

# CITY OF MALVERN CODE OF ORDINANCES

## 2021

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**CODIFIED BY: Southwest Iowa Planning Council  
1501 SW 7<sup>th</sup> Street  
Atlantic, IA 50022**



ORDINANCE # 320

AN ORDINANCE ADOPTING THE CITY OF MALVERN CODE OF ORDINANCES,  
2020

**SECTION 1.** Pursuant to published notice, a public hearing has been duly held and the City Council of the City of Malvern, Iowa hereby adopts the Code of Ordinances, City of Malvern, Iowa 2020.

**SECTION 2.** An official copy of the Code of Ordinances, as adopted, including a certification by the City Clerk as to its adoption and effective date, is on file at the Office of the City Clerk.

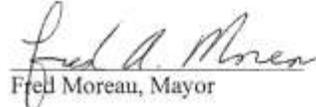
**SECTION 3.** Copies of the Code shall be kept available at the Office of the City Clerk.

**SECTION 4.** All general ordinances or parts thereof passed prior to the effective date of this ordinance, not contained in the Code of Ordinances, City of Malvern, Iowa 2020, are hereby repealed, except as hereafter provided, or special ordinances not named.

**SECTION 5.** This ordinance shall be in full force and effect upon its passage and publication, as required by law.

**PASSED and APPROVED** by the City Council of the City of Malvern, Iowa on the 10<sup>th</sup> day of August, 2020.

  
Mary Poort, City Clerk

  
Fred Moreau, Mayor

**CERTIFICATION**

I hereby certify that the foregoing ordinance was published as Ordinance # 320 in the Malvern Leader on the 20<sup>th</sup> day of August, 2020.

  
Mary Poort, City Clerk

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**TITLE I GENERAL PROVISIONS**

**CHAPTER 1 GENERAL PROVISIONS**

1-1-1	Definitions	1-1-7	Amendment
1-1-2	Grammatical Interpretation	1-1-8	Severability
1-1-3	Indemnity	1-1-9	Catchlines, Titles, Headings and Notes
1-1-4	Personal Injury	1-1-10	Amendments to Code, Effect of New Ordinances, Amendatory Language
1-1-5	Prohibited Acts Include Causing, Permitting	1-1-11	Altering Code
1-1-6	Construction		

1-1-1 DEFINITIONS. The following words and phrases whenever used in the Ordinances of the City, shall be construed as defined in this section unless, from the context, a different meaning is intended or unless different meaning is specifically defined and more particularly directed to the use of such words or phrases:

1. "Building" means any man-made structure permanently affixed to the ground.
2. "City" means the City of Malvern, Iowa, or the area within the territorial limits of the City, and such territory outside of the City over which the City has jurisdiction or control by virtue of any constitutional or statutory provision;
3. "Clerk" means Clerk-Treasurer.
4. "Computation of time" means the time within which an act is to be done. It shall be computed by excluding the first day and including the last day; and if the last day is Sunday or a legal holiday, that day shall be excluded;
5. "Council" means the City Council of the City. All its members or all Council persons mean the total number of Council persons provided by the City charter under the general laws of the state;
6. "County" means the County of Mills, Iowa;
7. "Delegation of Authority" means whenever a provision appears requiring an officer of the City to do some act or make certain inspections, it is to be construed to authorize the officer to designate, delegate and authorize subordinates to perform the required act or make the required inspection unless the terms of the provision or section designate otherwise.  
(Amended in 2010)
8. "Fiscal Year" means July 1 to June 30.
9. "Law" denotes applicable federal law, the Constitution and statutes of the State of Iowa, the Ordinances of the City; and when appropriate, any and all rules and regulations which may be promulgated thereunder;

10. "May" confers a power;
11. "Month" means a calendar month;
12. "Must" states a requirement;
13. "Oath" shall be construed to include an affirmative or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "affirm" and "affirmed" shall be equivalent to the words "swear" and "sworn";
14. "Or" may be read "and" and "and" may be read "or" if the sense requires it;
15. "Ordinance" means a law of the City; however, an administrative action, order or directive, may be in the form of a resolution;
16. "Owner" applied to a building or land includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or part of such building or land;
17. "Person" means natural person, any other legal entity, or the manager, lessee, agent, servant, officer, or employee of any of them;
18. "Personal property" includes money, goods, chattels, things in action and evidences of debt;
19. "Preceding" and "following" mean next before and next after, respectively;
20. "Property" includes real and personal property;
21. "Real property" includes any interest in land;
22. "Shall" imposes a duty;
23. "Sidewalk" means that portion of a street between the curb line and the adjacent property line intended for the use of pedestrians;
24. "State" means the State of Iowa;
25. "Street" includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state;

26. "Tenant" and "occupant" applied to a building or land, includes any person who occupies whole or a part of such building or land, whether alone or with others;
27. "Title of Office". Use of the title of any officer, employee, board or commission means that officer, employee, department, board or commission of the City;
28. "Writing" and "Written" include printed, typewritten, or electronically transmitted such as facsimile or electronic mail;
29. "Year" means a calendar year;
30. All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such other as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning;
31. When an act is required by an Ordinance the same being such that it may be done as well by an agent as by the principal, such requirement shall be construed as to include all such acts performed by an authorized agent.

1-1-2 GRAMMATICAL INTERPRETATION. The following grammatical rules shall apply in the Ordinances of the City;

1. Gender. Any gender includes the other gender;
2. Singular and Plural. The singular number includes the plural and the plural includes the singular;
3. Tenses. Words used in the present tense include the past and the future tenses and vice versa;
4. Use of Words and Phrases. Words and phrases not specifically defined shall be construed according to the content and approved usage of the language.

1-1-3 INDEMNITY. The applicant for any permit or license under this Code of Ordinances, by making such application, assumes and agrees to pay for all injury to or death of any person or persons whomsoever, and all loss of or damage to property whatsoever, including all costs and expenses incident thereto, however arising from or related to , directly, indirectly or remotely, the issuance of the permit or license, or the doing of anything thereunder, or the failure of such applicant, or the agents, employees or servants of such applicant, to abide by or comply with any of the provisions of this Code of Ordinances or the terms and conditions of such permit or license, and such applicant, by making such application, forever agrees to indemnify the City and its officers, agents and employees, and agrees to save them harmless from any and all claims, demands, lawsuits

or liability whatsoever for any loss, damage, injury or death, including all costs and expense incident thereto, by reason of the foregoing. The provisions of this section shall be deemed to be a part of any permit or license issued under this Code of Ordinances or any other ordinance of the City whether expressly recited therein or not.

1-1-4 **PERSONAL INJURIES.** When action is brought against the City for personal injuries alleged to have been caused by its negligence, the City may notify in writing any person by whose negligence it claims the injury was caused. The notice shall state the pendency of the action, the name of the plaintiff, the name and location of the court where the action is pending, a brief statement of the alleged facts from which the cause arose, that the City believes that the person notified is liable to it for any judgment rendered against the City, and asking the person to appear and defend. A judgment obtained in the suit is conclusive in any action by the City against any person so notified, as to the existence of the defect or other cause of the injury or damage, as to the liability of the City to the plaintiff in the first named action, and as to the amount of the damage or injury. The City may maintain an action against the person notified to recover the amount of the judgment together with all the expense incurred by the City in the suit.

(Code of Iowa, Sec. 364.14)

1-1-5 **PROHIBITED ACTS INCLUDE CAUSING, PERMITTING.** Whenever in this Code any act or omission is made unlawful, it includes causing, allowing, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission. A principal is responsible for the unauthorized acts or omissions committed by an agent or employee which have been authorized by the principal.

1-1-6 **CONSTRUCTION.** The provisions of this Code are to be construed with a view to affect its objects and to promote justice.

1-1-7 **AMENDMENT.** All Ordinances of the City Council passed thereafter shall be in the form of an addition or amendment to the Malvern Municipal Code of 2020 constituting this Municipal Code, and shall include proper references to chapter and section to maintain the orderly codification of the Ordinances.

(Code of Iowa, Sec. 380.2)

1-1-8 **SEVERABILITY.** If any section, provision or part of the City Code or any subsequent ordinance is adjudged invalid or unconstitutional, such adjudication will not affect the validity of the City Code as a whole or any section provision, or part thereof not adjudged invalid or unconstitutional.

1-1-9 **CATCHLINES, TITLES, HEADINGS AND NOTES.** The catchlines of the several sections of this City Code printed in boldface type as well as the titles, headings, chapter heads, section and subsection heads or titles, editor's notes, cross-references and State law references, unless set out in the body of the section itself, contained in this City Code, do not constitute any part of the law, and are intended merely to indicate, explain, supplement or clarify the contents of a section.

(Amended in 2010)

1-1-10 AMENDMENTS TO CITY CODE, EFFECT OF NEW ORDINANCES, AMENDATORY LANGUAGE.

1. All ordinances passed subsequent to this Code which amend, repeal or in any way affect this City Code may be numbered in accordance with the numbering system of this City Code and printed for inclusion herein. When subsequent ordinances repeal any chapter, section, or subsection or any portion thereof, such repealed portions may be excluded from this City Code by omission from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as this City Code and subsequent ordinances numbered or omitted are readopted as a new Code of Ordinances.
2. Amendments to any of the provisions of this City Code may be made by amending such provisions by specific reference to the section or subsection number of this City Code in substantially the following language: “That section \_\_\_\_\_ of the Code of Ordinances, City of \_\_\_\_\_, Iowa is hereby amended to read as follows:...” The new provisions shall then be set out in full as desired.
3. In the event a new section not heretofore existing in this City Code is to be added, the following language may be used: “That the Code of ordinances, City of \_\_\_\_\_, Iowa, is hereby amended by adding a section, to be numbered \_\_\_\_\_, which said section reads as follows: ...” The new section shall then be set out in full as desired.

(Amended in 2010)

1-1-11 ALTERING CODE. It is unlawful for any unauthorized person to change or amend by additions or deletions, any part or portion of the Code of Ordinances, or to insert or delete pages, or portion, or to alter or tamper with the Code of Ordinances in any manner whatsoever which will cause the law of the City to be misrepresented thereby.

## **TITLE I GENERAL PROVISIONS**

### **CHAPTER 2 RIGHT OF ENTRY**

#### 1-2-1 Right of Entry

1-2-1 RIGHT OF ENTRY. Whenever necessary to make an inspection to enforce any Ordinance, or whenever there is reasonable cause to believe that there exists an Ordinance violation in any building or upon any premises within the jurisdiction of the City, any authorized official of the City, may, upon presentation of proper credentials, enter such building or premises at all reasonable times to inspect the same and to perform any duty imposed upon such official by Ordinance; provided that, except in emergency situations, such official shall first give the owner and/or occupant, if they can be located after reasonable effort, twenty-four hour written notice of the authorized official's intention to inspect. In the event the owner and/or occupant refuses entry, the official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

# TITLE I GENERAL PROVISIONS

## CHAPTER 3 PENALTY

1-3-1	General Penalty	Infraction
1-3-2	Civil Penalty -Municipal	1-3-3 Scheduled Fines

1-3-1 GENERAL PENALTY. The doing of any act prohibited or declared to be unlawful, an offense, or a misdemeanor by the City Code or any Ordinance or Code herein adopted by reference, or the omission or failure to perform any act or duty required by this City Code or any Ordinance or Code or any Ordinance or Code herein adopted by reference is, unless another penalty is specified, punishable in accordance with Iowa Code Section 903.1(1)(a).

Code of Iowa, Sec. 903.1(1)(a)  
(Amended in 2008)  
(Amended in 2009)  
(Amended in 2010)

1-3-2 CIVIL PENALTY - MUNICIPAL INFRACTION.  
(Code of Iowa, Sec. 364.22)

### 1. Definitions.

- a. Municipal Infraction. Except those provisions specifically provided under state law as a felony, an aggravated misdemeanor, or a serious misdemeanor or a simple misdemeanor under Chapters 687 through 747 of the Iowa Code, the doing of any act prohibited or declared to be unlawful, an offense or a misdemeanor by the Code of Ordinances City of Malvern, or any Ordinance or Code herein adopted by reference, or omission or failure to perform any act or duty required by the Code of Ordinances City of Malvern, or any Ordinance or Code herein adopted by reference, is a "municipal infraction" and is punishable by civil penalty as provided herein.
- b. Officer. The term "officer" shall mean any employee or official authorized to enforce the Code of Ordinances of the City of Malvern.
- c. Repeat offense. The term "repeat offense" shall mean a recurring violation of the same section of the Code of Ordinances.

### 2. Violations, Penalties, and Alternative Relief.

- a. A municipal infraction is punishable by a civil penalty as provided in the following schedule, unless a specific schedule of civil penalties is provided for specific offenses elsewhere in this Code.

## Schedule of Civil Penalties

First offense: Not more than seven hundred fifty dollars (\$750.00).

Repeat Offense: Not more than one thousand dollars (\$1,000.00)  
(Amended during 2010)

- b. Each day that a violation occurs or is permitted to exist by the violator constitutes a separate offense.
- c. Seeking a civil penalty as authorized in this chapter does not preclude the City from seeking alternative relief from the court in the same action.

### 3. Civil Citations

- a. Any officer authorized by the City to enforce the Code of Ordinances may issue a civil citation to a person who commits a municipal infraction.
- b. The citation may be served by personal service, substituted service, or by certified mail, return receipt requested, or by publication as provided in the Iowa Rules of Civil Procedure.
- c. The original of the citation shall be sent to the Clerk of the district court. If the infraction involves real property a copy of the citation shall be filed with the County Treasurer.
- d. The citation shall serve as notification that a civil offense has been committed and shall contain the following information:
  - (1) The name and address of the defendant.
  - (2) The name or description of the infraction attested to by the officer issuing the citation.
  - (3) The location and time of the infraction.
  - (4) The amount of civil penalty to be assessed or the alternative relief sought, or both.
  - (5) The manner, location, and time in which the penalty may be paid.
  - (6) The time and place of court appearance.
  - (7) The penalty for failure to appear in court.

**(8) The legal description of the affected property, if applicable.**

4. Seeking a civil penalty as authorized in Section 364.22, Code of Iowa, does not preclude the City from seeking alternative relief from the court in the same action. Such relief may include the imposition of a civil penalty by entry of a personal judgment against the defendant, directing that the payment of the civil penalty be suspended or deferred under conditions imposed by the court, ordering the defendant to abate or cease the violation or authorizing the City to abate or correct the violation, or ordering that the City's cost for abatement or correction of the violation be entered as a personal judgment against the defendant or assessed against the property where the violation occurred, or both. If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt.
5. This section does not preclude a peace officer from issuing a criminal citation for violation of a City Code or regulation if criminal penalties are also provided for the violation, nor does it preclude or limit the authority of the City to enforce the provisions of the Code of Ordinances by criminal sanctions or other lawful means. Each day that a violation occurs or is permitted to exist by the defendant constitutes a separate offense. The violation of any provision of this Code of Ordinances or any regulation promulgated thereunder shall also constitute a simple misdemeanor punishable by a fine of \$100.00 or by imprisonment in the county jail for a term not to exceed 30 days.

1-3-3 SCHEDULED FINES. The scheduled fine for a violation of any provision of the City Code shall be in accordance with State Code Chapter 805 unless another scheduled amount is provided in the City Code or Iowa Code.

**TITLE I GENERAL PROVISIONS**

**CHAPTER 4 PROCEDURE FOR HEARINGS BY THE CITY COUNCIL**

1-4-1	Purpose and Intent	1-4-4	Subpoenas
1-4-2	General	1-4-5	Conduct of Hearing
1-4-3	Form of Notice of Hearing	1-4-6	Method and Form of Decision

1-4-1 PURPOSE AND INTENT.

1. It is the purpose of this article to establish an orderly, efficient, and expeditious process for evidentiary hearings before the City Council.
2. The provisions of this article shall apply to a proceeding required by constitution, statute or Ordinance to be determined by the City Council after an opportunity for an evidentiary hearing.

1-4-2 GENERAL.

1. Record. A record of the entire proceedings shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the City Council.
2. Reporting. The proceedings at the hearing may also be reported by a court reporter at the expense of any party.
3. Continuances. The City Council may grant continuances for good cause shown.
4. Oaths, Certification. **The Mayor, City Council or any member thereof and the City Clerk has the power to administer oaths and affirmations. The highest ranking official present shall administer the oath.**
5. Reasonable dispatch. The City Council and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

1-4-3 FORM OF NOTICE OF HEARING. The notice to parties shall be substantially in the following form, but may include other information:

"You are hereby notified that an evidentiary hearing will be held before the \_\_\_\_\_ City Council at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour \_\_\_\_\_, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you.

You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefor with the City Clerk."

1-4-4 SUBPOENAS. Filing of affidavit. The City Council may issue a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the City Council or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefor which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in the witness's possession or under the witness's control. A subpoena need not be issued when the affidavit is defective in any particular.

#### 1-4-5 CONDUCT OF HEARING.

1. Rules. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.
2. Oral evidence. Oral evidence shall be taken only on oath or affirmation.
3. Hearsay evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.
4. Admissibility of evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.
5. Exclusion of evidence. Irrelevant and unduly repetitious evidence shall be excluded.
6. Rights of parties. Each party shall have these rights, among others:
  - a. To call and examine witnesses on any matter relevant to the issues of the hearing;
  - b. To introduce documentary and physical evidence;
  - c. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
  - d. To impeach any witness regardless of which party first called the witness to testify;
  - e. To rebut the evidence against the party; and

f. To self-representation or to be represented by anyone of the party's choice who is lawfully permitted to do so.

