concept of Interim Use Permits. Minnesota Statutes § 462.3597. The difference between a CUP and an IUP is that Interim Use Permits are not perpetual but authorize a "temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it." *Id.*, subd. 1.

In July 2011 a resident filed a request with the City for a Conditional Use Permit authorizing the maintenance of a cabinetry business in his garage. Home occupations are presently recognized as a land use that the City may authorize through the issuance of a Conditional Use Permit. In the course of its deliberation on the matter, the Council considered whether it was appropriate to authorize a home occupation on a perpetual basis, which is what a CUP would do. An Interim Use Permit seemed like a more appropriate tool for authorizing a home occupation that met certain standards.

The ordinance amendments and new chapter 305 are intended to provide for the issuance of Interim Use Permits. A search of the Internet will show that a number of cities and counties in Minnesota have specific ordinances allowing for the issuance of Interim Use Permits and distinguishing IUPs from CUPs.

The city of Mahtomedi has an Interim Use Permit ordinance. Section 11.01, subd. 8-22. White Bear Lake does not (although White Bear Lake is a charter city, not a statutory city like Birchwood and Mahtomedi). Other examples include the cities of Bloomington (Section. 21.501.05), Lakeville (Title 11, chapter 5), and Woodbury (section 24-45) and the counties of Benton (chapter 11.6.3), Scott (chapter 207), and Sherburne (section 16.2).

With this background in mind, the following discussion addresses the specific changes proposed in the City Code.

### **Chapter 301 (ZONING CODE: GENERAL PROVISIONS)**

#### **301.070 CONDITIONAL USES**

Section 301.070 is amended to delete item 1.f. (Home occupation). The intent of the amendments is to eliminate Conditional Use Permits for home occupations because a home occupation is not intended to "run with the land" and continue in perpetuity, so it is necessary to eliminate the reference to home occupations in this provision.

#### **301.090 INTERIM USE PERMIT**

Section 301.090 is a new section adding a definition of "Interim Use." The definition is taken from the statute – Minnesota Statutes § 462.3597. In addition to the definition, this section also provides that an Interim Use Permit is not required if a Building Permit, a Conditional Use Permit, or a Zoning Permit is issued for the use. This is similar to the language in section 301.070 saying a CUP is not required if a Building Permit has been granted and to language in section 301.080 saying that a Zoning Permit is not required if a Building Permit or Conditional Use Permit is issued. It makes sense to not require an Interim Use Permit if the project or use qualifies for one of the other permits.

Section 301.070 identifies the projects for which a Conditional Use Permit can be applied for (land disturbance activities, swimming pools, tennis courts, solar energy systems, and home occupations), and section 301.080 identifies the projects that require a Zoning Permit (smaller land use activities). This new section 301.090, however, does not identify the projects that can be authorized through an Interim Use Permit, except for home occupations. Other projects that are not specifically identified as the type requiring a Conditional Use Permit or a Zoning Permit would be eligible for an Interim Use Permit as long as the requirements of chapter 305 are met. Of course, a use that is not permitted by specific ordinances of the city would not be entitled to an Interim Use Permit.

### **CHAPTER 306 ZONING CODE: CONDITIONAL USE PERMITS**

Some minor changes are required in chapter 306 to recognize that a separate chapter will address Interim Use Permits if the new ordinance is adopted.

#### **306.070 HOME OCCUPATIONS**

This section is proposed to be deleted in its entirety. Since a Conditional Use Permit is no longer available for home occupations, there should be no provisions in chapter 307 relating to home occupations. Many of the existing requirements in this section, however, are carried over to the new ordinance, as explained below with the explanation of the chapter 305 provisions.

### **306.080 NOTIFICATION AND PROCEDURES FOR CONDITIONAL USE PERMITS.**

Section 306.080 is a procedural provision establishing the requirements for administering an application for a CUP. It is appropriate to add language to part 1 of that section to recognize that the City must also give such notice of a CUP application as may be required by state statute. Minnesota Statutes § 462.3595, subd. 2 requires that a governmental body give the same notice of a CUP application that is required for a zoning ordinance change in section 462.357, subd. 3. Subdivision 3 of section 462.357 requires that notice be published in the official newspaper, in addition to mailing notice to nearby neighbors, at least ten days in advance of a public hearing on the matter.

A new item 10 is also proposed to be added to this section. Item 10 provides that a decision on a Conditional Use Permit must be made within the time limit expressed in Minnesota Statutes § 15.99. That statute requires a decision to be made on a CUP application within sixty days (with some provision for granting an extension). The City does not want a CUP to be issued upon the City's failure to meet the deadline so this is an appropriate provision to include in the ordinance as a reminder of the deadline.

### **306.090 - REVOCATION**

The main intent here is to repeal any reference to home occupations in item 2 since CUPs are no longer the appropriate permitting mechanism for home occupations. Also, language regarding when a CUP becomes null and void for failure to be made use of is clarified to indicate that the City Council could allow a permittee to have more than one year from the time the CUP is issued to implement the permit.

### **305 ZONING CODE: INTERIM USE PERMITS**

Chapter 305 is all new material, and it provides for the issuance of Interim Use Permits.