7. Official notice.

a. What may be noticed. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or of official records of the City or its departments and Ordinances of the City.

b. Parties to be notified. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

c. Opportunity to refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the City Council.

8. Inspection of the premises. The City Council may inspect any building or premises involved in the appeal during the course of the hearing, provided that:

a. Notice of such inspection shall be given to the parties before the inspection is made;

b. The parties are given an opportunity to be present during the inspection; and

c. The City Council shall state for the record, upon completion of the inspection, the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the City Council.

1-4-6 METHOD AND FORM OF DECISION.

1. Hearings before the City Council where a contested case is heard before the City Council, no member thereof who did not hear the evidence or alternatively has not read or listened to the entire record of the proceedings shall vote on or take part in the decision. The City Council may designate a member or members to preside over the receipt of evidence. Such member or members shall prepare findings of fact for the City Council.

2. Form of decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the parties personally or sent to them by certified mail, postage prepaid, return receipt requested.

3. Effective date of decision. The effective date of the decision shall be stated therein.

## TITLE II POLICY AND ADMINISTRATION

### CHAPTER 1 CITY CHARTER

2-1-1	Charter		Council
2-1-2	Form of Government	2-1-5	Term of Mayor
2-1-3	Powers and Duties	2-1-6	Copies on File
2-1-4	Number and Term of City		

2-1-1 CHARTER. This chapter may be cited as the Charter of the City of Malvern, Iowa.

2-1-2 FORM OF GOVERNMENT. The form of government of the City of Malvern, Iowa, is the Mayor-Council form of government.

(Code of Iowa, Sec. 372.4)

2-1-3 POWERS AND DUTIES. The City Council and Mayor and other City officers have such powers and shall perform such duties as are authorized or required by state law and by the Ordinances, resolutions, rules and regulations of the City of Malvern, Iowa.

2-1-4 NUMBER AND TERM OF CITY COUNCIL. The City Council consists of five City Council members elected at large, elected for overlapping terms of four years.

(Code of Iowa, Sec. 372.4)

(Code of Iowa, Sec. 376.2)

2-1-5 TERM OF MAYOR. The Mayor is elected for a term of two years.

(Code of Iowa, Sec. 372.4)

(Code of Iowa, Sec. 376.2)

2-1-6 COPIES ON FILE. The City Clerk shall keep an official copy of the charter on file with the official records of the City Clerk, shall immediately file a copy with the Secretary of State of Iowa, and shall keep copies of the charter available at the City Clerk's office for public inspection.

(Code of Iowa, Sec. 372.1)

**TITLE II POLICY AND ADMINISTRATION**

**CHAPTER 2 APPOINTMENT AND QUALIFICATIONS OF MUNICIPAL OFFICERS**

2-2-1	Creation of Appointive Officers	2-2-6	Surety
2-2-2	Appointment of Officers	2-2-7	Blanket Position Bond
2-2-3	Terms of Appointive Officers	2-2-8	Bonds Filed
2-2-4	Vacancies in Offices	2-2-9	Boards and Commissions
2-2-5	Bonds Required	2-2-10	Oaths

2-2-1 **CREATION OF APPOINTIVE OFFICERS.** There are hereby created the following appointive officers: Clerk, Attorney, Superintendent of Public Utilities, Superintendent of Public Works and Fire Chief.

2-2-2 **APPOINTMENT OF OFFICERS.** The Mayor shall appoint a Mayor Pro Tempore with the consent of a majority of the City Council.

The City Council shall appoint the first Fire Chief of the volunteer fire department for a term of one (1) year.

All other officers shall be appointed or selected by the City Council unless otherwise provided by law or Ordinance.

(Code of Iowa, Sec. **372.4(2)**)

2-2-3 **TERMS OF APPOINTIVE OFFICERS.** The terms of all appointive officers that are not otherwise fixed by law or Ordinance shall be one (1) year.

2-2-4 **VACANCIES IN OFFICES.** Vacancies in appointive office shall be filled in accordance with State law.

2-2-5 **BONDS REQUIRED.** Each municipal officer required by law or Ordinance to be bonded shall, before entering upon the duties of the office, execute to the City a good and sufficient bond, to be approved by the City Council, conditioned on the faithful performance of the duties and the proper handling and accounting for the money and property of the City in the official's charge unless the City Council shall have provided for a blanket position surety bond.

(Code of Iowa, Sec. 64.13)

2-2-6 **SURETY.** Any association or corporation which makes a business of insuring the fidelity of others and which has authority to do such business within Iowa shall be accepted as surety on any of the bonds.

2-2-7 BLANKET POSITION BOND. The City Council shall provide for a blanket position bond to cover all officers and employees of the City, but the City Council may provide by resolution for a surety bond for any other officer or employee that the City Council deems necessary. The City shall pay the premium on any official bond.

(Code of Iowa, Sec. 64.13)

2-2-8 BONDS FILED. All bonds when duly executed shall be filed with the Clerk, except that the Clerk's bond shall be filed with the Mayor.

(Code of Iowa, Sec. 64.23)

2-2-9 BOARDS AND COMMISSIONS.

1. Membership and Sections. Membership and selections of members of boards and commissions shall be as specified in this Chapter or the Code of Iowa. Any committee, board, or commission so established shall cease to exist upon the accomplishment of the special purpose for which it was created, or when abolished by a majority vote of the City Council or as specified in the Code of Iowa.
2. Removal of Members of Boards and Commissions: The City Council may remove any member of any board or commission, which it has established.
3. Gender Balance: Boards and commissions shall be gender balanced in accordance with Section 69.16A (Iowa Code).

2-2-10 OATHS. The oath of office shall be required and administered in accordance with the following:

4. Qualify for Office. Each elected or appointed officer shall qualify for office by taking the prescribed oath and by giving, when required, a bond. The oath shall be taken, and bond provided, after being certified as elected but not later than noon of the first day which is not a Sunday or a legal holiday in January of the first year of the term for which the officer was elected.
5. Prescribed Oath. The prescribed oath is: "I, (name), do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all duties of the office of (name of office) in Malvern as now or hereafter required by law."
6. Officers Empowered to Administer Oaths. The following are empowered to administer oaths and to take affirmations in any matter pertaining to the business of their respective office:
  - a. Mayor
  - b. City Clerk
  - c. Members of all boards, commissions or bodies created by law.

## TITLE II POLICY AND ADMINISTRATION

### CHAPTER 3 POWERS AND DUTIES OF MUNICIPAL OFFICERS

2-3-1	General Duties	2-3-8	Powers and Duties of the City Attorney
2-3-2	Books and Records		
2-3-3	Deposits of Municipal Funds	2-3-9	Powers and Duties of the Superintendent of Public Utilities
2-3-4	Transfer of Records and Property To Successor	2-3-10	Powers and Duties of the Superintendent of Public Works
2-3-5	Powers and Duties of the Mayor	2-3-11	Powers and Duties of the Fire Chief
2-3-6	Powers and Duties of the Clerk		
2-3-7	Reserved		

2-3-1 **GENERAL DUTIES.** Each municipal officer shall exercise the powers and perform the duties prescribed by law and Ordinance, or as otherwise directed by the City Council unless contrary to State law or City charter.

(Code of Iowa, Sec. 372.13(4))

2-3-2 **BOOKS AND RECORDS.** All books and records required to be kept by law or Ordinance shall be open to inspection by the public upon request, except records required to be confidential by state or federal law.

(Code of Iowa, Sec. 22.1, 22.2, and 22.7)

2-3-3 **DEPOSITS OF MUNICIPAL FUNDS.** Prior to the fifth day of each month, each office or department shall deposit all funds collected on behalf of the municipality during the preceding month. The officer responsible for the deposit of funds shall take such funds to the City Clerk, together with receipts indicating the sources of the funds.

2-3-4 **TRANSFER OF RECORDS AND PROPERTY TO SUCCESSOR.** Each officer shall transfer to the official's successor in office all books, papers, records, documents and property, together with an invoice of the same, in the official's custody and appertaining to the official's office.

2-3-5 **POWERS AND DUTIES OF THE MAYOR.** The duties of the Mayor shall be as follows:

1. The Mayor shall supervise all departments of the City and give direction to department heads concerning the functions of the departments. The Mayor shall have the power to examine all functions of the municipal departments, their records, and to call for special reports from department heads at any time.

(Code of Iowa, Section 372.14(1))

2. The Mayor shall act as presiding officer at all regular and special City Council meetings. The Mayor pro tem shall serve in this capacity in the Mayor's absence.

(Code of Iowa, Sec. 372.14(1) and (3))

3. The Mayor may veto an Ordinance, amendment, or resolution within fourteen days after passage. The Mayor shall explain the reasons for the veto in a written message to the City Council at the time of the veto. Within thirty days after the Mayor's veto, the City Council may pass the measure again by a vote to not less than two-thirds of all of the members of the City Council. If the Mayor vetoes an ordinance, amendment, or resolution and the City Council repasses the measure after the Mayor's veto, a resolution becomes effective immediately upon repassage, and an Ordinance or amendment becomes a law when the Ordinance or a summary of the Ordinance is published, unless a subsequent effective date is provided within the Ordinance or amendment.

If the Mayor takes no action on an Ordinance, amendment, or resolution, a resolution becomes effective fourteen days after the date of passage and an Ordinance or amendment becomes a law when the ordinance or a summary of the Ordinance is published, but not sooner than fourteen days after the date of passage, unless a subsequent effective date is provided within the Ordinance or amendment.

(Code of Iowa. Sec. 380.6)

(Amended during 2008)

4. The Mayor shall represent the City in all negotiations properly entered into in accordance with law or Ordinance. The Mayor shall not represent the City where this duty is specifically delegated to another officer by law or Ordinance.
5. The Mayor shall, whenever authorized by the City Council, sign all contracts on behalf of the City.
6. The Mayor shall call special meetings of the City Council when the Mayor deems such meetings necessary to the interests of the City.
7. The Mayor shall make such oral or written reports to the City Council at the first meeting of every month as referred. These reports shall concern municipal affairs generally, the municipal departments, and recommendations suitable for City Council action.
8. Immediately after taking office the Mayor shall designate one member of the City Council as Mayor pro tempore. The Mayor pro tempore shall be vice-president of the City Council. Except for the limitations otherwise provided herein, the Mayor pro tempore shall perform the duties of the Mayor in cases of absence or inability of the Mayor to perform the duties of the office. In the exercise of the duties of the office the Mayor pro tempore shall not have power to appoint, employ or discharge from employment officers or employees without the approval of the City Council. The Mayor pro tempore shall have the right to vote as a member of the City Council.

(Code of Iowa, Sec. 372.14(3))

9. The Mayor shall, upon order of the City Council, secure for the City such specialized and professional services not already available to the City. In executing the order of the City

Council the Mayor shall conduct said duties in accordance with the City Ordinance and the laws of the State of Iowa.

10. The Mayor shall sign all licenses and permits which have been granted by the City Council, except those designated by law or Ordinance to be issued by another municipal officer.
11. Upon authorization of the City Council, the Mayor shall revoke permits or licenses granted by the City Council when their terms, the Ordinances of the City, or the laws of the State of Iowa are violated by holders of said permits or licenses.
12. The Mayor shall order to be removed, at public expense, any nuisance for which no person can be found responsible and liable. This order shall be in writing. The order to remove said nuisances shall be carried out by the Mills County Sheriff.
13. Proclamation of Emergency. Have authority to take command of the police and govern the City by proclamation, upon making a determination that a time of emergency or public danger exists. Within the City limits, the Mayor has all the powers conferred upon the Sheriff to suppress disorders.

(Code of Iowa, Sec. 372.14 (2))

2-3-6 **POWERS AND DUTIES OF THE CLERK.** The duties of the Clerk, **or in the Clerk's absence or inability to act**, the Deputy Clerk shall be as follows:

1. The Clerk shall attend all regular and special City Council meetings and prepare and publish a condensed statement of the proceedings thereof, to include the total expenditure from each City fund, within fifteen (15) days of the City Council meeting. The statement shall further include a list of all claims allowed, a summary of all receipts and the gross amount of the claims.

(Code of Iowa, Sec. 372.13(4) and (6))

2. The Clerk shall record each measure taken by the City Council, stating where applicable whether the Mayor signed, vetoed, or took no action on the measure and what action the City Council made upon the Mayor's veto.

(Code of Iowa, Sec. 380.7(1))

3. The Clerk shall cause to be published either the entire text or a summary of all Ordinances and amendments enacted by the City. "Summary" shall mean a narrative description of the terms and conditions of an Ordinance setting forth the main points of the Ordinance in a manner calculated to inform the public in a clear and understandable manner the meaning of the Ordinance and which shall provide the public with sufficient notice to conform to the desired conduct required by the Ordinance. The description shall include the title of the Ordinance, an accurate and intelligible abstract or synopsis of the essential elements of the Ordinance, a statement that the description is a summary, the location and the normal

business hours of the office where the Ordinance may be inspected, when the Ordinance becomes effective, and the full text of any provisions imposing fines, penalties, forfeitures, fees, or taxes. Legal descriptions of property set forth in Ordinances shall be described in full, provided that maps or charts may be substituted for legal descriptions when they contain sufficient detail to clearly define the area with which the Ordinance is concerned. The narrative description shall be written in a clear and coherent manner and shall, to the extent possible, avoid the use of technical or legal terms not generally familiar to the public. When necessary to use technical or legal terms not generally familiar to the public, the narrative description shall include definitions of those terms.

The Clerk shall authenticate all such measures except motions with said Clerk's signature, certifying the time and place of publication when required.

(Code of Iowa, Sec. 380.7(1) and (2))

4. The Clerk shall maintain copies of all effective City Ordinances and codes for public review.  
(Code of Iowa, Sec. 380.7(4))
5. The Clerk shall publish notice of public hearings, elections and other official actions as required by State and City law.  
(Code of Iowa, Sec. 362.3)
6. The Clerk shall certify all measures establishing any zoning district, building lines, or fire limits, and a plat showing each district, lines or limits to the recorder of the county containing the affected parts of the City.  
(Code of Iowa, Sec. 380.11)
7. The Clerk shall be the chief accounting officer of the City.
8. The Clerk shall keep separate accounts for every appropriation, department, public improvement or undertaking, and for every public utility owned or operated by the City. Each account shall be kept in the manner required by law.  
(Code of Iowa, Sec. 384.20)
9. Following City Council adoption for the budget, the Clerk shall certify the necessary tax levy for the following year to the County Auditor and the County Board of Supervisors.  
(Code of Iowa, Sec. 384.16(5))
10. The Clerk shall report to the City Council at the first meeting of each month the status of each municipal account as of the end of the previous month.
11. The Clerk shall balance all funds with the bank statement at the end of each month.
12. The Clerk shall prepare the annual public report, publish it, and send a certified copy to the State Auditor and other State officers as required by law.

(Code of Iowa, Sec. 384.22)

13. The Clerk shall maintain all City records as required by law.

(Code of Iowa, Sec. 372.13(3) and (5))

14. The Clerk shall have custody and be responsible for the safekeeping of all writings or documents in which the municipality is a party in interest unless otherwise specifically directed by law or Ordinance.

(Code of Iowa, Sec. 372.13(4))

15. The Clerk shall file and preserve all receipts, vouchers, and other documents kept, or that may be required to be kept, necessary to prove the validity of every transaction and the identity of every person having any beneficial relation thereto.

16. The Clerk shall furnish upon request to any municipal officer a copy of any record, paper or public document under the Clerk's control when it may be necessary to such officer in the discharge of the Clerk's duty. The Clerk shall furnish a copy to any citizen when requested upon payment of the fee set by City Council resolution. The Clerk shall, under the direction of the Mayor or other authorized officer, affix the seal of the corporation to those public documents or instruments which by Ordinance are required to be attested by the affixing of the seal.

(Code of Iowa, Sec. 380.7(4), Sec. 22.2 and 22.7)

17. The Clerk shall attend all meetings of committees, boards and commissions of the City. The Clerk shall record and preserve a correct record of the proceedings of such meetings.

(Code of Iowa, Sec. 372.13(4))

18. The Clerk shall keep and file all communications and petitions directed to the City Council or to the City generally. The Clerk shall endorse thereon the action of the City Council taken upon matters considered in such communications and petitions.

(Code of Iowa, Sec. 372.13(4))

19. The Clerk shall issue all licenses and permits approved by the City Council, and keep a record of licenses and permits issued which shall show a date of issuance, license or permit number, official receipt number, name of person to whom issued, term of license or permit, and purpose for which issued.

(Code of Iowa, Sec. 372.13(4))

20. The Clerk shall inform all persons appointed by the Mayor or City Council to offices in the municipal government of their position and the time at which they shall assume the duties of their office.