The next available higher chapter number in the 300 series (LAND USE REGULATIONS) is chapter 309, although chapter 305 has been reserved for future use and is available. Rather than number the new ordinance on Interim Use Permits as chapter 309, it was decided to use chapter 305 for the Interim Use Permits provisions because this would allow Conditional Use Permits (chapter 306) and Zoning Permits (chapter 307) to follow in sequence.

### **305.010 - GENERALLY**

This provision is a general statement that the City Council may issue Interim Use Permits for temporary uses of property. What kind of uses may be authorized on an interim basis is not defined in the ordinance. This is the typical way that local units of government provide for the issuance of Interim Use Permits. As long as the use satisfies the criteria of the ordinance, and is not in violation of another provision of the code, the City Council may elect to authorize an interim use under appropriate circumstances.

### **305.020 – PERMIT APPLICATION**

This section sets forth the information that an applicant for an Interim Use Permit must submit to the City. The City will, after the ordinance is adopted, prepare a form that applicants can use to apply for an IUP.

The categories are self-explanatory. The language was taken from the ordinance adopted by the City of Bloomington, Minnesota. Bloomington city code, section 21.505.01(i). Obviously, the applicant must sign the form and pay the application fee. The City needs information about the use to be made, the schedule, and details of the project including a floor plan or site plan. The information that is required to be submitted in an application will allow the City to begin its evaluation of the project.

### **305.030 – PROCESS FOR CONSIDERATION OF APPLICATION**

The process proposed for consideration of an application for an Interim Use Permit is to refer the matter to the Planning Commission. The Planning Commission is the appropriate body to consider the application since it is familiar with the building code and the zoning code. The ultimate decision, of

course, rests with the Council but a recommendation from the Planning Commission will be helpful to the Council.

A separate item is included stating that the Council must make a decision in a timely fashion, as required by Minnesota Statutes § 15.99. Again, it is important that the Council be aware of its obligation to make a decision within the 60 days, or longer period if properly extended, allowed by the statute.

#### **305.040 – STANDARDS GENERALLY**

The standards set forth in this section are the ones that municipalities apply to applications for Interim Use Permits. The language was taken from the City of Bloomington ordinance. Section 21.505.01(e). If an applicant is unable to satisfy these standards, the permit will be denied.

#### **305.050 – PERMIT CONDITIONS**

As with other permits the City may issue, it may be necessary and appropriate to impose conditions on the permittee. This section recognizes that fact. In most cases all permit conditions will be developed with the cooperation and acquiescence of the applicant, but in rare cases conditions may have to be imposed over the objection of the applicant.

Four specific permit conditions are recognized in the section. The first is mitigative measures to reduce potential adverse effects. This language recognizes that a permit applicant must consider methods to minimize the impact of the use on the land, the neighbors, and the environment. Without the ability to impose these kinds of conditions, a project may have to be denied rather than approved with mitigation. The second authorizes the City to conduct inspections of the premises. As the property is put to the proposed use authorized by the permit, it may be necessary to periodically inspect the property to ensure that the permit conditions and the code are being followed. The third specific type of condition spelled out is the requirement to post a financial guarantee. This may not be a condition that is required in all Interim Use Permits but if the use is of a type that may result in significant cleanup activities at the end of the permit, it may be appropriate to require the applicant to post some form of financial guarantee to ensure that the City is not stuck with a cleanup bill. The fourth requirement is that various city code provisions might be imposed as conditions in the permit. This approach would not change the permittee's obligation to comply with the city code but would be a reminder that the permit is dependent on compliance.

Finally, a general clause is included to recognize that the City Council may include any conditions that are reasonable and appropriate. In order for a condition to be reasonable and appropriate, the record would have to support the imposition of the condition and it would have to be within the City's authority to impose it.

#### **305.060 – SUSPENSION OR REVOCATION**

This is another provision where the language was taken from the Bloomington ordinance, section 21.505.01(g), although it is a common provision with municipal ordinances allowing interim uses. It simply provides that the City Council may suspend or revoke an Interim Use Permit if violations of the city code, state law, or the permit occur. The City could not suspend or revoke the permit without affording the permittee due process, which means the permittee must have notice and opportunity to be heard, but it is a good idea to express in the ordinance that an IUP is subject to suspension or revocation for noncompliance. The specifics of that process are not spelled out in the ordinance but the City will ensure that the proper procedural steps are followed by any IUP is suspended or revoked.

#### **305.070 – TERMINATION**

There are five events spelled out in this section that could lead to termination of an Interim Use Permit. The language is worded to make the termination automatic upon the occurrence of any of the events.

The first termination event is the date of termination specified in the permit or the specific event identified in the permit. By definition an Interim Use Permit is an authorization that has a specific

termination trigger – a date or an event. If that date arrives or the event occurs, the permit terminates without any further action by the Council.

The second termination trigger is a change in the zoning regulations that would no longer permit the use. An example would be an IUP for a home occupation that was allowed when the permit was issued but that was later prohibited by a change in the city code.

The third event is a failure on the part of the permittee to begin putting the property to the interim use allowed within six months of issuance of the permit. This is appropriate to give the City the ability to terminate the permit and take a new look at the project if the permittee still wanted to go ahead. Six months should be time enough to at least start a project that has a limited life anyway.

The fourth event that will cause the permit to be terminated is if the permittee begins use of the property as allowed but then stops for a period of one year or longer. Again, if the property is not going to be used for the intended use, then the permit may be properly terminated.