(Code of Iowa, Sec. 372.13(4))

21. The Clerk shall preserve a complete record of every City election, regular or special and perform duties required by law or Ordinance of the City Clerk in regard to elections.  
(Code of Iowa, Sec. 376.4)
22. The Clerk shall draw all warrants/checks for the City upon the vote of the City Council.  
(Code of Iowa, Sec. 372.13(4))
23. The Clerk shall show on every warrant/check the fund on which it is drawn and the claim to be paid.  
(Code of Iowa, Sec. 372.13(4))
24. The Clerk shall keep a warrant/check record in a form approved by the City Council, showing the number, date, amount, payee's name, upon what fund drawn, and for what claim each warrant/check is issued.  
(Code of Iowa, Sec. 372.13(4))
25. The Clerk shall bill and collect all charges, rents or fees due the City for utility and other services, and give a receipt therefor.  
(Code of Iowa, Sec. 372.13(4))
26. Annually, the Clerk shall prepare and submit to the City Council an itemized budget of revenues and expenditures.  
(Code of Iowa, Sec. 384.16)
27. The Clerk shall keep the record of each fund separate.  
(Code of Iowa, Sec. 372.13(4) and 384.85)
28. The Clerk shall keep an accurate record for all money or securities received by the Clerk on behalf of the municipality and specify date, from whom, and for what purposes received.  
(Code of Iowa, Sec. 372.13(4))
29. The Clerk shall prepare a receipt in duplicate for all funds received. The Clerk shall give the original to the party delivering the funds, and retain the duplicate.  
(Code of Iowa, Sec. 372.13(4))
30. The Clerk shall keep a separate account of all money received by the Clerk for special assessments.  
(Code of Iowa, Sec. 372.13(4))
31. The Clerk shall, immediately upon receipt of monies to be held in the Clerk's custody and belonging to the City, deposit the same in banks selected by the City Council in amounts not exceeding monetary limits authorized by the City Council.  
(Code of Iowa, Sec. 372.13(4))

2-3-7 RESERVED

2-3-8 POWERS AND DUTIES OF THE CITY ATTORNEY. The duties of the City Attorney shall be as follows:

(Code of Iowa, Sec. 372.13(4))

1. Upon request, the City Attorney shall attend regular meetings of the City Council and attend those special meetings of the City Council at which the City Attorney is required to be present.
2. The City Attorney shall, upon request, formulate drafts for contracts, forms and other writings which may be required for the use of the City.
3. The City Attorney shall keep in proper files a record of all official opinions and a docket or register of all actions prosecuted and defined by the City Attorney accompanied by all proceedings relating to said actions.
4. The City Attorney shall, upon request, give an opinion in writing upon all questions of law relating to municipal matters submitted by the City Council, the Mayor, members of the City Council individually, municipal boards or the head of any municipal department.
5. The City Attorney shall prepare those Ordinances when the City Council may desire and direct to be prepared and report to the City Council upon all Ordinances before their final passage by the City Council and publication.
6. The City Attorney shall act as Attorney for the City in all matters affecting the City's interest and appear on behalf of the City before any court, tribunal, commission or board. The City Attorney shall prosecute or defend all actions and proceedings when so requested by the Mayor or City Council.
7. The City Attorney shall, however, if directed by the City Council, appear to defend any municipal officer or employee in any cause of action arising out of or in the course of the performance of the duties of his or her office or employment.
8. The City Attorney shall sign the name of the City to all appeal bonds and to all other bonds or papers of any kind that may be essential to the prosecution of any cause in court, and when so signed the City shall be bound upon the same.
9. The City Attorney shall make a written report to the City Council and interested department heads of the defects in all contracts, documents, authorized power of any City officer, and Ordinances submitted to said City Attorney or coming under said City Attorney's notice.

10. The City Attorney shall, upon request, after due examination, offer a written opinion on and recommend alterations pertaining to contracts involving the City before they become binding upon the City or are published.

2-3-9 POWERS AND DUTIES OF THE SUPERINTENDENT OF PUBLIC UTILITIES. The duties of the superintendent of public utilities shall be as follows:

(Code of Iowa, Sec. 372.13(4))

1. The Superintendent shall be responsible for the management, operation and maintenance of all municipal utilities.
2. The Superintendent shall keep records of accounts payable, revenues, accounts receivable, expenditures made, depreciation of plant and equipment, and a continuous up-to-date inventory of all goods and supplies. The Superintendent shall keep all other records ordered to be kept by the Mayor in addition to those provided for by law or Ordinance.
3. The Superintendent shall make a report every month in writing to the Mayor and City Council on the present state of the public utilities. In this report shall be specifically stated the financial condition, production and the general condition of the entire utilities enterprise. The Superintendent shall, at the close of every year, compile (or cause to be compiled) a written annual report of the activities and general condition of the public utilities of the City. This report shall contain a statement of the general progress and accomplishments of the plants and systems for the year covered in the report; a statement of financial operations for the year showing revenues, expenditures, and profits or losses; a summary of the history of the financial operations of the plant for the past five (5) years showing total revenue, cost of operations, depreciation, interest on bonds and net profits; a statement of free services rendered to the municipality during the year and their estimated cash value; a statement of the rate schedules that are presently in effect; and a balance sheet with a statement of all assets, liabilities and reserves.

2-3-10 POWERS AND DUTIES OF THE SUPERINTENDENT OF PUBLIC WORKS. The duties of the Superintendent of public works shall be as follows:

(Code of Iowa, Sec. 372.13(4))

1. The Superintendent shall supervise the installation of all storm sewers in the City in accordance with the regulations of the department of public works pertaining to the installation of storm sewers.
2. The Superintendent shall supervise maintenance and repair of sidewalks, alleys, bridges, and streets and keep them in a reasonably safe condition for travelers. The Superintendent shall immediately investigate all complaints of the existence of dangerous or impassable conditions of any sidewalk, street, alley, bridge, underpass or overpass, or other city property, and is charged with the duty of correcting unsafe defects.

3. The Superintendent shall, whenever snow or ice imperil travel upon streets and alleys, be in charge of removing said snow and ice from the streets and alleys in the City and shall do whatever else is necessary and reasonable to make travel upon streets and alleys of the City safe.
4. The Superintendent shall compile and maintain written records of the purchases, accomplishments, disposition of equipment and manpower, an up-to-date inventory, and activities contemplated by the street department. The Superintendent shall make monthly oral and written reports of the activities of the department to the Mayor on or before the first day of each month.
5. The Superintendent shall perform all other duties of a public works nature which are not specifically assigned to other municipal officials or employees.

2-3-11 POWERS AND DUTIES OF THE FIRE CHIEF. The duties of the Fire Chief shall be as follows:

(Code of Iowa, Sec. 372.13(4))

1. The Fire Chief shall be charged with the duty of maintaining the efficiency, discipline and control of the fire department. The members of the fire department shall, at all times, be subject to the direction of the Fire Chief.
2. The Fire Chief shall enforce all rules and regulations established by the City Council for the conduct of the affairs of the fire department.
3. The Fire Chief shall exercise and have full control over the disposition of all fire apparatus, tools, equipment and other property used by or belonging to the fire department.
4. The Fire Chief shall cause to be kept records of the fire department personnel, operating cost and efficiency of each element of fire fighting equipment, depreciation of all equipment and apparatus, the number of responses to alarms, their cause and location, and an analysis of losses by value, type and location of buildings.
5. The Fire Chief shall compile an annual report based upon the records maintained by the fire department and summarizing the activities of the fire department for the year. This report shall be filed with the Mayor. The annual report shall also contain recommendations for the improvement of the department.
6. The Fire Chief shall enforce all Ordinances and, where enabled, state laws regulating the following:
  - a. Fire prevention.
  - b. Maintenance and use of fire escapes.

- c. The investigation of the cause, origin and circumstances of fires.
  - d. The means and adequacy of exits in case of fire from halls, theatres, churches, hospitals, asylums, lodging houses, schools, factories and all other buildings in which the public congregates for any purpose.
  - e. The installation and maintenance of private fire alarm systems and fire extinguishing equipment.
7. The Fire Chief shall have the right of entry into any building or premises within the Fire Chief's jurisdiction at a reasonable time and after reasonable notice to the occupant or owner. The Fire Chief shall there conduct such investigation or inspection that the Fire Chief considers necessary in light of state law, regulations or Ordinance.
8. The Fire Chief shall make such recommendations to owners, occupants, caretakers or managers of buildings necessary to eliminate fire hazards.
9. The Fire Chief shall, at the request of the State Fire Marshal, and as provided by law, aid said Marshal in the performance of the Marshal's duties by investigating, preventing and reporting data pertaining to fires.

**TITLE II POLICY AND ADMINISTRATION**

**CHAPTER 4 SALARIES OF MUNICIPAL OFFICERS**

2-4-1 Council Member  
2-4-2 Mayor

2-4-3 Mayor Pro Tem  
2-4-4 Other Officers

2-4-1 COUNCIL MEMBER. The salaries of each City Council member shall be \$20 for each meeting.

(Code of Iowa, Sec. 372.13(8))

2-4-2 MAYOR. The Mayor shall receive an annual salary of \$1,500 to be paid in equal monthly installments.

(Code of Iowa, Sec. 372.13(8))

2-4-3 MAYOR PRO TEM. If the Mayor Pro Tem performs the duties of the Mayor during the Mayor's absence or disability for a continuous period of fifteen days or more, the Mayor Pro Tem may be paid for that period the compensation determined by the City Council, based upon the Mayor Pro Tem's performance of the mayor's duties and upon the compensation of the mayor.

(Code of Iowa, Sec. 372.13(8))

2-4-4 OTHER OFFICERS. The compensation of all other officers and employees shall be set by resolution of City Council.

(Code of Iowa, Sec. 372.13(4))

## TITLE II POLICY AND ADMINISTRATION

### CHAPTER 5 CITY FINANCE

2-5-1	Budget Adoption	2-5-8	Budget Officer
2-5-2	Budget Amendment	2-5-9	Expenditures
2-5-3	Budget Protest	2-5-10	Authorizations to Expend
2-5-4	Accounts and Programs	2-5-11	Accounting
2-5-5	Annual Report	2-5-12	Budget Accounts
2-5-6	Council Transfers	2-5-13	Contingency Accounts
2-5-7	Administrative Transfers		

2-5-1 BUDGET ADOPTION. The annual operating budget of the City shall be prepared in accordance with the following:

1. Proposal Prepared. The finance officer is responsible for preparation of the annual budget detail, for review by the Mayor and Council and adoption by the Council in accordance with directives of the Mayor and Council.
2. Boards and Commissions. All boards, commissions, and other administrative agencies of the City that are authorized to prepare and administer budgets must submit their budget proposals to the finance officer for inclusion in the proposed City budget at such time and in such form as required by the Council.
3. Submission to Council. The finance officer shall submit the completed budget proposal to the Council each year at such time as directed by the Council.
4. Resolution Establishing Maximum Property Tax Dollars. The Council shall adopt a resolution establishing the total maximum property tax dollars that may be certified for levy that includes taxes for City government purposes under *Code of Iowa* Section 384.1, for the City's trust and agency fund under *Code of Iowa* Section 384.6, Subsection 1, for the City's emergency fund under *Code of Iowa* Section 384.8, and for the levies authorized under *Code of Iowa* Section 384.12, Subsections 8, 10, 11, 12, 13, 17, and 21, but excluding additions approved at election under *Code of Iowa* Section 384.12, Subsection 19.  
(Code of Iowa, Sec. 384.15A)
  - a. The Council shall set a time and place for a public hearing on the resolution before the date for adoption of the resolution and shall publish notice of the hearing not less than 10 nor more than 20 days prior to the hearing in a newspaper published at least once weekly and having general circulation in the City.
  - b. If the City has an internet site, the notice shall also be posted and clearly identified on the City's internet site for public viewing beginning on the date of the newspaper publication or public posting, as applicable. Additionally, if the City maintains a social media

account on one or more social media applications, the public hearing notice or an electronic link to the public hearing notice shall be posted on each such account on the same day as the publication of the notice. All of the following shall be included in the notice:

- (1) The sum of the current fiscal year's actual property taxes certified for levy under the levies specified in this subsection and the current fiscal year's combined property tax levy rate for such amount that is applicable to taxable property in the City other than property used and assessed for agricultural or horticultural purposes.
- (2) The effective tax rate calculated using the sum of the current fiscal year's actual property taxes certified for levy under the levies specified in this subsection, applicable to taxable property in the City other than property used and assessed for agricultural or horticultural purposes.
- (3) The sum of the proposed maximum property tax dollars that may be certified for levy for the budget year under the levies specified in this subsection and the proposed combined property tax levy rate for such amount applicable to taxable property in the City other than property used and assessed for agricultural or horticultural purposes.
- (4) If the proposed maximum property tax dollars specified under Subparagraph (3) exceed the current fiscal year's actual property tax dollars certified for levy specified in Subparagraph (1), a statement of the major reasons for the increase.

Proof of publication shall be filed with and preserved by the County Auditor. The Department of Management shall prescribe the form for the public hearing notice for cities and the form for the resolution to be adopted by the Council under Paragraph C of this subsection.

- c. At the public hearing, the Council shall receive oral or written objections from any resident or property owner of the City. After all objections have been received and considered, the Council may decrease, but not increase, the proposed maximum property tax dollar amount for inclusion in the resolution and shall adopt the resolution and file the resolution with the County Auditor as required under *Code of Iowa* Section 384.16, Subsection 3.
- d. If the sum of the maximum property tax dollars for the budget year specified in the resolution under the levies specified in this subsection exceeds 102 percent of the sum of the current fiscal year's actual property taxes certified for levy under the levies specified in this subsection, the Council shall be required to adopt the resolution by a two-thirds majority of the membership of the Council.
- e. If the City has an internet site, in addition to filing the resolution with the Auditor under *Code of Iowa* Section 384.16, Subsection 3, the adopted resolution shall be posted and

clearly identified on the City's internet site for public viewing within 10 days of approval by the Council. The posted resolution for a budget year shall continue to be accessible for public viewing on the internet site along with resolutions posted for all subsequent budget years.

5. Council Review. The Council shall review the proposed budget and may make any adjustments it deems appropriate in the budget before accepting such proposal for publication, hearing, and final adoption.
6. Notice of Hearing. Following, and not until adoption of the resolution required under Subsection 4 of this section, the Council shall set a time and place for public hearing on the budget to be held before March 31 and shall publish notice of the hearing not less than 10 nor more than 20 days before the hearing. A summary of the proposed budget and a description of the procedure for protesting the City budget under Section 384.19 of the *Code of Iowa*, in the form prescribed by the Director of the Department of Management, shall be included in the notice. Proof of publication of the notice under this subsection and a copy of the resolution adopted under Subsection 4 of this section must be filed with the County Auditor.

*(Code of Iowa, Sec. 384.16[3])*

7. Copies of Budget on File. Not less than 20 days before the date that the budget must be certified to the County Auditor and not less than 10 days before the public hearing, the Clerk shall make available a sufficient number of copies of the detailed budget to meet the requests of taxpayers and organizations and have them available for distribution at the offices of the Mayor and Clerk and at the City library.

*(Code of Iowa, Sec. 384.16[2])*

8. Adoption and Certification. After the hearing, the Council shall adopt, by resolution, a budget for at least the next fiscal year and the Clerk shall certify the necessary tax levy for the next fiscal year to the County Auditor and the County Board of Supervisors. The tax levy certified may be less than, but not more than, the amount estimated in the proposed budget submitted at the final hearing or the applicable amount specified in the resolution adopted under Subsection 4 of this section. Two copies each of the detailed budget as adopted and of the tax certificate must be transmitted to the County Auditor.

*(Code of Iowa, Sec. 384.16[5])*

2-5-2 BUDGET AMENDMENT. The City budget as finally adopted for the following fiscal year becomes effective July first and constitutes the City appropriation for each program and purpose specified therein until amended. The City budget for the current fiscal year may be amended for any of the following purposes:

(Code of Iowa, Sec. 384.18)

1. To permit the appropriation and expenditures of unexpended, unencumbered cash balances on hand at the end of the preceding fiscal year which had not been anticipated in the budget.
2. To permit the appropriation and expenditure of amounts anticipated to be available from sources other than property taxation, and which had not been anticipated in the budget.
3. To permit transfers from the debt service fund, the capital improvements reserve fund, the emergency fund, or other funds established by State law, to any other City fund, unless specifically prohibited by State law.
4. To permit transfers between programs within the general fund.

The budget amendment shall be prepared and adopted in the same manner as the original budget, and is subject to protest as provided in Section 2-5-3 of this chapter, except that the City Finance Committee may by rule provide that amendments of certain types or up to certain amounts may be made without public hearing and without being subject to protest.

#### 2-5-3 RESERVED

2-5-4 ACCOUNTS AND PROGRAMS. The City shall keep separate accounts corresponding to the programs and items in its adopted or amended budget, as recommended by the State City Finance Committee.

The City shall keep accounts which show an accurate and detailed statement of all public funds collected, received, or expended for any City purpose, by any City officer, employee, or other person, and which show the receipt, use, and disposition of all City property. Public monies may not be expended or encumbered except under an annual or continuing appropriation.

(Code of Iowa, Sec. 384.20)

2-5-5 ANNUAL REPORT. Not later than December first of each year the City shall publish an annual report containing a summary for the preceding fiscal year of all collections and receipts, all accounts due the City, and all expenditures, the current public debt of the City, and the legal debt limit of the City for the current fiscal year. A copy of this report shall be furnished to the Auditor of State.

(Code of Iowa, Sec. 384.22)

2-5-6 COUNCIL TRANSFERS. When the City Clerk determines that one or more appropriation accounts need added authorizations to meet required expenditures therein the City Clerk shall inform the City Council or if the City Council upon its own investigation so determines, and another account within the same programs has an appropriation in excess of foreseeable needs, or, in the case of a clear emergency or unforeseeable need, the contingency account has an unexpended appropriation which alone or with the other accounts can provide the needed appropriations, the City Council shall set forth by resolution the reductions and increases in the appropriations and the reason for such transfers. Upon the passage of the resolution and approval by the Mayor, as provided by

law for resolutions, the City Clerk shall cause the transfers to be set out in full in the minutes and be included in the published proceedings of the City Council. Thereupon the Clerk, and where applicable, the City Treasurer, shall cause the appropriation to be revised upon the appropriation expenditure ledgers of the City, but in no case shall the total of the appropriation of a program be increased except for transfers from the contingency account nor shall the total appropriation for all purposes be increased except by a budget amendment made after notice and hearing as required by law for such amendments.