Finally, the last event, which will terminate the permit if no other trigger comes into play, is five years from issuance. This is the same as saying that no Interim Use Permit can be for longer than a five year period. Again, since it is an interim use that is being permitted, five years should be long enough to carry out the project. If more time is needed after five years, there is nothing in the ordinance that prohibits the person from reapplying for a new permit.

## **HOME OCCUPATIONS**

Up to this point, the provisions in chapter 305 apply generally to any interim use to be permitted. However, since the major reason for adopting this new chapter is to address home occupations, it makes sense to specifically address home occupations. The requirements in the 100 series apply only to home occupations.

### **305.100 – HOME OCCUPATIONS GENERALLY**

This paragraph is an introductory provision describing the intention of the new ordinance. The first sentence is presently found in the existing ordinance, section 306.070. The next two sentences simply describes that a person may apply for an Interim Use Permit for a home occupation if the occupation is not allowed by ordinance nor prohibited by the ordinance.

### **305.110 – ALLOWED HOME OCCUPATIONS**

The list of home occupations that are allowed is taken from the existing ordinance, section 306.070, item 1. The only change is to eliminate the phrase “similar occupations as determined by the city staff and city council.” This language was deleted because any additional occupations that are to be allowed should be addressed through an amendment to the ordinance, not by some other process. Also, because home occupations that are not on the list of allowed occupations can now be authorized by the issuance of an Interim Use Permit (if they are not on the prohibited list), the process outlined in chapter 305 will provide an appropriate process for considering the unlisted occupation.

### **305.120 – PROHIBITED HOME OCCUPATIONS**

The list of home occupations that are allowed is taken from the existing ordinance, section 306.070, item 2. Again, the only difference is that the phrase “or other objectionable activities as determined by the city staff or city council.” (The existing language uses the word “or” between staff and council, whereas the language in item 1 described above uses the word “and.”) For the same reasons just discussed above, it is appropriate to require an ordinance amendment if an additional home occupation is to be added to the list of prohibited occupations.

### **305.130 – HOME OCCUPATIONS ALLOWED BY INTERIM USE PERMIT**

This provision recognizes that for those occupations that are not allowed outright, and thus need no permit, or prohibited, so no permit can be issued, an Interim Use Permit can be issued authorizing the home occupation.

### **305.140 – APPLICATION FOR AN INTERIM USE PERMIT**

This section lays out the information the City requires as part of an application for an IUP for a home occupation. This information is in addition to any information required under section 305.020 for any IUP application.

Items 1, 2, 3 and 7 are identical to what is presently found in section 306.070, item 3. Items 4, 5, and 6 are new but the information required by these provisions was always required as part of any application for a home occupation permit in the past anyway, so the obligations are neither unexpected nor burdensome.

The process for acting on an IUP application for a home occupation will be the same as the process for any other IUP application found in section 305.030.

### **305.150 – PROCESS FOR CONSIDERATION OF APPLICATION FOR HOME OCCUPATION**

An application for an IUP for a home occupation will be acted upon in the same manner as any other IUP application. The applicable process is found in section 305.030. It is helpful, however, to include this section so the public knows that an application for an IUP for a home occupation will be referred to the Planning Commission for a public hearing and the creation of an administrative record.

### **305.160 – REQUIREMENTS AND STANDARDS FOR HOME OCCUPATIONS**

The list of requirements and standards for a home occupation in this section is identical to the list already found in 306.070, item 4. The only change was to include an introductory sentence indicating that a permit applicant had to comply with these requirements and to number the requirements rather than to use letters simply to make the format identical to that in other provisions. The requirements are all reasonable limitations on a home occupation that is not specifically allowed under the code. In most cases it is likely that these requirements will also be incorporated into the actual Interim Use Permit as conditions.

### **305.170 – INSPECTION**

This is another provision intended specifically for home occupations that is similar to the general provision in section 305.020, item 2, that the City may make an IUP conditional on the right to inspect the property periodically. However, it is included here to emphasize that the City does intend to maintain the right to inspect property on which a home occupation has been permitted through the issuance of an Interim Use Permit. Also, it is included here because it already exists in the present ordinance, section 306.070, item 6. The only change is to update the reference to the ordinance setting forth the requirements for home occupations.

### **REPEALER**

The present ordinance – section 306.070, item 5 – addresses nonconforming home occupations. This provision provides that any person conducting a home occupation out of compliance with section 306.070 has 90 days to obtain a Conditional Use Permit. Since that 90 day period has long expired, there is no need to include this language. Any person who is presently conducting a home occupation without a permit (unless the occupation is allowed under section 305.110) is in violation of the city code and should immediately apply for an Interim Use Permit. If the home occupation is prohibited under section 305.120, the person should cease immediately with the occupation.

The existing section 306.070, item 5, also establishes that a CUP for a home occupation automatically terminates when the applicant no longer resides in the specific dwelling unit. Since a CUP “runs with the land” it is uncertain whether such a condition is enforceable. That is an important reason why a separate ordinance regarding Interim Use Permits is being adopted and this section is being repealed.