(IAC, Sec. 545.2.4(384,388))

2-5-7 RESERVED

2-5-8 BUDGET OFFICER. The City Clerk shall be the City budget officer and is responsible for preparing the budget data in cooperation with the City Council or Mayor. The City Clerk shall be responsible for carrying out the authorizations and plans in the budget as set forth in the budget, subject to City Council control and the limitations set out in this Ordinance.

(Code of Iowa, Sec. 372.13(4))

2-5-9 EXPENDITURES. No expenditure shall be authorized by any City officer or employee except as herein provided. All purchases of services, supplies and equipment shall be made only after issuance of a purchase order and no invoice shall be accepted unless authorized by such an order. Purchases not exceeding ten dollars (\$10.00) (or an amount determined by City Council) may be made by those officials authorized by the City Council but only on issuance of a spot purchase order in writing signed by the authorized officer. A copy of such spot purchase order must be delivered to the Clerk within twenty-four (24) hours, weekends, and holidays excepted. All other purchases shall be valid only if a purchase order has been given in writing and signed by the Clerk. Purchases from petty cash shall be excepted.

2-5-10 AUTHORIZATIONS TO EXPEND. All purchase orders other than those excepted herein shall be authorized by the City budget officer after determining whether the purchase, if a major item, has been authorized by the budget or other City Council approval. The Clerk shall then determine whether a purchase order may be issued by checking the availability of an appropriation sufficient to pay for such a purchase. A purchase order may be issued only if there is an appropriation sufficient for the purchase and for other anticipated or budgeted purposes. If no adequate appropriation is available for the expenditure contemplated the Clerk shall not issue a purchase order until a budget amendment to transfer of appropriation is made in accordance with power delegated by City Council and within the limits set by law and the City Council. The Clerk shall draw a warrant/check only upon an invoice received, or progress billing for a public improvement, supported by a purchase order and a signed receipt or other certification indicating the material has been delivered of the quality and in the quantities indicated or the services have been performed satisfactorily to the extent invoiced.

2-5-11 ACCOUNTING. The Clerk shall set up and maintain books of original entry to provide a chronological record of cash received and disbursed through all receipts given and warrants written,

which receipts and warrants shall be prenumbered, in accordance with modern, accepted methods, and the requirement of the state. The Clerk shall keep a general ledger controlling all cash transactions, budgetary accounts and recording unappropriated surpluses. Warrants/checks shall be signed by the City Clerk and Mayor.

(Code of Iowa, Sec. 384.20)

2-5-12 BUDGET ACCOUNTS. The Clerk shall set up such individual accounts to record receipts by source and expenditures by program and purpose as will provide adequate information and control for budgetary purposes as planned and approved by the City Council. Each individual account shall be maintained within its proper fund as required by City Council order or State law and shall be so kept that receipts can be immediately and directly compared with specific estimates and expenditures can be related to the appropriation which authorized it. No expenditure shall be posted except to the appropriation for the function and purpose for which the expense was incurred.

(Code of Iowa, Sec. 384.20)

2-5-13 CONTINGENCY ACCOUNTS. Whenever the City Council shall have budgeted for a contingency account the Clerk shall set up in the accounting records but the Clerk shall not charge any claim to a contingency account. Said contingency accounts may be drawn upon only by City Council resolution directing a transfer to a specific purpose account within its fund and then only upon compelling evidence of an unexpected and unforeseeable need or emergency.

All administrative transfers shall be reported in writing at the next regular meeting of the City Council after being made and the facts set out in the minutes for the information of the Mayor and City Council

## TITLE II POLICY AND ADMINISTRATION

### CHAPTER 6 CITY ELECTIONS

2-6-1	Purpose	2-6-6	Filing, Presumption, Withdrawals, Objections
2-6-2	Nominating Method to be Used	2-6-7	Persons Elected
2-6-3	Nominations by Petition	2-6-8	Primary and Runoff Abolished
2-6-4	Adding Name by Petition		
2-6-5	Preparation of Petition		

2-6-1 PURPOSE. The purpose of this chapter is to designate the method by which candidates for elective municipal offices in the City shall be nominated and elected.

2-6-2 NOMINATING METHOD TO BE USED. All candidates for elective municipal offices shall be nominated under the provisions of Chapter 45 of the Code of Iowa.

(Code of Iowa, Sec. 376.3)

2-6-3 NOMINATIONS BY PETITION. Nominations for elective municipal offices of the City may be made by nomination paper or papers signed by not less than ten eligible electors, residents of the City.

(Code of Iowa, Sec. 45.1)

2-6-4 ADDING NAME BY PETITION. The name of a candidate placed upon the ballot by any other method than by petition shall not be added by petition for the same office.

(Code of Iowa, Sec. 45.2)

2-6-5 PREPARATION OF PETITION. Each eligible elector shall add to the signature the elector's residence address, and date of signing. The person whose nomination is proposed by the petition may not sign it. Before filing said petition, there shall be endorsed thereon or attached thereto an affidavit executed by the candidate, which affidavit shall contain:

1. Name and Residence. The name and residence (including street and number, if any) of said nominee, and the office to which nominated.
2. Name on Ballot. A request that the name of the nominee be printed upon the official ballot for the election.
3. Eligibility. A statement that the nominee is eligible to be a candidate for the office and if elected will qualify as such officer.
4. Organization Statement. A statement, in the form required by Iowa law, concerning the organization of the candidate's committee.

Such petition when so verified shall be known as a nomination paper.

(Code of Iowa, Sec. 45.5)

2-6-6 FILING, PRESUMPTION, WITHDRAWALS, OBJECTIONS. The time and place of filing nomination petitions, the presumption of validity thereof, the right of a candidate so nominated to withdraw and the effect of such withdrawal, and the right to object to the legal sufficiency of such petitions, or to the eligibility of the candidate, shall be governed by the appropriate provisions of Chapter 44 of the Code of Iowa.

2-6-7 PERSONS ELECTED. The candidates who receive the greatest number of votes for each office on the ballot are elected, to the extent necessary to fill the positions open.

2-6-8

## **TITLE II POLICY AND ADMINISTRATION**

### **CHAPTER 7 LAW ENFORCEMENT**

2-7-1 Establishment of Services by 28E Agreement

2-7-2 Copy of Agreement

2-7-1 ESTABLISHMENT OF SERVICES BY 28E AGREEMENT. The City of Malvern has established law enforcement services to provide for the preservation of peace and enforcement of law and ordinances within the corporate limits of the City by participating in a 28E Agreement with the Mills County Sheriff's Department.

(Code of Iowa, Sec. 28E.30)

2-7-2 COPY OF AGREEMENT. A copy of the 28E Agreement is on file with the Secretary of State, State of Iowa and has been recorded by the Mills County Recorder, Mills County, Iowa. In addition, a copy of the agreement is on file in the City Clerk's office.

## TITLE II POLICY AND ADMINISTRATION

### CHAPTER 8 CITY COUNCIL

2-8-1 Powers and Duties

2-8-3 Meetings

2-8-2 Exercise of Power

2-8-1 POWER AND DUTIES. The powers and duties of the City Council include, but are not limited to the following:

1. General. All powers of the City are vested in the City Council except as otherwise provided by law or ordinance.

(Code of Iowa, Sec. 364.2(1))

2. Wards. By ordinance, the City Council may divide the City into wards based upon population, change the boundaries of wards, eliminate wards or create new wards.

(Code of Iowa, Sec. 372.13(7))

3. Fiscal Authority. The City Council shall apportion and appropriate all funds, and audit and allow all bills, accounts, payrolls and claims, and order payment thereof. It shall make all assessments for the cost of street improvements, sidewalks, sewers and other work, improvement or repairs which may be specially assessed.

(Code of Iowa, Sec. 364.2(1), 384.16 & 384.38(1))

4. Public Improvements. The City Council shall make all orders for the doing of work, or the making or construction of any improvements, bridges or buildings.

(Code of Iowa, Sec. 364.2(1))

5. Contracts. The City Council shall make or authorize the making of all contracts, and no contract shall bind or be obligatory upon the City unless either made by ordinance or resolution adopted by the City Council, or reduced to writing and approved by the City Council, or expressly authorized by ordinance or resolution adopted by the City Council.

(Code of Iowa, Sec. 364.2(1) & 384.95 through 384.102)

6. Employees. The City Council shall authorize, by resolution, the number, duties, term of office and compensation of employees or officers not otherwise provided for by the State law or the Code of Ordinances.

(Code of Iowa, Sec. 372.13(4))

7. Setting Compensation for Elected Officers. By ordinance, the City Council shall prescribe the compensation of the Mayor, City Council members, and other elected City officers, but a change in the compensation of the Mayor does not become effective during the term in which the change is adopted, and the City Council shall not adopt such an ordinance changing the compensation of any elected officer during the months of November and December in the year of a regular City election. A change in the compensation of City

Council members becomes effective for all City Council members at the beginning of the term of the City Council members elected at the election next following the change in compensation.

(Code of Iowa, Sec. 372.13(8))

2-8-2 EXERCISE OF POWER. The City Council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance in the following manner:

(Code of Iowa, Sec. 364.3(1))

1. Approved Action by the City Council. Passage of an ordinance, amendment, or resolution requires an affirmative vote of not less than a majority of the City Council members. A motion to spend public funds in excess of twenty five thousand dollars (\$25,000) on any one project, or a motion to accept public improvements and facilities upon their completion also requires an affirmative vote of not less than a majority of the City Council members. Each Council member's vote on an ordinance, amendment or resolution must be recorded.

(Code of Iowa, Sec. 380.4)

(Amended in 2008)

2. Overriding Mayor's Veto. Within thirty (30) days after the Mayor's veto, the City Council may repass the ordinance or resolution by a vote of not less than two-thirds of the City Council members, and the ordinance or resolution becomes effective upon repassage and publication.

(Code of Iowa, Sec. 380.6(2))

3. Measures Become Effective. Measures passed by the City Council, other than motions, become effective in one of the following ways:

- a. If the Mayor signs the measure, a resolution becomes effective immediately upon signing and an ordinance or amendment becomes a law when published, unless a subsequent effective date is provided within the measure.

(Code of Iowa, Sec. 380.6(1))

- b. If the Mayor vetoes a measure and the City Council repasses the measure after the Mayor's veto, a resolution becomes effective immediately upon repassage, and an ordinance or amendment becomes a law when published unless a subsequent effective date is provided with the measure.

(Code of Iowa, Sec. 380.6(2))

- c. If the Mayor takes no action on the measure, a resolution becomes effective fourteen (14) days after the date of passage and an ordinance or amendment becomes law when published, but not sooner than fourteen (14) days after the day of passage, unless a subsequent effective date is provided within the measure.

(Code of Iowa, Sec. 380.6(3))

2-8-3 MEETINGS. Procedures for giving notice of meetings of the City Council and other provisions regarding the conduct of City Council meetings are contained in Section 2-8-3 of this Code of Ordinances. Additional particulars relating to City Council meetings are the following:

1. Regular Meetings. The regular meetings of the City Council are on the second Monday and last Tuesday of each month at 7:00 o'clock (7:00) p.m. in the City Council Chambers at City Hall. If such day falls on a legal holiday or Christmas Eve, the meeting is held on such different day or time as determined by the City Council.
2. Special Meetings. Special meetings shall be held upon call of the Mayor or upon the written request of a majority of the members of the City Council submitted to the City Clerk. Notice of a special meeting shall specify the date, time, place and subject of the meeting and such notice shall be given personally or left at the usual place of residence of each member of the City Council. A record of the service of notice shall be maintained by the City Clerk.  
(Code of Iowa, Sec. 372.13(5))
3. Quorum. A majority of all City Council members is a quorum.  
(Code of Iowa, Sec. 372.13(1))
4. Rules of Procedure. The City Council shall determine its own rules and maintain records of its proceedings.  
(Code of Iowa, Sec. 372.13(5))
5. Compelling Attendance. Any three (3) members of the City Council can compel the attendance of the absent members at any regular, adjourned or duly called meeting, by serving a written notice upon the absent members to attend at once.

**TITLE II POLICY AND ADMINISTRATION**

**CHAPTER 9 PLANNING AND ZONING COMMISSION**

2-9-1	Planning and Zoning Commission	2-9-4	Compensation
2-9-2	Term of Office	2-9-5	Powers and Duties
2-9-3	Vacancies		

2-9-1 PLANNING AND ZONING COMMISSION. There shall be a City Planning and Zoning Commission, hereinafter referred to as the Commission, consisting of seven (7) members. Five (5) members shall be residents of the City, appointed by the City Council. Two (2) members shall be residents of the area outside the City over which the zoning jurisdiction of the City has been extended, appointed by the Board of Supervisors of the County in which such extended area is located. Commission members shall be qualified by knowledge or experience to act in matters pertaining to the development of a city plan and shall not hold any elective office in the City government.

(Code of Iowa, Sec 414.6, 414.23 & 392.1)

2-9-2 TERM OF OFFICE. The term of office of the members of the Commission shall be for five (5) years. The term of not more than one-third of the members will expire in any one year.

2-9-3 VACANCIES. If any vacancy exist on the Commission caused by resignation, or otherwise, a successor for the remainder of the term shall be appointed in the same manner as the original appointee.

2-9-4 COMPENSATION. All members of the Commission shall serve without compensation, except their actual expenses, which shall be subject to the approval of the City Council.

2-9-5 POWERS AND DUTIES. The Commission shall have and exercise the following powers and duties:

1. Selection of Officers. The Commission shall choose annually at its first regular meeting one of its members to act as Chairperson and another as Vice Chairperson, who shall perform the duties of the Chairperson during the Chairperson's absence or disability.

(Code of Iowa, Sec 392.1)

2. Adopt Rules and Regulations. The Commission shall adopt such rules and regulations governing its organization and procedures as it may deem necessary.

(Code of Iowa, Sec 392.1)

3. Zoning. The Commission shall have and exercise all powers and duties and privileges in establishing the City zoning regulations and other related matters and may from time to time recommend to all the City amendments, supplements, changes or modifications, all as provided by Chapter 414 of the Code of Iowa.

(Code of Iowa, Sec 392.1)

4. Recommendations of Improvements. No statuary, memorial or work of art in a public place, and not public buildings, bridge, viaduct, street fixture, public structure or appurtenances, shall be located or erected, or site therefor obtained, nor shall any permit be issued by any department of the City for the erection or location thereof until and unless the design and proposed location of any such improvement shall have been submitted to the Commission and its recommendations shall not act as a stay upon action for any such improvement when the Commission after thirty (30) days' written notice requesting such recommendations, shall have failed to file same.

(Code of Iowa, Sec 392.1)

5. Review and Comment on Plats. All plans, plats, or re-plats of subdivision or re-subdivision of land embraced in the City or adjacent thereto, laid out in lots or plats with the streets, alleys, or other portions of the same intended to be dedicated to the public in the City, shall first be submitted to the Commission and its recommendations obtained before approval by the City Council.

(Code of Iowa, Sec 392.1)

6. Review and Comment of Street and Park Improvements. No plan for any street, park, pathway, boulevard, traffic-way, river front, or other public improvement affecting the City plan shall be finally approved by the City or the character or location thereof determined, unless such proposal shall first have been submitted to the Commission and the Commission shall have had thirty (30) days within which to file its recommendations hereon.

(Code of Iowa, Sec 392.1)

7. Fiscal Responsibilities. The Commission shall have full, complete and exclusive authority to expend for and on behalf of the City all sums of money appropriated to it, and to use and expend all gifts, donations or payments whatsoever which are received by the City of Malvern for City planning and zoning purposes.

(Code of Iowa, Sec 392.1)

8. Limitation on Entering Contracts. The Commission shall have no power to contract debts beyond the amount of its original or amended appropriations as approved by the City Council for the present year.

(Code of Iowa, Sec 392.1)

9. Annual Report. The Commission shall each year make an annual report to the Mayor and City Council if its proceeding, with a full statement of its receipts, disbursements and the progress of its work during the preceding fiscal year.

(Code of Iowa, Sec 392.1)

**TITLE II POLICY AND ADMINISTRATION**

**CHAPTER 10 PARK COMMISSION**

2-10-1	Park Board	2-10-5	Compensation
2-10-2	Term	2-10-6	Annual Report
2-10-3	Organization	2-10-7	Rules and Regulations
2-10-4	Treasurer		

2-10-1 **PARK BOARD.** There shall be a Board of Park Commissioners (hereinafter “Park Board”) for the City of Malvern consisting of five (5) persons of legal age. One (1) of the Park Board members may reside outside the city limits but shall live within the area serviced by telephone prefix 624; and the remainder, four (4) Park Board members, shall reside within the corporate limits of the City and shall be appointed by the Mayor with approval of the City Council. The appointments by the Mayor shall be made effective on January 1 of each year as each term expires.

2-10-2 **TERM.** Initially, two (2) park Board members shall serve a term of three (3) consecutive years, two (2) Park Board members shall serve a term of (2) consecutive years, and one (1) Park Board member shall serve a term of one (1) year. Thereafter, all other Park Board members appointed shall serve three (3) consecutive years. If, for any reason, a Park Board member is unable to serve his or her full term, the City Council shall appoint a person to fill the vacated spot for the remainder of the existing term. In the event any Park Board member fails to attend four (4) or more consecutive meetings of the Park Board, said member shall appear before the City Council and show good cause why he or she should not be removed as a Park Board member.

2-10-3 **ORGANIZATION.** The City Clerk or the Deputy Clerk shall take the minutes of the meetings.

2-10-4 **TREASURER.** The City Clerk (or Deputy Clerk) shall be the Treasurer of the Park Board and pay out all monies under the control of the Board as ordered on orders signed by the Chairperson.