**CITY OF BIRCHWOOD VILLAGE  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA**

**ORDINANCE 2011-06**

**AN ORDINANCE AMENDING CHAPTER 301 (ZONING CODE: GENERAL PROVISIONS) CHAPTER 306 (ZONING CODE: CONDITIONAL USE PERMITS) TO CLARIFY CONDITIONAL USE PERMIT PROVISIONS AND TO ADD A PROVISION ALLOWING FOR THE ISSUANCE OF INTERIM USE PERMITS AND ADOPTING NEW CHAPTER 305 (ZONING CODE: INTERIM USE PERMITS) TO ESTABLISH STANDARDS AND PROCEDURES FOR INTERIM USE PERMITS**

**WHEREAS**, the City of Birchwood has adopted chapter 301 and chapter 306 to allow for the granting of conditional use permits in certain situations, and

**WHEREAS**, conditional use permits run with the land, and

**WHEREAS**, the Minnesota Legislature has provided in Minnesota Statutes section 462.3597 that municipalities may allow for the issuance of interim use permits that will terminate under certain conditions, and

**WHEREAS**, the City of Birchwood is desirous of allowing for the issuance of interim use permits.

**NOW, THEREFORE**, the City Council of the city of Birchwood Village ordains that chapter 301 and chapter 306 are hereby amended to read as follows and chapter 305 is adopted to read as follows:

**301 ZONING CODE: GENERAL PROVISIONS**

301.070. CONDITIONAL USES. Certain accessory uses permitted within the City have greater than usual chances to present safety hazards, impact on neighboring people and property, and nuisance situations. Because of these greater effects, the City requires these uses to be covered under Conditional Use Permits. Applications for Conditional Use Permits must comply with all provisions of Section 306.  
**CONDITIONAL USE PERMITS.**

1. A Conditional Use Permit shall be required for the following projects:
  - a. Any land disturbance activity where the slope is toward a lake, pond, wetland, or watercourse leading to such waters, and the alteration is closer to such water than the structure setback requirement. See Note at end of Section 301.070.

- b. Any land disturbance activity where such work involves an area greater than four hundred (400) square feet and/or more than fifty (50) cubic yards in volume. See Note at end of Section 301.070.
- c. Any swimming pool with a capacity over three thousand (3000) gallons or with a depth of over three and one-half (3 ½) feet of water.
- d. Any tennis court.
- e. Any solar energy system for heating, cooling, electrical generation or other purposes.
- f. ~~Home occupation.~~

NOTE: A separate Conditional Use Permit is not required for a land disturbance activity when a building permit has been granted. However, as part of the Building Permit Application, the applicant shall provide information required pursuant to Section 306.030 and shall follow all provisions of Section 302.050 IMPERVIOUS SURFACES and 302.055 LAND DISTURBANCE ACTIVITY STANDARDS.

301.090. INTERIM USES. An "interim use" is a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it. An interim use permit is not required if a Building Permit or a Conditional Use Permit or a Zoning Permit is issued for the use. An Interim Use Permit is required for a home occupation.

### 306 ZONING CODE: CONDITIONAL USE PERMITS

\ 306.070 HOME OCCUPATIONS. Section 306.070 is repealed in its entirety.

#### 306.080 NOTIFICATION AND PROCEDURES FOR CONDITIONAL USE PERMITS

1. Notice of Conditional Use Permit application shall be mailed at least 10 days prior to the Planning Commission meeting to each owner of property within 200 feet of the property to which the Conditional Use Permit relates, and when applicable to the Department of Natural Resources. The City Clerk shall mail such notices. The City shall also give such notice as may be required by state statute.

10. The City shall make a decision on a Conditional Use Permit within the time limitation of Minnesota Statutes section 15.99.

#### 306.090 REVOCATION

1. A violation of any condition set forth or required by the City Council in granting a Conditional Use Permit shall be a violation of this Code, and the City Council after Notification and Procedures per Section 306.090, may terminate the Conditional Use Permit.
2. A Conditional Use Permit shall become null and void one year after it was granted, unless made use of within the year, or ~~such a longer period of~~ time if prescribed by the Council at the time the permit is issued. ~~A Conditional Use Permit for a Home Occupation shall become null and void if the Home Occupation is not carried out for any continuous interval of one year.~~

## 305 ZONING CODE: INTERIM USE PERMITS

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### 305.010. GENERALLY.

As provided in section 301.090 the City may issue an Interim Use Permit for temporary uses of property including certain home occupations in accordance with the procedures and requirements of this chapter 305.

### 305.020. PERMIT APPLICATION

Applicants for an Interim Use Permit shall submit an application with the following information:

1. An application form signed by the property owner(s) or authorized representative.
2. The required application fee.
3. A complete description of the use.
4. Schedule for commencement of the use.
5. Size of the facility accommodating the use.
6. Hours and dates of operation.
7. Anticipated employment.
8. Floor plan or site plan.

### 305.030. PROCESS FOR CONSIDERATION OF APPLICATION.

1. All applications for an Interim Use Permit shall be referred to the Planning Commission for consideration. The City Clerk shall mail notice of the Planning Commission meeting at which the matter will be considered to each owner of property within 200 feet of the property to which the Interim Use Permit relates, at least ten days before the meeting. The City shall also give such notice as may be required by state statute.

2. The applicant for the Interim Use Permit shall appear before the Planning Commission to present the application and answer questions. The Planning Commission may also hear from other interested persons and may receive information in writing.

3. The Planning Commission shall consider possible adverse effects of the proposed interim use and identify mitigative measures that may be taken to reduce adverse effects.

4. The Planning Commission shall make a recommendation to the Council on whether to issue the Interim Use Permit and any conditions that should be included if issuance of a permit is recommended.

5. The matter shall be placed on the agenda for a City Council meeting for the Council to make a final decision. The Council may accept, modify, or reject the recommendation of the Planning Commission.

6. The City shall make a decision on an Interim Use Permit within the time limitation of Minnesota Statutes section 15.99.

305.040. STANDARDS GENERALLY.

No Interim Use Permit shall be issued unless the City Council determines the following:

1. The proposed use will not adversely impact implementation of the City's Comprehensive Plan.
2. The proposed use will not be in conflict with any provisions of the City Code on an ongoing basis.
3. The proposed use will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety and welfare.
4. The date or event that will terminate the use has been identified with certainty.
5. The property on which the use is situated is currently in compliance with all applicable City Code standards, property maintenance standards and there are no nuisance characteristics associated with the property or its current use.
6. The applicant has paid the necessary fees established by the City Council for an Interim Use Permit.
7. There are no delinquent property taxes, special assessments, interest, or City utility fees dues upon the parcel of land to which the Interim Use Permit application relates.

305.050. PERMIT CONDITIONS

The City may include with any Interim Use Permit such conditions as the City deems reasonable and appropriate. These conditions may include any or all of the following:

1. Mitigative measures to reduce potential adverse effects.

2. Conditions authorizing City inspection of the premises.
3. The posting of a financial guarantee.
4. Requirements of any city code provision may be included as a condition in the permit.
5. Such other conditions as the City deems are reasonable and appropriate.

305.060. SUSPENSION OR REVOCATION

The City Council may suspend or revoke an Interim Use Permit upon the failure of the permittee, owner, operator, tenant or user to comply with the provisions of this Code, the laws of the State of Minnesota or any condition established at the time of approval of the Interim Use Permit. No suspension or revocation shall be effective without first giving notice to the permittee and providing the permittee with an opportunity to be heard.

305.070. TERMINATION.

An Interim Use Permit shall terminate on the happening of any of the following events, whichever comes first:

1. The date or event stated in the permit occurs.
2. Upon change in the City's zoning regulations the use is no longer permitted.
3. The permittee has not begun the use of the property as allowed by the permit within six months after issuance.
4. The IUP shall expire if the approved use is inactive for one year or longer.
5. Five years after the date of issuance if not terminated earlier.

305.100. HOME OCCUPATIONS. Because Birchwood Village is a residential community, this ordinance and the actions of the City to enforce it are intended to insure that all home occupations shall be unobtrusive to the residents of Birchwood Village. The City has established by ordinance certain home occupations that are allowed and certain home occupations that are prohibited. Home occupations that are neither allowed nor prohibited may be conducted upon the issuance of an Interim Use Permit. The requirements of sections 305.100 to 305.140 shall be construed to be in addition to any other provisions of chapter 305 that are applicable.

305.110. ALLOWED HOME OCCUPATIONS.

The following home occupations are permitted within the city limits of the City of Birchwood, provided the occupation is conducted by a resident of the home and there are not more than two patrons per visitation nor more than six visitations per day. :

1. Telecommuting
2. Home office
3. Art Studio that does not involve a foundry or welding
4. Dressmaking and Tailoring
5. Secretarial Services
6. Licensed family day care
7. Foster care
8. Catering
9. Instruction, including music lessons, of no more than two pupils at a time

305.120. PROHIBITED HOME OCCUPATIONS.

The following home occupations are not permitted within the city limit of the City of Birchwood:

1. Body shops
2. Machine shops
3. Welding
4. Flea markets
5. Escort businesses or any sexually oriented business
6. Headquarters or dispatch centers where persons come to the residence and are dispatched to other locations
7. Sale, lease, trade, transfer, repair, or manufacture of major appliances, internal combustion engines, motor vehicles, watercraft, illegal drugs or substances, firearms or ammunition, hazardous materials or explosives, including fireworks
8. Animal boarding kennels.

305.130. HOME OCCUPATIONS ALLOWED BY INTERIM USE PERMIT.

Any home occupation that is not an allowed home occupation under Section 305.020 or a prohibited home occupation under Section 305.021 shall be allowed to operate only after an Interim Use Permit is issued pursuant to this chapter.

305.140. APPLICATION FOR AN INTERIM USE PERMIT.

Applicants for an Interim Use Permit shall submit an application with the information specified in section 305.020 and the following information:

1. a site plan
2. a floor plan
3. a written narrative describing the home occupation and it's compliance or deviation from the code
4. a description of equipment and vehicles to be used for the occupation
5. a schedule for commencement and conduct of the home occupation, including days and hours of operation
6. conditions and limitations on the occupation that the applicant will comply with if the permit is issued
7. any other information requested by the City

305.150. PROCESS FOR CONSIDERATION OF APPLICATION FOR HOME OCCUPATION.

The City shall act on an application for an Interim Use Permit in accordance with the requirements in section 305.030.