2-10-5 **COMPENSATION.** Each Park Board member shall receive compensation of six dollars (\$6.00) per meeting to be paid semi-annually in June and December.

2-10-6 **ANNUAL REPORT.** The Park Board shall make an annual report to the City Council immediately after the close of the municipal fiscal year.

2-10-7 **RULES AND REGULATIONS.** The Park Board shall have the power to make rules and regulation for the use of the park or other facilities under its control, such rules shall be posted at the facility or otherwise publicized in a manner to provide adequate notice to the public.

**TITLE II POLICY AND ADMINISTRATION**

**CHAPTER 11 LIBERTY MEMORIAL BUILDING COMMISSION**

2-11-1 Memorial Building Commission	2-11-5 Powers and Duties
2-11-2 Qualification and Appointment	2-11-6 Memorial Building Account
2-11-3 Compensation	2-11-7 Annual Report
2-11-4 Organization	

2-11-1 MEMORIAL BUILDING COMMISSION. The Liberty Memorial Building shall be under the management and control of a commission of four (4) members who shall be known as the Liberty Memorial Building Commission. The Mayor shall serve as a “sit-in” member of the Liberty Memorial Building Commission and may vote only to break a tie.

2-11-2 QUALIFICATION AND APPOINTMENT. The Liberty Memorial Building Commission shall be made up of four (4) members. The composition of the commission shall be as follows: at least two of the four of the members shall be an honorably discharged soldier, sailor, marine, airman or Coast Guard member and also live in the city limits of Malvern, Iowa; one member may be a resident of the City of Malvern, Iowa; one member may not reside within the city limits of Malvern, Iowa but must have a Malvern, Iowa postal address. The preference of the City is to have four veterans that reside in the City but if unavailable the above exceptions would apply. The Liberty Memorial Building Commission members shall be appointed by the Mayor with the approval of the City Council.

2-11-3 COMPENSATION. Each Liberty Memorial Building Commissioner shall receive compensation of six dollars (\$6.00) per meeting to be paid semi-annually in June and December.

2-11-4 ORGANIZATION. All appointments to the Liberty Memorial Building Commission shall be for staggered terms of three (3) years except to fill vacancies. The positions of any member of Liberty Memorial Building Commission shall be vacant if said member moves permanently from the City or is absent from six (6) consecutive regular meetings of the Liberty Memorial Building Commission, except in the case of sickness or temporary absence from the City. Vacancies in the Liberty Memorial Building Commission shall be filled by appointment of the Mayor, with approval of the City Council, and the new members shall fill out the unexpired term for which the appointment is made.

2-11-5 POWERS AND DUTIES. The Liberty Memorial Building Commission shall have and exercise the following powers and duties:

1. To meet and elect from its members a Chairperson, a Vice Chairperson and such other officers as it deems necessary.
2. To have charge, control and supervision of the Liberty Memorial Building, its appurtenances and fixtures.

3. To direct and control all the affairs of the Liberty Memorial Building.
4. To have exclusive control of the expenditure of funds allocated for Liberty Memorial Building purposes by the City Council, and of all moneys available by gift or otherwise, and of all moneys belonging to the Liberty Memorial Building under the rules of the Liberty Memorial Building Commission.
5. To accept gifts of real property, personal property, or mixed property, and devises and bequests, including trust funds; to take the title to said property in the name of the Liberty Memorial Building; and to expend the funds received by them from such gifts for the improvement of the Liberty Memorial Building.
6. To keep a record of the Commission's proceedings.
7. To enforce the performance of conditions on gifts, donations, devises and bequests accepted by the City by action against the City Council.

2-11-6 MEMORIAL BUILDING ACCOUNT. All moneys appropriated by the City Council from the General Fund for the operation and maintenance of the Liberty Memorial Building shall be set aside in an account Liberty Memorial Building. Expenditures shall be paid for only on orders of the Liberty Memorial Building Commission, signed by its President and Secretary. The warrant-writing officer is the City Clerk (or Deputy Clerk).

2-11-7 ANNUAL REPORT. The Liberty Memorial Building Commission shall make a report to the City Council immediately after the close for the City's fiscal year. The report shall contain statements of the condition of the Liberty Memorial Building, the amount of money expended in the maintenance of the Liberty Memorial Building during the year, together with such further information required by the City Council.

## TITLE III COMMUNITY PROTECTION

### CHAPTER 1 OFFENSES

3-1-1	Violations of Chapter	3-1-4	Streets
3-1-2	Public Peace	3-1-5	Public Safety and Health
3-1-3	Public Morals	3-1-6	Public Property

3-1-1 VIOLATIONS OF CHAPTER. Commission of any of the acts named in the following sections by any person shall constitute a violation of this chapter.

3-1-2 PUBLIC PEACE. It shall be unlawful for any person to do any of the following:

1. Engage in fighting or violent behavior or invite or defy another person to fight, provided that participants in athletic contests may engage in such conduct which is reasonably related to that sport.

(Code of Iowa, Sec. 723.4(1))

2. Make unusually loud or excessive noise which results in the disturbance of the peace and the public quiet of a neighborhood.

(Code of Iowa, Sec. 723.4(2))

3. Willfully permit upon any premises owned, occupied, possessed or controlled by such person any unusually loud or excessive noise in such a manner calculated to provoke a breach of the peace of others, or the public quiet of the neighborhood.

(Code of Iowa, Sec. 723.4(2))

4. Direct abusive language or make any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another.

(Code of Iowa, Sec. 723.4(3))

5. Without lawful authority or order of authority, disturb any lawful assembly or meeting of persons by conduct intended to disrupt the meeting or assembly.

(Code of Iowa, Sec. 723.4(4))

6. Without authority, obstruct any street, sidewalk, highway or other public way.

(Code of Iowa, Sec. 723.4(7))

7. Without authority, solicit contributions, distribute literature, or otherwise peddle or sell goods and services within the traveled portion of any roadway.

(Code of Iowa, Sec. 364.12(2)(a))

3-1-3 PUBLIC MORALS. Indecent exposure. It shall be unlawful for any person to expose such person's genitals, pubes, female nipples, or buttocks to another or to urinate or defecate in public or in view of the public.

3-1-4 STREETS.

1. Removal of safeguards or danger signals. No person shall willfully remove, tear down, destroy, deface, or carry away from any highway, street, alley, avenue or bridge any lamp, obstruction, guard or other article or things, or extinguish any lamp or other light, erected or placed thereupon for the purpose of guarding or enclosing unsafe or dangerous places in said highway, street, alley, avenue or bridge without the consent of the person in control thereof.

(Code of Iowa, Sec. 716.5)

2. Obstructing or defacing streets. No person shall obstruct, deface, or injure any public road in any manner by breaking up, plowing or digging within the boundary lines thereof, without permission from the Mayor.

(Code of Iowa, Sec. 716.1)

3. Allowing water, snow, ice and accumulations on sidewalk. No abutting property owner shall allow water from an improperly located eave or drain, or from any roof, to fall onto a public sidewalk, or fail to remove snow, ice and accumulations from the sidewalks promptly. Upon failure by the abutting property owner to perform the action required under this subsection within a reasonable time, the City may perform the required action and assess the costs against the abutting property.

(Code of Iowa, Sec. 364.12(2)(b and e))

4. Removal of hydrant caps, sewer caps or manhole covers. No person shall remove or carry away hydrant caps, sewer caps or manhole covers without the consent of the person in control thereof.

3-1-5 PUBLIC SAFETY AND HEALTH.

1. Expectorating. No person shall expectorate on the ground or in any structure within the City limits.

(Code of Iowa, Sec. 364.1)

2. Putting debris on streets and sidewalks. No person shall throw or deposit on any street or sidewalk any glass bottle, glass, nails, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris, or any other substance, which the person knows or has reason to know may injure any person, animal or vehicle.

(Code of Iowa, Sec. 321.369)

3. Carrying a concealed weapon. It shall be unlawful for any person to carry under such person's clothes or concealed about their person or to be found in possession of any slingshot, knuckles of metal or other material, air gun or any other weapon other than a knife, unless licensed by the Iowa Department of Public Safety or having in possession a valid permit from the County Sheriff.

4. False alarms. No person shall give or cause to be given any false alarm of a fire, nor set fire to any combustible material, or cry or sound an alarm or by any other means without cause.
5. Stench bombs. No person shall throw, drop, pour, explode, deposit, release, discharge or expose any stench bomb or tear bomb, or any liquid, gaseous or solid substance or matter of any kind that is injurious to persons or property, or that is nauseous, sickening, irritating or offensive to any of the senses in, on or about a theater, restaurant, car, structure, place of business, or amusement, or any place of public assemblage, or attempt to do any of these acts, or prepare or possess such devices or materials with intent to do any of these acts. This provision shall not apply to duly constituted police, military authorities, or peace officers in the discharge of their duties, or to licensed physicians, nurses, pharmacists and other similar persons licensed under the laws of this State; nor to any established place of business or home having tear gas installed as a protection against burglary, robbery or holdup, nor to any bank or other messenger carrying funds or other valuables.

6. Discharging firearms.

(Code of Iowa, Sec. 727.2)

- a. No person, firm, or corporation shall discharge or fire any cannon, gun, bomb, pistol, air gun, or other firearms.
- b. The City Council may, upon application in writing, grant a permit for the operation of a firing range in which the discharge of firearms for training, recreational or competitive events would be allowed upon showing that the range would be under the direction of a competent organization, group or individual.
- c. In the interest of public health and safety and at such times as approved by the **Mayor**, the police or their designee may use firearms to control rodent or animal problems when it is evident that conventional control methods have not resolved the problem.
- d. Nothing herein shall be construed to prohibit the use of blank cartridges for a show or the theatre, or for signal purposes in athletic sports or by railroads, or trucks, for signal purposes, or by a recognized military organization and provided further that nothing in this section shall apply to any substance or composition prepared and used for medicinal or fumigation purposes.

7. Possession of Fireworks.

- a. Definition. The term "fireworks" includes any explosive composition, or combination of explosives, substances or articles prepared for the purpose of producing a visible or audible effect by combustion, explosion or detonation and includes blank cartridges, firecrackers, torpedoes, sky rockets, Roman Candles or other fireworks of like construction and fireworks containing any explosive or flammable compound, or other

device containing any explosive substance. The term "fireworks" does not include gold star-producing sparklers on wires that contain no magnesium or chlorate or perchlorate, flitter sparklers in paper tubes that do not exceed 1/8 inch in diameter, toy snakes that contain no mercury, or caps used in cap pistols.

- b. Exemption. The use of blank cartridges for a show or the theater, or for signal purposes in athletic events, or by railroads or trucks for signal purposes, or by recognized military organizations is exempt from this Subsection.
- c. Prohibition. No person shall possess fireworks except as provided in **Title III Chapter 15 of this ordinance.**

- 8. Abandoned refrigerators. No person shall place, or allow to be placed, any discarded, abandoned, unattended or unused refrigerator, ice box or similar container equipped with an air-tight door or lid, snap lock, or other locking device which cannot be released from the inside, in a location accessible to children, outside any building, dwelling, or within an unoccupied or abandoned building or dwelling, or other structure, under such person's control without first removing the door, lid, snap lock, or other locking device from said icebox, refrigerator or similar container. This provision applies equally to the owner of any such refrigerator, icebox or similar container, and to the owner or occupant of the premises where the hazard is permitted to remain.

(Code of Iowa, Sec. 727.3)

- 9. Impersonating an officer. No person shall falsely represent themselves or falsely assume to be any law enforcement officer, judge or magistrate. It shall be unlawful to wear or adopt the uniform or insignia of any law enforcement officer on any street or public place.

(Code of Iowa, Sec. 718.2)

10. Harassment of City Employees.

- a. It shall be unlawful for any person to willfully prevent, resist or obstruct or attempt to prevent, resist or obstruct any City employee from the performance of any official duty.
- b. It shall be unlawful for any person to communicate by any means, any threat of bodily or property harm to any City employee or to any member of the employee's family during the course of, or as a result of, the performance of any official duty by said City employee.

11. Antenna and radio wires. No person shall allow, locate or maintain any antenna wires, antenna supports, radio wires or television wires to exist over any street, alley, highway, sidewalk or public property.

(Code of Iowa, Sec. 364.12(2))

12. Barbed wire. No person shall install, allow to be installed or use barbed wire without the consent of the City Council.

(Code of Iowa, Sec. 364.1)

13. Playing in streets. No person shall coast, sled or play games on streets or highways except in areas blocked off by the City of Malvern for such purposes.

(Code of Iowa, Sec. 364.12)

### 3-1-6 PUBLIC PROPERTY.

1. Defacing public grounds. No person shall cut, break or deface any tree or shrub in a public park or on any avenue thereto by willfully defacing, cutting, breaking or injuring, except by the authority of the Mayor.

(Code of Iowa, Sec. 364.12(2))

2. Injuring new pavement. No person shall injure new pavement in any street, alley or sidewalk by willfully driving, walking or making marks on such pavement.

(Code of Iowa, 364.12(2))

3. Destroying park equipment. No person shall destroy or injure any property or equipment in public swimming pools, playgrounds or parks by willfully defacing, breaking, damaging, mutilating or cutting.

(Code of Iowa, Sec. 364.12(2))

4. Injury to public library books or property. No person shall willfully or recklessly tear, deface, mutilate, injure or destroy, in whole or in part, any newspaper, periodical, book, map, pamphlet, chart, picture or other property belonging to any public library or reading room.

5. Defacing or destroying proclamations or notices. No person shall intentionally deface, obliterate, tear down or destroy in whole or in part any transcript or extract from or of any law of the United States or of this State, or any proclamation, advertisement or notification, set up at any place within the City by authority of law or by order of any court, during the time for which the same is to remain set up.

(Code of Iowa, Sec. 716.1)

6. Injury to gravestones or property in cemetery. No person shall willfully or recklessly destroy, mutilate, deface, injure or remove any tomb, vault, monument, gravestone or other structure placed in any public or private cemetery, or any fences, railing or other work for the protection, ornamentation of said cemetery, or of any tomb, vault, monument or gravestone,

or other structure aforesaid, on any cemetery lot within such cemetery, or willfully and maliciously destroy, cut, break or injure any tree, shrub, plant or lawn within the limits of said cemetery, or drive outside of said avenues and roads, and over the grass or graves of said cemetery.

(Code of Iowa, Sec. 716.1)

7. Injury to fire apparatus. No person shall willfully destroy or injure any engines, hose carriage, hose, hook and ladder carriage, or other things used and kept for extinguishment of fires.

(Code of Iowa, Sec. 716.1)

8. Injury to city ambulance or paramedic apparatus. No person shall willfully destroy or injure any ambulance or paramedic unit, equipment or other things used to administer medical care.

(Code of Iowa, Sec. 716.1)

9. Obstructing or defacing roads. No person shall obstruct, deface or injure any public road by breaking up, plowing or digging within the boundary lines thereof, except by written authorization of the Mayor.

(Code of Iowa, Sec. 716.1)

10. Injury to roads, railways, and other utilities. No person shall injure, remove or destroy any electric railway or apparatus belonging thereto, or any bridge, rail or plank road; or place or cause to be placed, any obstruction on any electric railway, or on any such bridge, rail or plank road; or willfully obstruct or injure any public road or highway; or cut, burn, or in any way break down, injure or destroy any post or pole used in connection with any system of electric lighting, electric railway, or telephone or telegraph system; or break down and destroy or injure and deface any electric light, telegraph or telephone instrument; or in any way cut, break or injure the wires of any apparatus belonging thereto; or willfully without proper authorization tap, cut, injure, break, disconnect, connect, make any connection with, or destroy any of the wires, mains, pipes, conduits, meters or other apparatus belonging to, or attached to, the power plant or distributing system of any electric light plant, electric motor, gas plant or water plant; or aid or abet any other person in so doing.

(Code of Iowa, Sec. 716.1)

11. Tapping into Utility Transmission Cables. No person shall connect to any transmission cable without first obtaining permission from the owner of the cable.

(Code of Iowa, Sec. 727.8)

12. Obstructing ditches and breaking levees. No person shall divert, obstruct, impede, or fill up, without legal authority, any ditch, drain, or watercourse, or break down any levee established, constructed, or maintained under any provision of law.

(Code of Iowa, Sec. 716.1)

## TITLE III COMMUNITY PROTECTION

### CHAPTER 2 NUISANCES

3-2-1	Definitions	3-2-7	Request for Hearing and Appeal
3-2-2	Nuisances Prohibited	3-2-8	Abatement in Emergency
3-2-3	Other Conditions Regulated	3-2-9	Abatement by Municipality
3-2-4	Notice to Abate Nuisance or Condition	3-2-10	Collection of Cost of Abatement
3-2-5	Contents of Notice to Abate	3-2-11	Installment Payment of Cost of Abatement
3-2-6	Method of Service	3-2-12	Condemnation of Nuisance

3-2-1 DEFINITIONS. For use in this Ordinance, the following terms are defined:

1. NUISANCES DECLARED. The term "nuisance" means whatever is injurious to health, indecent, or unreasonably offensive to the senses or an obstacle to the free use of property, so as essentially to unreasonably interfere with the comfortable enjoyment of life or property. Nuisances shall include, but not be limited to, those activities and items hereinafter set forth in this section below:

(Code of Iowa, Sec. 657.1)

- a. The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which by occasioning noxious exhalations, unreasonably offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public.

(Code of Iowa, Sec. 657.2(1))

- b. The causing or suffering any offal, filth, or noisome substance to accumulate or to remain in any place to the prejudice of others.

(Code of Iowa, Sec. 657.2(2))

- c. The obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.