305.160. REQUIREMENTS AND STANDARDS FOR HOME OCCUPATIONS.

No Interim Use Permit shall be granted for a home occupation unless the applicant will comply with the following:

1. The home occupation shall be conducted solely within the principal or accessory structures.
2. The nature of the home occupation shall be clearly secondary and incidental to the use of the building as a dwelling unit. No more than 20% of the gross floor area of the unit shall be dedicated to the home occupation.
3. No more than one person may be engaged in the business on the premises other than those who customarily reside on the premises.
4. Exterior displays or signs, exterior indication of the home occupation or variation from the residential character of the principal structure shall not be permitted.
5. No home occupation shall be noticeable from adjacent properties or right-of-way nor constitute a fire hazard to neighboring residences, adversely affect

neighboring property values, or constitute a nuisance or otherwise be detrimental to the neighbors because of traffic, noise, glare, odor, electrical interference, magnetic interference, radio and television interference, laser beams, vibration, dust and other nuisance or safety hazards or other factors that may affect neighbors.

6. No home occupations shall adversely affect government facilities and services, including roads, sanitary sewers, city water, storm drainage, garbage service, police service and fire service.

7. No home occupations shall adversely affect sensitive environmental features, including lakes, surface water, underground water supply and quality, wetlands, slopes, soils or factors as found relevant by the city staff or city council.

8. No home occupations shall involve the use of hazardous materials or activities.

9. Deliveries shall be by single rear axle straight trucks normally used by package delivery services in residential neighborhoods. No more than three delivery/pickup trips per day are allowed.

10. The home occupation shall not cause a noticeable increase in traffic congestion on the lot containing the home occupation or on the streets adjacent thereto as compared to that generated by a typical family in a dwelling. Commercial vehicles associated with the home occupation shall make no more than three trips to/from the lot per day.

11. No motor vehicle or trailer parking related to the home occupation shall be permitted on the street.

12. No more than one commercial vehicle associated with the home occupation may be parked on the lot outside a garage.

13. Commercial vehicles larger than one ton associated with the home occupation may not be parked or stored on the lot.

14. No exterior storage of equipment or materials associated the home occupation is permitted at any time.

15. A full time resident must conduct the business.

#### 305.170 INSPECTION

1. Upon issuing a Conditional Use Permit for a home occupation, the City of Birchwood Village hereby reserves the right to inspect the premises in which the home occupation is being conducted to insure compliance with the provisions of this section or any conditions additionally imposed.

2. If City officials believe that any home occupation is being conducted out of compliance with any requirement of chapter 305, the City reserves the right to inspect or seek inspection of the premises in which the home occupation is being conducted and to bring action for compliance.