(Code of Iowa, Sec. 657.2(3))

- d. The polluting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.

(Code of Iowa, Sec. 657.2(4))

- e. The obstructing or encumbering by fences, buildings, or otherwise the public roads, private ways, streets, alleys, commons, landing places, or burying grounds.

(Code of Iowa, Sec. 657.2(5))

**(This is not an exclusive or exhaustive list of possible nuisances.)**

- f. Houses of ill fame, kept for the purpose of prostitution and lewdness, gambling houses, or houses resorted to for the use of controlled substances or houses where drunkenness, quarreling, fighting or breaches of the peace are carried on or permitted to the disturbance of others.  
(Code of Iowa, Sec. 657.2(6))
- g. Billboards, signboards, and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard or alley or of a railroad or street railway track as to render dangerous the use thereof, especially near intersecting streets.  
(Code of Iowa, Sec. 657.2(7))
- h. Cotton-bearing cottonwood trees and all other cotton-bearing poplar trees in the City.
- i. Any object or structure hereafter erected within 1,000 feet of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation, including take-off and landing.  
(Code of Iowa, Sec. 657.2(8))
- j. The depositing or storing of inflammable junk, such as old rags, rope, cordage, rubber, bones, and paper, by any person, including a dealer in such articles, unless it be in a building of fire resistant construction.  
(Code of Iowa, Sec. 657.2(9))
- k. The emission of dense smoke, noxious fumes, or fly ash.  
(Code of Iowa, Sec. 657.2(10))
- l. Dense growth of all weeds, grasses, vines, brush, or other vegetation in the City so as to constitute a health, safety, or fire hazard including any City owned property between the abutting property line and the street right-of-way.  
(Code of Iowa, Sec. 657.2(11))
- m. Trees infected with Dutch elm disease.  
(Code of Iowa, Sec. 657.2(12))
- n. Effluent from septic tank or drain field running or ponding on the ground in the open.
- o. Any article or substance placed upon a street, alley, sidewalk, public ground, or in any ditch, waterway, or gutter so as to obstruct the drainage.  
(Code of Iowa, Sec. 716.1)
- p. Accumulations of rubbish or trash tending to harbor vermin, rodents, and rank growth of weeds or other vegetation and plants, which is conducive to hazard.  
(Code of Iowa, Sec. 657.2)

- q. Causing or suffering any refuse, garbage, obnoxious substances, hazardous wastes, junk or salvage materials to be collected or to remain in any place to the prejudice to others; causing or suffering any refuse, garbage, obnoxious substances, hazardous wastes, junk or salvage materials or other offensive or disagreeable substances to be thrown, left or deposited in or upon any street, avenue, alley, sidewalk, park, public square, public enclosure, lot, vacant or occupied, or upon any pond or pool of water; except for compost piles established and maintained with written permission from the Mills County Public Health Department and junk or salvage materials property stored in accordance with the Malvern Municipal Code;
- r. Diseased or damaged trees or shrubs. Any dead, diseased or damaged trees or shrubs, which may harbor insects or diseased pests or diseases injurious to other trees or shrubs or any healthy tree which is in such a state of deterioration that any part of such tree may fall and damage property or cause injury to persons.
- s. Weeds. Any condition relating to weeds which is described as a nuisance in the Malvern Municipal Code of Ordinances or under state law.
- t. Any ditch, drain or water course which is now or hereafter may be constructed so as to prevent surface water and overflow water from adjacent lands entering or draining into and through the same; any storm water detention basin not maintained in an appropriate manner so as to allow its proper function.
- u. Stagnant water standing on any property, any property, container or material kept in such condition that water can accumulate and stagnate.
- v. Conditions which are conducive to the harborage or breeding of vermin.
- w. Infestations of vermin such as rats, mice, skunks, snakes, starlings, pigeons, bees, wasps, cockroaches or flies.
- x. Facilities for the storage or processing of sewage, such as privies, vaults, sewers, private drains, septic tanks, cesspools and drainage fields, which have failed or do not function properly or which are overflowing, leaking or emanating odors; septic tanks, cisterns and cesspools which are abandoned or no longer in use unless they are empty and cleaned with clean fill; an evolved cesspools or septic tank which does not comply with the Mills County Department of Health regulation.
- y. Unoccupied buildings or unoccupied portions of buildings which are unsecured.
- z. Dangerous buildings or structures.
- aa. Abandoned buildings.

- bb. Any hazardous thing or condition on property which may contribute to injury of any person present on the property; hazards include, but are not limited to, open holes, open wells, open foundation, dangerous trees or limbs, abandoned and unsecured refrigerators or trapping devices.
- cc. The storage, parking, leaving or permitting the storage, parking or leaving of any inoperable or obsolete vehicle upon private property within the City for a period in excess of 48 hours, unless exempted herein. This section shall not apply to any vehicle enclosed within a building on private property or to any vehicle held in connection with a legal junk yard or automobile or truck-oriented use operated in the appropriate zone and in compliance with the Malvern Municipal Code of Ordinances.
- dd. All junk yard or salvage operations except those permitted by ordinance and operating in full compliance with the Malvern Municipal Code of Ordinances.
- ee. The open burning of trash, refuse, garbage, junk or salvage materials, yard waste, leaves and tree trimmings shall be prohibited within the City limits, during times not in accordance with the City's Open Burning Policy. Outdoor cooking or burning of wood is permitted if performed in a container constructed of steel, brick or masonry and the fire is no larger than two feet in diameter. Additional open burning may be permitted upon written request, only with the special permission of the City Council provided the burning is in compliance with Open Burning Policy guidelines established by the City in consultation with the Fire Department.
- ff. Any accumulations of ice, water and snow on public sidewalks, or the failure to remove said accumulations within 48 hours after the creation of such accumulations exist, shall constitute a nuisance and shall be abated pursuant to the provisions specified in the Malvern Municipal Code of Ordinances.
- gg. The parking of motor vehicles on private property without the consent of the property owner or responsible party.
- hh. Any nuisance described as such or declared by Chapter 657 of the Code of Iowa.
- ii. The sounding of any horn or other signaling device on any vehicle on any street, public or private place within the City, except as a danger warning, which makes a loud or harsh sound to the disturbance or annoyance of any person and can be plainly audible at a distance of 50 feet.
- jj. The use of amplified sound creating a disturbance or annoyance to others and can be plainly heard 50 feet from the source of the amplified sound.

- kk. Yelling, shouting, hooting, whistling or singing at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in the vicinity.
- ll. The erection, excavation, demolition, alteration, repair or construction of any building or other property between the hours of 7:00 p.m. and 9:00 a.m., except in the case of an emergency of a public health and safety nature, with the approval of the City.
- mm. No person shall obstruct, deface, destroy or injure any public right-of-way in any manner by breaking up, plowing or digging within the right-of-way without City permission.
- nn. No person shall throw or deposit on any public or private property any glass bottle, glass, nails, tacks, wire, cans, trash, garbage, rubbish, litter or any other debris or like substance which may injure or damage any person, animal or vehicle or which may annoy, injure or become dangerous to the health, comfort or property of individuals or the public.
- oo. No person shall allow any plants to grow uncultivated and out of context with the surrounding plant life when such plant has a seed head formed or forming and with a height of 8 inches or more, nor shall any person allow their grass to grow unattended with a consistent height above 8 inches.
- pp. Causing or suffering any refuse, garbage, obnoxious substances, hazardous wastes, junk or salvage materials to be collected or to remain in any place that prejudices others.
- qq. Causing or suffering any refuse, garbage, obnoxious substances, hazardous wastes, junk or salvage materials or other offensive or disagreeable substances to be thrown, left or deposited in or upon any street, alley, avenue, sidewalk, park, public square, public enclosure, lot, vacant or occupied.
- rr. The storage of any appliances, scrap metal, indoor furniture, broken furniture, used building material, unstacked wood, broken toys, broken bicycles and tricycles, bathroom fixtures and similar objects visible from the public right-of-way or adjoining property.
- ss. Pools and ponds containing stagnant water.
- tt. Pipes, lumber, drywall, flooring, roofing shingles and other building material left on the property visible from the public right-of-way or adjoining property for a period of time exceeding 72 hours.
- uu. Rusty, deteriorated, dilapidated or unusable play equipment visible from any adjoining property.
- vv. Dilapidated dwelling units exhibiting peeling paint, untreated wood, broken gutters,

broken windows, dry rot, missing banisters, railings and spindles, broken doors and the like creating an eyesore and offending members of the public.

ww. Harassment by any means with the intent to intimidate, annoy or alarm another person.

xx. Trespassing on the property of another without the express permission of the owner, lessee or person in lawful possession.

(Non-exhaustive List)

2. The term "property owner" means the contract purchaser if there is one of record, otherwise the record holder of legal title.

(Code of Iowa, Sec. 364.1)

3-2-2 NUISANCES PROHIBITED. The creation or maintenance of a nuisance is hereby prohibited, and a nuisance may be abated by criminal citation, municipal infraction or as otherwise provided in this Ordinance or Code of Iowa.

(Code of Iowa, Sec. 657.3)

3-2-3 OTHER CONDITIONS REGULATED. The following actions are required and may also be abated in the manner provided in this Ordinance:

1. The removal of diseased trees or dead wood, but not diseased trees and dead wood outside the lot and property lines and inside the curb lines upon the public street.

(Code of Iowa, Sec. 364.12(3)(b))

2. The removal, repair, or dismantling of dangerous buildings or structures.

(Code of Iowa, Sec. 364.12(3)(c))

3. The numbering of buildings.

(Code of Iowa, Sec. 364.12(3)(d))

4. The connection to public drainage systems from abutting property when necessary for public health or safety.

(Code of Iowa, Sec. 364.12(3)(e))

5. The connection to public sewer systems from abutting property, and the installation of sanitary toilet facilities and removal of other toilet facilities on such property.

(Code of Iowa, Sec. 364.12(3)(f))

6. The cutting or destruction of weeds or other growth which constitutes a health, safety, or fire hazard.

(Code of Iowa, Sec. 364.12(3)(g))

7. The maintenance, by the property owner, of all property outside the lot and property lines and inside the curb lines upon public streets, including maintaining a fifteen (15) foot clearance above the street from trees extending over the streets, except as provided in Section 3-2-3(1).

3-2-4 NOTICE TO ABATE NUISANCE OR CONDITION. Whenever the Mayor or other authorized municipal officer finds that a nuisance or other condition exists which is listed in Section 3, the Mayor or officer may notify the property owner as shown by the records of the County Auditor to abate the nuisance within a reasonable time after notice. Notice and opportunity to abate the nuisance is not required prior to bringing legal action.

(Code of Iowa, Sec. 364.12(3)(h))

3-2-5 CONTENTS OF NOTICE TO ABATE. The notice to abate shall contain:

(Code of Iowa, Sec. 364.12(3)(h))

1. A description of what constitutes the nuisance or other condition.
2. The location of the nuisance or condition.
3. A statement of the act or acts necessary to abate the nuisance or condition.
4. A reasonable time within which to complete the abatement.
5. A statement that if the nuisance or condition is not abated as directed and no request for hearing is made within the time prescribed, the City will abate it and assess the costs against such person.

3-2-6 METHOD OF SERVICE. The notice may be sent by regular mail to the property owner as shown by the records of the County Auditor.

(Code of Iowa, Sec. 364.12(3)(h))

3-2-7 REQUEST FOR HEARING AND APPEAL. Any person ordered to abate a nuisance or condition may have a hearing with the officer ordering the abatement as to whether a nuisance or prohibited condition exists. A request for a hearing must be made in writing and delivered to the officer/employee ordering the abatement within seven (7) working days of the receipt of the notice or the right to a hearing shall be waived. If an appeal is not filed as set forth herein, it will be conclusively presumed that a nuisance or prohibited condition exists and it must be abated as ordered.

At the conclusion of the hearing, the hearing officer shall render a written decision as to whether a nuisance or prohibited condition exists. If the officer finds that a nuisance or prohibited condition exists, the officer must order it abated within an additional time which must be reasonable under the circumstances. The property owner may appeal this decision by filing written notice with the City

Clerk within five (5) calendar days of the decision. This appeal shall be heard before the City Council at a time and place fixed by the Council. The findings of the Council shall be conclusive and, if a nuisance or prohibited condition is found to exist, it shall be ordered abated within a time reasonable under the circumstances.

3-2-8 ABATEMENT IN EMERGENCY. If it is determined that an emergency exists by reason of the continuing maintenance of the nuisance or condition, the City may perform any action that may be required under this chapter without prior notice, and assess the costs as provided herein, after notice to the property owner under the applicable provision of Sections 3-2-4 and 3-2-5 and hearing as provided in Section 3-2-7.

(Code of Iowa, Sec. 364.12(3)(h))

3-2-9 ABATEMENT BY MUNICIPALITY. If the person notified to abate a nuisance or condition neglects or fails to abate as directed, the City may perform the required action to abate, keeping an accurate account of the expense incurred. The itemized expense account shall be filed with the City Clerk, who shall pay such expenses on behalf of the municipality. Fees shall be as follows:

(Code of Iowa, Sec. 364.12(3)(h))

(1) For a first (1<sup>st</sup>) offense, a charge of \$30.00 per hour expended per worker that the City deems necessary to abate the nuisance, with a minimum charge of one (1) hour per worker, as well as an additional charge for all equipment deemed by the City to be required to aid in abating the nuisance, with a minimum charge of one (1) hour for the use of each of the same, according to the following chart:

John Deere Mower Tractor	\$20.15
Kabota Tractor and Mower	\$33.41
John Deere Mower Zero Turn	\$33.41
Air Compressor (125-200 cfm)	\$15.71
Air Compressor (200+ cfm)	\$22.87
Dump Truck	\$48.98
Pickup	<b>\$40.00</b>
Case Loader	\$34.71
Loader	\$25.01
Backhoe	\$29.46
Flush Tank Truck	\$36.83
Street Sweeper	\$70.20
Push Mower/Trimmer	\$2.97
Skidsteer	\$80.00

All time is figured by rounding up to the next hour. The above rates are for city-owned equipment only **and shall increase by five percent (5%) annually on July 1**. Any necessary equipment that is required to be rented shall be billed at the actual rental rate.

Or, (2) for a second (2<sup>nd</sup>) or subsequent offense, in addition to the charges set for a first (1<sup>st</sup>) offense, a municipal infraction shall issue, per Chapter 3 of the Code of Ordinances.

3-2-10 COLLECTION OF COST OF ABATEMENT. The Clerk shall mail a statement of the total expense incurred to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within one month, the City Clerk shall certify the costs to the County Treasurer and they shall then be collected with, and in the same manner, as general property taxes.

(Code of Iowa, Sec. 364.12(3)(h))

3-2-11 INSTALLMENT PAYMENT OF COST OF ABATEMENT. If the amount expended to abate the nuisance or condition exceeds \$100, the City may permit the assessment to be paid in up to ten annual installments, to be paid in the same manner and at the same rate of interest charged delinquent real estate taxes by the County Treasurer.

(Code of Iowa, Sec. 364.13)

3-2-12 CONDEMNATION OF NUISANCE. The City may condemn a residential, commercial or industrial building found to be abandoned and a public nuisance and take title to the property for the public purpose of disposing of the property under Chapter 657A by conveying the property to a private individual for rehabilitation or for demolition and construction of housing.

(Code of Iowa, Sec. 364.12A)

## SECTION 2. NUISANCES PROHIBITED.

The creation or maintenance of a nuisance is hereby prohibited, and a nuisance may be abated by criminal citation, municipal infraction or as provided in this Ordinance.

SECTION 3. OTHER PROHIBITED CONDITIONS.

The following actions are required and failure to do so shall constitute a nuisance prohibited herein:

- A. The removal of diseased or dead trees or branches on private property. This provision does not apply to trees located on City right-of-way.
- B. The removal, repair or dismantling of a dangerous building or structure.
- C. The numbering of buildings.
- D. The connection to public drainage systems.
- E. The connection to public sewer systems and the installation of sanitary toilet facilities.

SECTION 4. NOTICE TO ABATE NUISANCE.

Whenever the Mayor or other authorized municipal employee finds that a nuisance or other condition as set forth in this Ordinance exists, he or she shall send the property owners a written notice to abate the nuisance within a reasonable time after the notice.

SECTION 5. CONTENTS OF NOTICE TO ABATE.

The notice to abate shall be delivered by ordinary mail and shall contain:

- A. A description of the nuisance.
- B. The location of the nuisance.
- C. A statement of the act or acts necessary to abate the nuisance.
- D. A time period within which to complete the abatement.
- E. A statement that if the nuisance is not abated as directed, the consequences that may occur.

SECTION 6. REQUEST FOR HEARING.

Any person ordered to abate a nuisance may have a hearing with the officer/employee ordering the abatement. A request for hearing must be made in writing and delivered to the officer/employee ordering the abatement within seven working days of the receipt of the notice or the right to hearing shall be waived.

At the conclusion of the hearing, the officer/employee shall render a decision as to whether a

nuisance or prohibited condition exists. If the decision is upheld, the nuisance must be abated immediately.

The property owner may appeal this decision by filing written notice with the City Clerk within five calendar days of the decision. The appeal will be heard before the City Council at a time and place fixed by the City Council. The findings of the Council shall be conclusive, and, if a nuisance is found to exist, it shall be ordered abated.

#### SECTION 7. ABATEMENT IN EMERGENCY.

If it is determined that an emergency exists by reason of the continuing maintenance of a nuisance, the City may perform any action which may be required under this Ordinance without prior notice and may assess the costs of the abatement to the property owner. The property owner has the right to appeal the assessment of the costs as provided in Section 6 above.

#### SECTION 8. ABATEMENT BY CITY.

If the person notified to abate a nuisance fails to abate the nuisance as directed, the City may perform the required action to abate and assess the costs to the property or may file criminal charges or a municipal infraction citation as the City deems fit.

**TITLE III COMMUNITY PROTECTION**

**CHAPTER 3 TRAFFIC CODE**

- 3-3-1 Short Title
- 3-3-2 Definitions
- 3-3-3 Traffic Accident Reports
- 3-3-4 Sheriff Department to Submit Annual Reports

**ENFORCEMENT AND OBEDIENCE TO TRAFFIC REGULATIONS**

- 3-3-5 Authority of Police and Fire Department Officials
- 3-3-6 Required Obedience to Provisions of this Chapter and State Law

**TRAFFIC CONTROL DEVICES**

- 3-3-7 Authority to Install Traffic-Control Devices
- 3-3-8 City Council to Designate Crosswalks, Establish, and Mark Traffic Lanes
- 3-3-9 Play Streets

**SPEED REGULATIONS**

- 3-3-10 Changing State Speed Limits in Certain Zones

**TURNING MOVEMENTS**

- 3-3-11 Turning Markers, Buttons and Signs
- 3-3-12 Authority to Place Restricted Turn Signs
- 3-3-13 Obedience to No-Turn Signs
- 3-3-14 "U" Turns

**ONE-WAY STREETS AND ALLEYS**

- 3-3-15 Authority to Designate One-Way Streets and Alleys
- 3-3-16 One-Way Streets and Alleys

- 3-3-17 Authority on Streets During Certain Periods

**SPECIAL STOPS REQUIRED**

- 3-3-18 Through Highways
- 3-3-19 Authority to Erect Stop Signs
- 3-3-20 Stops at Intersecting Through Highways and Other Intersections
- 3-3-21 Stop When Traffic Is Obstructed
- 3-3-22 School Stops

**PEDESTRIANS' RIGHTS AND DUTIES**

- 3-3-23 Prohibited Crossing
- 3-3-24 Pedestrians on Left

**METHOD OF PARKING**

- 3-3-25 Standing or Parking Close To Curb
- 3-3-26 Standing or Parking on the Left-Hand Side of One-Way Streets
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3-3-1 **SHORT TITLE.** This chapter may be known and cited as the "Traffic Code".

3-3-2 **DEFINITIONS.** Where words and phrases used in this chapter are defined in Chapter 321 of the Code of Iowa, such definitions shall apply to this Ordinance.

1. "Park and parking" means the stopping or standing of a vehicle, except for the purpose of, and while actually engaged in, loading or unloading merchandise or passengers.

2. "Stand or standing" means the halting of a vehicle, whether occupied or not, except for the purpose of and while actually engaged in receiving or discharging passengers.
3. "Stop", when required means complete cessation of movement.
4. "Stop or stopping", when prohibited, means any halting of a vehicle, even momentarily, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.
5. "Business districts" means: the territory contiguous to and including a highway when fifty percent or more of the frontage thereon for a distance of three hundred feet or more is occupied by buildings in use for business.
6. "Residential districts" means all areas of the City not included in business districts.  
(Code of Iowa, Sec. 321.1)

3-3-3 **TRAFFIC ACCIDENT REPORTS.** The driver of a vehicle involved in an accident within the limits of this City shall file a report as and when required by the Iowa Department of Transportation. A copy of this report shall be filed with the Mills County Sheriff Department. All such reports shall be for the confidential use of the Mills County Sheriff department and shall be subject to the provisions of Section 321.271 of the Code of Iowa.

The City shall maintain a suitable system of filing traffic accident reports.  
(Code of Iowa, Sec. 321.266)

3-3-4 **SHERIFF DEPARTMENT TO SUBMIT ANNUAL REPORTS.** The Mills County Sheriff shall prepare annually a traffic report which shall be filed with the Mayor. Such report shall contain information on traffic matters in this City concerning the number of traffic accidents, the number of persons killed or injured, the number and nature of violations, and other pertinent traffic data including the plans and recommendations for future traffic safety activities.

#### ENFORCEMENT AND OBEDIENCE TO TRAFFIC REGULATIONS

3-3-5 **AUTHORITY OF POLICE AND FIRE DEPARTMENT OFFICIALS.** Provisions of this chapter and the Iowa law relating to motor vehicles and law of the road shall be enforced by the officers of the Mills County Sheriff Department. The officers of the sheriff department are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws. In the event of a fire or other emergency, officers of the sheriff department may direct traffic as conditions require notwithstanding the provisions of the traffic laws. Officers of the fire department may direct or assist the police in directing traffic threat or in the immediate vicinity.  
(Code of Iowa, Sec. 321.229)

3-3-6 **REQUIRED OBEDIENCE TO PROVISIONS OF THIS CHAPTER AND STATE LAW.** Any person who shall willfully fail or refuse to comply with any lawful order of a police officer or

direction of a fire department officer during a fire, or who fails to abide by the provisions of this chapter and the applicable provisions of the following Iowa statutes relating to motor vehicles and the law of the road is in violation of this chapter. These sections of the Code are adopted by reference:

1. 321.98 Operation without registration.
2. 321.180 Violations of instruction permit limitations.
3. 321.193 Violation of conditions of restricted license.
4. 321.194 Violation of conditions of minor's school license.
5. 321.216 Unlawful use of license.
6. 321.218 Driving without a valid license (as to simple misdemeanor offenses only).
7. 321.219 Permitting unauthorized minor to drive.
8. 321.220 Permitting unauthorized person to drive.
9. 321.229 Failure to comply with lawful order of peace officer.
10. 321.231 Failure of driver of emergency vehicle to exercise caution while on emergency run (stop signs and signals).
11. 321.232 Radar jamming devices.
12. 321.234 Failure to observe seating requirements.
13. 321.236 (Parking) Violation of local ordinance (not a state offense).
14. 321.256 Failure to obey traffic control device.
15. 321.257 Failure to obey or yield to pedestrian or to official traffic control signal.
16. 321.260 Unlawful possession of, or interference with traffic control device.
17. 321.264 Striking unattended vehicle.

18. 321.265 Striking fixtures upon a highway.
19. 321.275 Motorcycle and motorized bicycles violations.
20. 321.277 Reckless driving.
21. 321.278 Drag racing prohibited.
22. 321.285 Speed restrictions.
23. 321.286 Truck speed limits (highway).
24. 321.287 Bus speed limits (highway).
25. 321.288 Failure to maintain control.
26. 321.294 Failure to maintain minimum speed when directed by officer.
27. 321.295 Excessive speed on bridge.
28. 321.297 Driving on wrong side of two-way highway.
29. 321.298 Failure to yield half of roadway upon meeting vehicle.
30. 321.299 Passing on wrong side.
31. 321.303 Unsafe passing.
32. 321.304 Unlawful passing.
33. 321.305 Violating one-way traffic designation.
34. 321.306 Improper use of lanes.
35. 321.307 Following too closely.
36. 321.308 Following too closely (trucks and towing vehicles).
37. 321.309 Failure to use approved drawbar.
38. 321.310 Unlawful towing of four-wheeled trailer.
39. 321.311 Turning from improper lane.

40. 321.312 Making U-turn on curve or hill.
41. 321.313 Unsafe starting of a stopped vehicle.
42. 321.314 Unsafe turn or failure to give signal.
43. 321.315 Failure to give continuous turn signal.
44. 321.316 Failure to signal stop or rapid deceleration.
45. 321.317 Signal light requirements; see equipment violation.
46. 321.318 Incorrect hand signal.
47. 321.319 Failure to yield to vehicle on right.
48. 321.320 Failure to yield upon left turn.
49. 321.321 Failure to yield upon entering through highway.
50. 321.322 Failure to obey stop or yield sign.
51. 321.323 Unsafe backing on highway.
52. 321.324 Failure to yield to emergency vehicle.
53. 321.325 Pedestrian disobeying traffic control signal.
54. 321.326 Pedestrian walking on wrong side of highway.
55. 321.327 Pedestrian right-of-way.
56. 321.328 Pedestrian failing to use crosswalk.
57. 321.329 Vehicle failing to yield to pedestrian.
58. 321.331 Soliciting ride from within roadway.
59. 321.332 Unlawful use of white cane.
60. 321.333 Failure to yield to blind person.
61. 321.340 Driving in or through safety zone.

62. 321.341 Failure to properly stop at railroad crossing.
63. 321.342 Failure to obey stop sign at railroad crossing.
64. 321.343 Failure to stop certain cargo or passenger vehicle at railroad crossing.
65. 321.344 Unlawful movement of construction equipment across railroad track.
66. 321.353 Unsafe entry into sidewalk or roadway.
67. 321.354 Stopping on traveled part of highway.
68. 321.358 Stopping, standing, or parking where prohibited.
69. 321.360 Prohibited parking in front of certain buildings.
70. 321.361 Parking too far from curb/angular parking.
71. 321.362 Parking without stopping engine and setting brake.
72. 321.363 Driving with obstructed view or control.
73. 321.365 Coasting upon downgrade.
74. 321.366 Improper use of median, curb, or controlled access facility.
75. 321.367 Failure to maintain distance fire-fighting vehicle.
76. 321.368 Crossing unprotected fire hose.
77. 321.369 Putting debris on highway/roadway.
78. 321.370 Removing injurious material.
79. 321.371 Clearing up wrecks.
80. 321.372 School bus provisions.
81. 321.377 Excessive speed of school bus.
82. 321.381 Driving or towing unsafe vehicle.
83. 321.382 Operating underpowered vehicle.

84. 321.383 Failure to display reflective device on slow-moving vehicles.
85. 321.384 Failure to use headlamps when required.
86. 321.385 Insufficient number of headlamps.
87. 321.386 Insufficient number of headlamps-motorcycles and motorized bicycles.
88. 321.387 Improper rear lamp.
89. 321.388 Improper registration plate lamp.
90. 321.389 Improper rear reflector.
91. 321.390 Reflector requirements.
92. 321.391 Improper type of reflector.
93. 321.392 Improper clearance lighting on truck or trailer.
94. 321.393 Lighting device color and mounting.
95. 321.394 No lamp or flag on rear-projecting load.
96. 321.395 Parking on certain roadways without parking lights.
97. 321.397 Improper light on bicycle.
98. 321.398 Improper light on other vehicle.
99. 321.402 Improper use of spotlight.
100. 321.403 Improper use of auxiliary driving lights.
101. 321.404 Improper brake light.
102. 321.408 Back-up lamps.
103. 321.409 Improperly adjusted headlamps.
104. 321.415 Failure to dim.
105. 321.419 Improper headlighting when night driving.

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| 106. | 321.420 | Excessive number of driving lights.                                     |
| 107. | 321.422 | Lights of improper color-front or rear.                                 |
| 108. | 321.423 | Special light/signal provision.   |
| 109. | 321.430 | Defective braking equipment.  |
| 110. | 321.431 | Brake performance ability.  |
| 111. | 321.432 | Defective audible warning device.                                       |
| 112. | 321.433 | Unauthorized use of emergency audible warning devices on motor vehicle. |
| 113. | 321.434 | Use of siren or whistle on bicycle.                                     |
| 114. | 321.436 | Defective or unauthorized muffler system.                               |
| 115. | 321.437 | Mirrors.  |
| 116. | 321.438 | Windshields.  |
| 117. | 321.439 | Defective windshield wiper.   |
| 118. | 321.440 | Defective tires.  |
| 119. | 321.441 | Unauthorized use of metal tire or track.                                |
| 120. | 321.442 | Unauthorized use of metal projection on wheels.                         |
| 121. | 321.444 | Failure to use safety glass.  |
| 122. | 321.445 | Failure to maintain or use safety belts.                                |
| 123. | 321.446 | Failure to secure child.  |
| 124. | 321.449 | Special regulations.  |
| 125. | 321.450 | Hazardous materials.  |
| 126. | 321.454 | Width and length violations.  |
| 127. | 321.455 | Excessive side projection of load – passenger vehicle.                  |

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| 128. | 321.456 | Excessive height.   |
| 129. | 321.457 | Excessive length.   |
| 130. | 321.458 | Excessive projection from front of vehicle.                                 |
| 131. | 321.459 | Excessive weight – dual axels (each over 2000 lb. over).                    |
| 132. | 321.460 | Spilling loads on highways.   |
| 133. | 321.461 | Excessive tow-bar length.   |
| 134. | 321.462 | Failure to use required towing equipment.                                   |
| 135. | 321.463 | Maximum gross weight.   |
| 136. | 321.466 | Gross weight in excess of registered gross weight (for each 2000 lb. over). |

**TRAFFIC CONTROL DEVICES**

**3-3-7 AUTHORITY TO INSTALL TRAFFIC-CONTROL DEVICES.** The City Council shall cause to be placed and maintained traffic-control devices when and as required under this chapter or other Ordinances of this City to make effective their provisions, and may so cause to be placed and maintained such additional, emergency, or temporary traffic-control devices for the duration of an emergency or temporary condition as traffic conditions may require, to regulate traffic under the traffic Ordinances of this City or under State law or to guide or warn traffic.

The City Clerk shall keep a record of all traffic-control devices maintained by the City.

All traffic-control devices shall comply with current standards established by the Manual of Uniform Traffic Control Devices for Streets and Highways at the time the control device is placed or erected.  
(Code of Iowa, Sec. 321.255 and 321.256)

**3-3-8 CITY COUNCIL TO DESIGNATE CROSSWALKS, ESTABLISH, AND MARK TRAFFIC LANES.** The City Council is hereby authorized:

1. To designate and maintain by appropriate devices, marks or lines upon the surface of the roadway, crosswalks at intersections where, due to traffic conditions, there is particular danger to pedestrians crossing the street or roadway, and at such other places as traffic conditions require.
2. To mark lanes for traffic on street pavements at such places as traffic conditions require, consistent with the traffic Code of this City. Where traffic lanes have been marked, it shall

be unlawful for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of a lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement.

3-3-9 PLAY STREETS. The Mayor with approval of the City Council has the authority to declare any street or part thereof a play street and to place appropriate signs or devices in the roadway indicating and helping to protect the same.

Whenever authorized signs are erected indicating any street or part thereof as a play street, no person shall drive a vehicle upon the street or any portion thereof except drivers of vehicles having business or whose residences are within the closed area, and then the driver shall exercise the greatest care in driving upon the street or portion thereof.

### SPEED REGULATIONS

3-3-10 CHANGING STATE SPEED LIMITS IN CERTAIN ZONES. It is hereby determined upon the basis of an engineering and traffic investigation that the speed permitted by State law upon the following streets or portions thereof is greater or less than is necessary for the safe operation of vehicles thereon, and it is declared that the maximum speed limit upon these streets or portions thereof described shall be as follows:

1. Increased speed limit:
2. Lower speed limit:

(Code of Iowa, Sec. 321.290)

### TURNING MOVEMENTS

3-3-11 TURNING MARKERS, BUTTONS AND SIGNS. The Mayor with approval of the City Council may cause markers, buttons, or signs to be placed within or adjacent to intersections, and thereby require and direct, as traffic conditions require, that a different course from that specified by the State law be traveled by vehicles turning at intersections, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by the markers, buttons, or signs, including right-hand turns at intersections with automatic traffic signals.

(Code of Iowa, Sec. 321.311)

3-3-12 AUTHORITY TO PLACE RESTRICTED TURN SIGNS. The Mayor with approval of City Council is authorized to determine those intersections, as traffic conditions require, at which the drivers of vehicles shall not make a right or left turn. The making of turns may be prohibited between certain hours of any day, in which event the same shall be plainly indicated on signs.

3-3-13 OBEEDIENCE TO NO-TURN SIGNS. Whenever authorized signs are erected indicating that no right or left turn is permitted, no driver of a vehicle shall disobey the directions of any such signs.

3-3-14 "U" TURNS. It shall be unlawful for a driver to make a "U" turn except at an intersection. "U" turns are prohibited at intersections within the business district and at intersections where there are automatic traffic signals.

#### ONE-WAY STREETS AND ALLEYS

3-3-15 AUTHORITY TO DESIGNATE ONE-WAY STREETS AND ALLEYS. Whenever any traffic Code of this City designates any one-way street or alley the Mayor with approval of City Council shall cause to be placed and maintained signs giving notice thereof and the regulation shall not be effective unless the signs are in place. Signs indicating the direction of traffic movement shall be placed at every intersection where movement of traffic in the opposite direction is prohibited. It shall be unlawful for any person to operate any vehicle in violation of markings, signs, barriers or other devices placed in accordance with this section.

3-3-16 ONE-WAY STREETS AND ALLEYS. Upon the following streets and alleys vehicular traffic shall move only in the indicated direction:

3-3-17 AUTHORITY TO RESTRICT DIRECTION OF MOVEMENT ON STREETS DURING CERTAIN PERIODS. The Mayor or Mills County Sheriff Department is authorized to determine and recommend to the Council certain streets, or specified lanes thereon, upon which vehicular traffic shall proceed in one direction during one period and the opposite direction during another period of the day and shall, upon authority given by Ordinance, place and maintain appropriate markings, signs, barriers, or other devices to give notice thereof. The Mayor with approval of City Council may erect signs temporarily designating lanes to be used by traffic moving in a particular direction, regardless of the center line of the roadway.

It shall be unlawful for any person to operate any vehicle in violation of markings, signs, barriers, or other devices placed in accordance with this section.