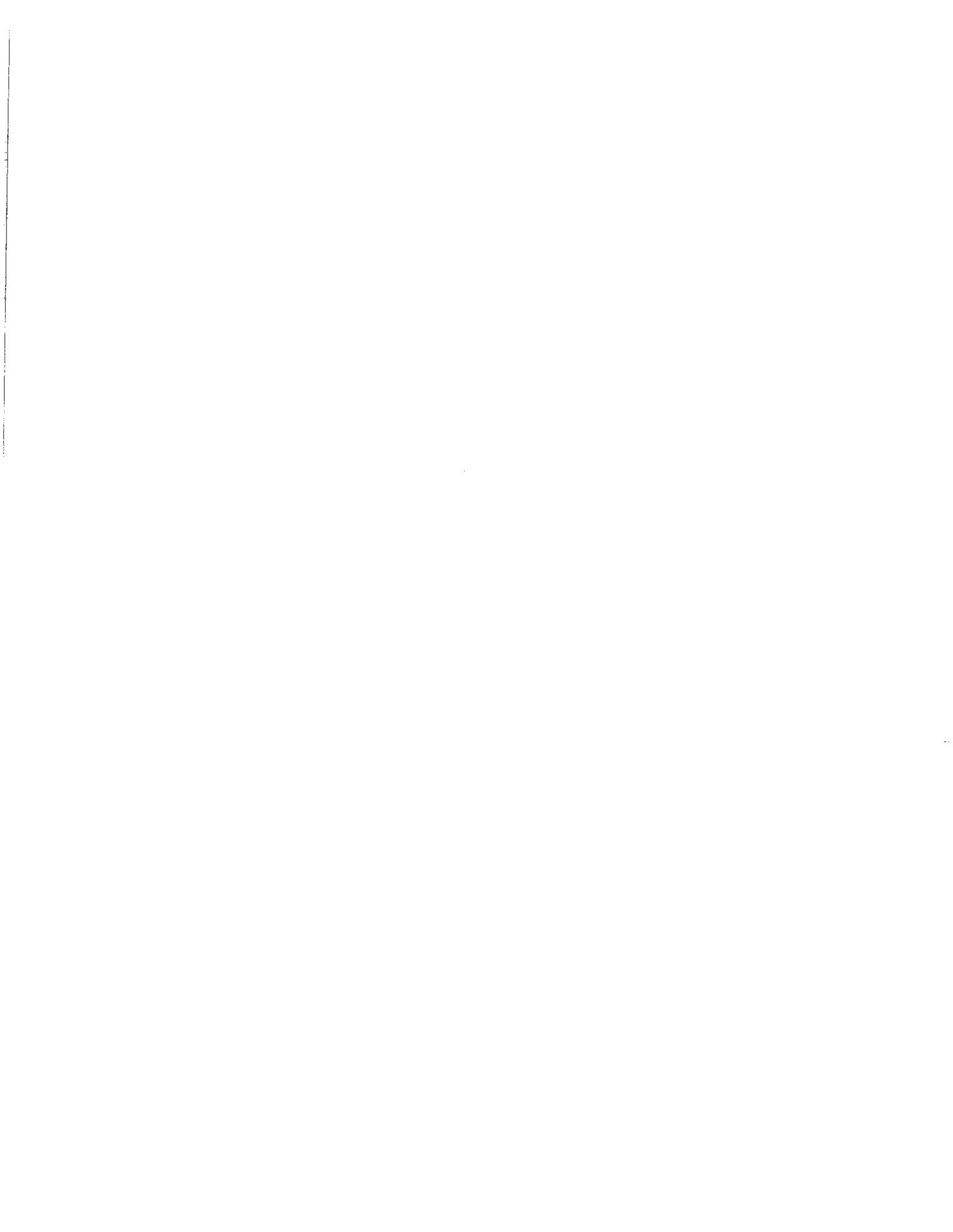
## Washington County Zoning Code

**Home Occupation:** Use of a property zoned residential or agricultural for gainful employment which is a) clearly incidental and subordinate to the use of the property as residential; b) carried on solely within the main dwelling or an accessory building; c) does not alter or change of the exterior character of appearance of the property; and d) is created and operated by the occupant of the dwelling.

Examples of potentially allowable home occupations include: office, professional service, hairdressing by occupant only, minor repair services excluding automobile or truck repair, photo/art studio, dressmaking or alterations, and teaching/tutoring limited individual lessons. Home occupations are not limited to this list and occupations on this list do not automatically qualify.

Examples of uses not allowed under this definition include: auto repair and painting, barber shops and/or beauty salons, kennels for the keeping of any domestic or non-domestic animals, medical offices, private schools with organized classes, tourist homes, restaurants, and retail sales.

Prohibited uses are not limited to this list.





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## MEMORANDUM

DATE: January 13, 2012  
TO: Planning Commission  
FROM: Mayor Alan Mitchell  
RE: Explanation of Complaints Ordinance

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### **INTRODUCTION**

Presently section 615.040 (entitled ENFORCEMENT) establishes certain procedures for responding to complaints about alleged violations of chapter 615. Chapter 615 (entitled EXTERIOR STORAGE) places restrictions on what may be stored outdoors.

New chapter 618 is intended to replace 615.040 and to update the procedures for responding to complaints. In addition, a new chapter 619 is being proposed to provide generally for enforcement of city code requirements. Chapter 619 establishes certain remedies available to the City when violations of the code occur; these remedies are available whether or not a complaint has been filed with the City.

### **Section 618.010 - GENERALLY**

The language in this section is taken from the Note at the beginning of present section 615.040. It simply recognizes that it is in the best interests of the City and its residents to resolve alleged code violations amicably between neighbors and without City involvement. The language is written broadly so it applies to all code violations, not just exterior storage requirements.

### **Section 618.020 - COMPLAINT**

This section provides that any person may file a complaint with the City regarding an alleged code violation. The City will provide a form for a complainant to use in filing a complaint. Because chapter 618 applies to all code violations, not just exterior storage, the complainant must identify the specific code provision that has allegedly been violated. Because it is possible that the violation occurred on public property or on property not owned by the alleged violator, the complainant must also identify the property where the violation occurred or is occurring.

The proposed language recognizes that the City need not accept an anonymous complaint. The staff will decide whether an anonymous complaint warrants acceptance and follow-up.

The Minnesota Data Practices Act, Minnesota Statutes chapter 13, provides in section 13.44 that the name of the person who files a complaint regarding the use of real property shall be classified as confidential and not available to the public or to the owner of the real property. A sentence is included in the proposed ordinance stating that the City will maintain the confidentiality of complainants when required to do so under that statute. It should be mentioned that Minnesota Statutes § 13.44 does not apply when the complaint does not involve real property. Because chapter 618 applies to all code

violations, some alleged violations may involve conduct and not real property. A firearm violation under chapter 609 would be an example.

#### **Section 618.030 - INVESTIGATION**

This section establishes procedures to be followed after a complaint is filed. The City staff will conduct an investigation of the complaint and report to the City Council. The staff has discretion regarding how extensive an investigation to conduct. It may involve simply contacting the person who allegedly engaged in the unlawful conduct. Hopefully, most complaints will result in an amicable resolution of the situation and there will be no action for the Council to take.

Once the staff completes its investigation, it will file a written summary with the City Council. This written summary will be a public document, with confidential names and other information redacted if required by law.

#### **Section 618.040 – NOTICE OF VIOLATION**

In those cases where a situation cannot be resolved at the staff level, the Council has the authority to take action. While the City staff conducts the investigation, it is only the Council that can decide to take action. If the City Council determines that a violation exists, the Council will direct that the violator be sent a Notice of Violation. This is essentially a letter identifying the violation that has been found and directing the alleged violator to comply with the ordinance that the Council determined has been violated within a specified timeframe. The Notice may specify certain actions the Council expects the alleged violator to take.

In the more egregious or serious situations, the City Council could decide to take enforcement action immediately, without going through the steps outlined in chapter 618, and seek an injunction or file criminal charges. See sections 619.010 and 619.020 and 619.040.

#### **Section 618.050 – PUBLIC HEARING**

This section provides that the alleged violator who gets the Notice of Violation can ask for a public hearing. In some cases, an alleged violator could ask for the hearing before the Notice of Violation was even issued. The person must request the hearing before the expiration date specified in the Notice of Violation. The hearing must be held within 60 days of the request. The hearing will be conducted by the Planning Commission. The alleged violator must be given notice of the time and date of the public hearing. The language doesn't specify the length of time the alleged violator must have between receipt of notice and the hearing, but the alleged violator must have an opportunity to prepare for the hearing. The hearing can be as formal as the situation demands. In most cases it will likely involve the staff and the alleged violator explaining their sides of the situation. The complainant may or may not appear before the Planning Commission. Reports and other written documentation might be provided to the Planning Commission.

Once the hearing is over, the Planning Commission shall prepare a written report with its findings and make a recommendation to the City Council on what to do.

#### **Section 618.060 – ABATEMENT**

This section provides that the City Council has options available to it to abate an alleged violation, whether or not a hearing has been held by the Planning Commission. One specific option is to actually abate the violation itself. Whether or not the City can go on private property and abate a specific violation will have to be determined in consultation with the City's attorneys at the time of the proposed action, but if abatement is appropriate and lawful, that is one tool available to the City. Other options

including issuing an order to undertake specific actions to abate the situation or going to court for judicial remedies.

**Section 618.070 – COSTS OF ABATEMENT BILLED TO PROPERTY OWNER**

This section provides that if the City is required to go in and abate a particular situation, the City will look to the alleged violator to reimburse the City for the costs it incurred. The City will send an invoice to the responsible person. Oftentimes the responsible person will be the property owner but the violator does not necessarily have to be a property owner. Perhaps a person who littered one of the public beaches could be held responsible for costs in cleaning up the beach. As with the initial decision to abate a situation, the City will consult with its legal advisers in determining its authority to impose these costs on another person.

**Section 618.080 – CERTIFICATION ON PROPERTY TAXES**

In those cases where the violator is a property owner, and the person fails to pay an invoice for abatement costs, the City will certify its expenses to the county auditor for collection in the same manner as special assessments and property taxes are collected. This language is taken from the existing language in section 615.040, Step 3.

**Section 615.040 – ENFORCEMENT**

The new chapter 618 takes the place of the provisions in section 615.040 so 615.040 should be repealed to avoid any confusion or inconsistency.

## 618. COMPLAINTS

618.010. GENERALLY. It is in the best interest of all residents of the City to try to resolve all problems regarding nuisances and other violations of the city code by polite personal contact between neighbors. It is recognized that such personal contact may not satisfactorily correct a particular situation or there may be reasons that a resident may not desire to use that approach. If a resident determines that polite personal contact will not resolve the problem, the following steps are to be followed:

618.020. COMPLAINT. Any person may file a complaint with the City on a form provided by the City. The complaint shall identify the specific ordinance provision that is allegedly being violated and the property at which the alleged violation is occurring. Anonymous complaints may be accepted at the discretion of City staff. The name of the complainant who complains about the use of real property will be classified as confidential data at all times pursuant to the provisions of Minnesota Statutes section 13.44.

618.030. INVESTIGATION. Upon receipt of a written complaint, City staff shall conduct an investigation of the complaint to determine if a violation exists. City staff shall then summarize the results of the investigation in writing and provide copies of the summary to the City Council. The staff report shall be a public document but no confidential or non-public data shall be disclosed.

618.040. NOTICE OF VIOLATION. Upon determination by the City Council that a violation exists, the City shall send a "Notice of Violation" to the alleged violator. Said notice shall direct the alleged violator to comply with the ordinance provision or provisions that are being violated within a specific period of time and may specify certain actions to be undertaken.

618.050. PUBLIC HEARING. Within the specified timeframe, the alleged violator may file a written request with the City that the Planning Commission hold a hearing on the matter. The alleged violator shall describe in the request the reasons why no violation has occurred or why no further action should be taken by the City. Upon receipt of a hearing request, the Planning Commission shall conduct the hearing within sixty days of receipt, after giving proper notice of the hearing. Unless directed by the City Council, the hearing held by the Planning Commission shall be open to the public. Upon completion of the hearing, the Planning Commission shall file a written report with the City Council. The report shall contain the findings of the Commission and the Commission's recommendation.

618.060. ABATEMENT. Upon receipt of the report from the Planning Commission, or if the alleged violator fails to cease the violation and also fails to ask for a public hearing within the specified time, the City may take appropriate action to address the situation, including directing the alleged violator to take certain action or, if appropriate, taking action itself to remedy the violation, or pursuing any other enforcement action available to the City.

618.070. COSTS OF ABATEMENT BILLED TO PROPERTY OWNER. After completion of the abatement action, the City shall send an invoice for the cost of the abatement to the responsible person for payment.

618.080. CERTIFICATION ON PROPERTY TAXES. If an invoice for payment of abatement costs is not paid on or before September 1 of any given year, and the violator is a property owner in the City of Birchwood, the City may extend such sum owed as a special tax against the property upon which the violation occurred and to certify the same to the County Auditor for collection in the same manner as taxes and special assessments are certified and collected, as otherwise allowed by law.