The following streets may have variable laning or direction of traffic at different times of day as marked by authorized signs under the provisions of this section:

#### SPECIAL STOPS REQUIRED

3-3-18 THROUGH HIGHWAYS. Streets or portions of streets described below are declared to be through highways:

(Code of Iowa, Sec. 321.345 and 321.350)

3-3-19 AUTHORITY TO ERECT STOP SIGNS. Whenever any Ordinance of this City designates and describes a through highway it shall be the duty of the Mayor with approval of City

Council to cause to be placed and maintained a stop sign on each and every street intersecting through highway except as modified in the case of intersecting through highways.

3-3-20 STOPS AT INTERSECTING THROUGH HIGHWAYS AND OTHER INTERSECTIONS. At the intersections of through highways and at intersections upon streets other than through highways, where, because of heavy cross-traffic or other traffic conditions, particular hazard exists, the Mills County Sheriff Department or the Mayor with approval of City Council is hereby authorized to determine whether vehicles shall stop or yield at one or more entrances to the intersection and shall present recommendations to the Council, and, upon approval of the Council, shall erect an appropriate sign at every place where a stop or yield is required.

3-3-21 STOP WHEN TRAFFIC IS OBSTRUCTED. Notwithstanding any traffic-control signal indication to proceed, no driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle.

3-3-22 SCHOOL STOPS. When a vehicle approaches an authorized school stop, the driver shall bring the vehicle to a full stop at a point ten feet from the approach side of the crosswalk marked by an authorized school stop sign, and thereafter proceed in a careful and prudent manner until the driver shall have passed such school site.

#### PEDESTRIANS' RIGHTS AND DUTIES

3-3-23 PROHIBITED CROSSING. Pedestrians crossing a street in the business district shall cross in the crosswalks only.

(Code of Iowa, Sec. 321.327)

3-3-24 PEDESTRIANS ON LEFT. Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway. Where sidewalks are not provided pedestrians at all times when walking on or along a roadway, shall walk on the left side of the roadway.

(Code of Iowa, Sec. 321.326)

#### METHOD OF PARKING

3-3-25 PARKING FOR PERSONAL VEHICLES. Personal vehicles include passenger cars, vans, sport utility vehicles, pickup trucks, boats and boat trailers. Maximum height of any personal vehicle may not exceed eight (8) feet from grade.

1. Parking is permitted within any enclosed structure when such structure conforms to the regulations of its zoning district.
2. **Parking is permitted on an all-weather driveway (defined as either paved, gravel or stone) within the front yard setback, but shall in no case encroach upon the public right-of-way. Personal vehicles may not be parked on the grass.**

3. Parking may occur in the rear yard or side yard setback if on an all-weather parking space which is connected by an all-weather driveway to a dedicated public right-of-way and/or alley.
4. No person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the right-hand wheels of the vehicle within eighteen inches of the curb or edge of the roadway except as provided in the case of angle parking and vehicles parked on the left-hand side of one-way streets.  
(Code of Iowa, Sec. 321.361)

3-3-26 **STANDING OR PARKING ON THE LEFT-HAND SIDE OF ONE-WAY STREETS.** No person shall stand or park a vehicle on the left-hand side of a one-way street other than parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the left-hand wheels of the vehicle within eighteen inches of the curb or edge of the roadway except as provided in the case of angle parking.

(Code of Iowa, Sec. 321.361)

3-3-27 **SIGNS OR MARKINGS INDICATING ANGLE PARKING.** The City Council, as traffic conditions require, shall determine upon what streets angle parking shall be permitted and shall mark or sign the streets or portions thereof indicating the method of angle parking. The determination shall be subject to approval by Council resolution.

(Code of Iowa, Sec. 321.361)

3-3-28 **OBEDIENCE TO ANGLE PARKING SIGNS OR MARKINGS.** Upon those streets or portions of streets that have been signed or marked for angle parking, no person shall park or stand a vehicle other than at an angle to the curb or edge of the roadway or in the center of the roadway as indicated by the signs and markings.

#### **STOPPING, STANDING, OR PARKING PROHIBITED IN SPECIFIED PLACES**

3-3-29 **STOPPING, STANDING, OR PARKING PROHIBITED IN SPECIFIED PLACES.** No person shall stop, stand or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control device, in any of the following places:

(Code of Iowa, Sec. 321.358)

1. On a sidewalk.
2. In front of a public or private driveway.
3. Within an intersection.
4. Within five (5) feet of either side of the point on the curb nearest to a fire hydrant.

5. On a crosswalk.
6. Within ten (10) feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of the roadway.
7. Within fifty (50) feet of the nearest rail of a railroad crossing, except when parked parallel with such rail and not exhibiting a red light.
8. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance when properly signposted.
9. Alongside or opposite any street excavation or obstruction when such stopping, standing, or parking would obstruct traffic.
10. On the roadway side of any vehicle stopped or parked at the edge or curb of street.
11. Opposite the entrance to a garage or driveway in such a manner or under such conditions as to leave available less than twenty (20) feet of the width of the roadway for the free movement of vehicular traffic.
12. Upon any street or in any alley in any part of the City in such a manner or under such conditions as to leave available less than ten (10) feet of the width of the roadway of such street or alley for the free movement of vehicular traffic, except when necessary in obedience to traffic regulations or traffic signs, or signals of a police officer.
13. At any place where official signs or curb markings prohibit stopping, standing or parking.
14. Within ten (10) feet of the crosswalk at all intersections within the City.
15. In an alley under any fire escape at any time.
- 16. Overnight parking on Main Street, from 3<sup>rd</sup> Street to 5<sup>th</sup> Street, between the hours of three o'clock (3:00) am and six o'clock (6:00) am.**
- 17. Overnight parking on Marion Avenue between the hours of three o'clock (3:00) am and six o'clock (6:00) am.**

3-3-30 AUTHORITY TO PAINT CURBS AND ERECT SIGNS PROHIBITING STANDING OR PARKING. When, because of restricted visibility or when standing or parked vehicles constitute a hazard to moving traffic, or when other traffic conditions require, the City Council may cause curbs to be painted with a yellow or orange color and erect "no parking" or "standing"

signs. It shall be unlawful for the operator of any vehicle to stand or park a vehicle in an area so painted or sign-posted. It shall be unlawful for any person, other than after having first secured the permission of the City Council, to paint any curbing, sidewalk or street with yellow or orange colored paint or to erect "no parking" signs.

(Code of Iowa, Sec. 321.358(10))

3-3-31 **AUTHORITY TO IMPOUND VEHICLES.** Members of the law enforcement department are authorized to remove, or cause to be removed, a vehicle from a street, public alley, or highway to the nearest garage or other place of safety, or to a garage designated or maintained by the law enforcement department, or otherwise maintained by the City, under the following circumstances:

1. When a vehicle is upon a roadway and is so disabled as to constitute an obstruction to traffic and the person or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal.
2. When any vehicle is left unattended upon a street and constitutes a definite hazard or obstruction to the normal movement of traffic.
3. When any vehicle is left parked upon a street for a continuous period of forty-eight hours or more. A diligent effort shall first be made to locate the owner. If the owner is found, the owner shall be given the opportunity to remove the vehicle.
4. When any vehicle is left parked in violation of a ban on parking during a snow emergency as proclaimed by the Mayor.

In addition to the penalties hereinafter provided, the owner or driver of any vehicle impounded for violation of any of the provisions of this chapter shall be required to pay the reasonable cost of towing charges and storage.

#### STOPPING, STANDING OR PARKING

3-3-32 **PARKING SIGNS REQUIRED.** Whenever by this or any other chapter of this City Code any parking time limit is imposed or parking is prohibited on designated streets or portions of streets it shall be the duty of the Mayor to erect appropriate signs giving notice thereof and the regulations shall not be effective unless signs are erected and in place at the time of any alleged offense. When signs are erected giving notice thereof, no person shall disobey the restrictions stated on such signs.

(Code of Iowa, Sec. 321.236)

3-3-33 **PARKING DURING SNOW EMERGENCY.** No person shall park, abandon, or leave unattended any vehicle on any public street, alley, or City-owned off-street parking area during any snow emergency proclaimed by the Mayor unless the snow has been removed or plowed from said street, alley or parking area and the snow has ceased to fall. A snow emergency parking ban shall continue from its proclamation through the duration of the snow or ice storm and the forty-eight hour

period after cessation of the storm except as above provided upon streets which have been fully opened.

The ban shall be of uniform application and the Mayor is directed to publicize the requirements widely, using all available news media, in early November each year. When predictions or occurrences indicate the need, the Mayor shall proclaim a snow emergency and the Mayor shall inform the news media to publicize the proclamation and the parking rules under the emergency. Such emergency may be extended or shortened when conditions warrant.

(Code of Iowa, Sec. 321.236)

3-3-34 ALL-NIGHT PARKING PROHIBITED. No person, except physicians or other persons on emergency calls, shall park a vehicle on any street marked to prohibit all night parking and giving notice thereof, for a period of time longer than thirty minutes between the hours of 3 a.m. and 6 a.m. of any day.

3-3-35 TRUCK PARKING LIMITED. No person shall park a motor truck, semi-trailer, or other motor vehicle with trailer attached in violation of the following regulations. The provisions of this section shall not apply to pickup, light delivery or panel delivery trucks.

(Code of Iowa, Sec. 321.236 [1])

1. City Streets. Excepting only when such vehicles are actually engaged in loading or unloading merchandise or cargo, no person shall park or leave unattended such vehicle on any streets within the City. When actually receiving or delivering merchandise or cargo such vehicle shall be stopped or parked in a manner which will not interfere with other traffic.
2. Noise. No such vehicle shall be left standing or parked upon any street, alley, public or private parking lot, or drive of any service station between the hours of eleven o'clock (11:00) p.m. and five o'clock (5:00) a.m. with the engine, auxiliary engine, air compressor, refrigerating equipment or other device in operation giving off audible sounds excepting only the drive of a service station when actually being serviced, and then in no event for more than thirty (30) minutes.
3. Livestock. No such vehicle containing livestock shall be parked on any street, alley or highway for a period of time of more than thirty 30 minutes.
4. Penalty. The following penalty provision shall govern all violations of 3-3-35: The simple notice of a fine, first (1<sup>st</sup>) offense, shall be in the amount of one hundred dollars (\$100.00) if paid within seventy-two (72) hours of the issuance of the citation, though if paid later than seventy-two (72) hours of the issuance of the citation, the fine shall be two hundred dollars (\$200.00). The simple notice of a fine, subsequent offense, shall be in the amount of five hundred (\$500.00), and such vehicle shall be impounded per Section 3-3-31.

3-3-36 RECREATIONAL VEHICLE PARKING ON SINGLE FAMILY OR TWO FAMILY LOT. Recreational vehicles, including campers, motor homes, boats or trailers of any length or size, shall not be parked within a residential zoning district, except as provided below. These conditions are in addition to those requirements for the parking of personal vehicles.

1. Any combination of two of three: Any residence is limited to one camper or motorhome, one boat on trailer, or flatbed/enclosed trailer.
2. Recreational Vehicle shall be parked in an enclosed building, the side yard, or rear yard, but not in the front yard except as provided in Item #13 below.
3. Recreational Vehicle may be parked on the front drive for up to two (2) days to load and two (2) days to unload as related to a trip.
4. Recreational Vehicle may not be dollied down on a City street and must abide by paragraph 70.06(4) in Traffic Code Enforcement Procedures regarding forty-eight (48) hour parking.
5. Recreational Vehicle may not be parked closer than seven and one-half (7.5) feet to any side-yard property line or five (5) feet from an adjoining alley.
6. The Recreational Vehicle must be parked or stored on a dust-free surface of water-permeable grass pavers, cement, asphalt, or other similar ground cover. Parking shall be allowed on a gravel pad only if it is kept with ample gravel as to be weed and grass free and it is not muddy. Any pad added must meet the requirements herein on lines 2, 3, and 5 above.
7. Recreational Vehicle must be operable, with equipment being in a usable working condition at all times, not leaking fluids, and maintained in a clean, well-kept state that does not detract from the appearance of the surrounding area. The recreational vehicle and the area where such vehicle is parked shall be maintained in a clean and neat manner. No disposing of gray water or chemical water in the city streets, yards, or city sewer. A dump station is provided at T&N Park for said waste.
8. Recreational vehicles shall not be used for or substituted for a storage shed in any form, or used for storage of goods, materials, or equipment other than those items which pertain to the use of the vehicle.
9. Recreational Vehicles not moved or used within a one-year period shall be considered a nuisance and may be removed from the property.
10. Recreational Vehicle equipped with liquefied petroleum gas containers must ensure that such containers must meet the current standards of the Interstate Commerce Commission, the United States Department of Transportation, or the American Society of Mechanical Engineers. Any valves must be closed at all times that the vehicle is not in preparation for immediate use. Leaks in containers must be repaired immediately.

11. Recreational Vehicle may not be 1) used for on-site dwelling purposes for more than twenty-one (21) days per year; or 2) permanently connected to sewer lines, water lines or electrical lines, unless approved by the City Council in the event of an emergency or natural disaster, in which case any provision in this article is subject to Council leniency.
12. The storage or keeping of Recreational Vehicles not having a properly issued current motor vehicle registration and current motor vehicle license plate properly displayed is prohibited on any lot, parcel or tract of land or part thereof, situated within the zoning jurisdiction of the City of Malvern, except for recreational vehicles stored within a fully enclosed building or held for sale by a licensed motor vehicle dealer at his/her place of business in a zoning district which permits such use.
13. Parking of one (1) Recreational Vehicle is permitted on a front driveway provided that the following conditions are met:
  - a. Approval is acquired by you from the City Council.
  - b. No part of the Recreational Vehicle shall encroach upon side yards, sidewalks, or sit upon City right-of-way.
  - c. Inside parking is not possible.
  - d. There is no reasonable access to the rear or side yard. A lot shall be deemed to have reasonable access to the rear or side yard if:
    - (1) The side yards are ten (10) feet or more in width;
    - (2) There is less than ten (10) feet of difference in the elevation of the front and rear yards as measured at the front and rear lot lines; and
    - (3) There are not large trees (trunk four (4) inches in caliper) or large shrubs (six (6) feet in height in the side yards.
    - (4) Corner lots shall normally be deemed to have reasonable access to the rear yard.
    - (5) A fence shall not be deemed as preventing reasonable access.
14. Any Recreational Vehicle parked or stored in violation of the provisions of this section shall be deemed a nuisance. Any person violating the provisions of this section shall be deemed to be keeping, allowing, and maintaining a nuisance in violation of Chapter 3-2 of this code. The provision of Chapter 3-2 of this code regarding penalties, additional relief, abatement emergency and liability shall apply to violation of the provision of this section.

15. The provision of this section may be enforced by criminal or civil processes by any peace officer or parking enforcement officer. Further the provisions of this section may also be enforced by civil processes by the building official, director of public works, or zoning enforcement official, or their respective designee, and by the director of public health.

## MISCELLANEOUS DRIVING RULES

3-3-37 VEHICLES NOT TO BE DRIVEN ON SIDEWALKS. The driver of a vehicle shall not drive upon or within any sidewalk area.

3-3-38 CLINGING TO VEHICLES. No person shall drive a motor vehicle on the streets of this City unless all passengers of the vehicle are inside the vehicle in the place intended for their accommodation. No person shall ride on the running board of a motor vehicle or in any other place not customarily used for carrying passengers. No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself or herself to any vehicle upon a roadway.

3-3-39 PARKING FOR CERTAIN PURPOSES PROHIBITED. No person shall park a vehicle upon the roadway for the principal purpose of:

1. Displaying such vehicle for sale.
2. Displaying advertising.
3. Selling merchandise from the vehicle except in a duly established market place or when so authorized or licensed under the Ordinances of this City.
4. Storage or as junk or dead storage for more than forty-eight hours.
5. For lubricating, repairing or for commercial washing of such vehicle except such repairs as are needed by an emergency.

3-3-40 DRIVING THROUGH FUNERAL OR OTHER PROCESSION. No driver of any vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when the vehicles are conspicuously designated as required in this chapter. This provision shall not apply at intersections where traffic is controlled by traffic-control signals or police officers.

3-3-41 DRIVERS IN A PROCESSION. Each driver in a funeral or other procession shall drive as near to the right-hand edge of the roadway as practical and shall follow the vehicle ahead as closely as is practical and safe.

3-3-42 FUNERAL PROCESSIONS TO BE IDENTIFIED. A funeral procession composed of vehicles shall be identified as such by the display upon the outside of each vehicle of a pennant or

other identifying insignia or by such other method as may be determined and designated by the sheriff department.

3-3-43 LOAD RESTRICTIONS UPON VEHICLES USING CERTAIN STREETS. When signs are erected giving notice thereof, no person shall operate any vehicle licensed in excess of the amounts specified on the signs at any time upon any of the following streets within the City and none other:

1. Main St
2. 14<sup>th</sup> St
3. W 9<sup>th</sup> Street west of Main St
4. W 11<sup>th</sup> St west of Main St
5. 7<sup>th</sup> Ave between W 11<sup>th</sup> St and W 5<sup>th</sup> St
6. W 5<sup>th</sup> St west of Main St
7. W 3<sup>rd</sup> St between 2<sup>nd</sup> St and Main St
8. 2<sup>nd</sup> Street between 4<sup>th</sup> St and 1<sup>st</sup> St
9. E 2<sup>nd</sup> St
10. Lambert Ave

3-3-44 TRUCK ROUTES.

1. Every motor vehicle licensed for five tons or more, having no fixed terminal within the City or making no scheduled or definite stops within the City for the purpose of loading or unloading, shall travel over or upon the following streets within the City and none other:
  - a. Main St
  - b. 14<sup>th</sup> St
  - c. W 9<sup>th</sup> Street west of Main St
  - d. W 11<sup>th</sup> St west of Main St
  - e. 7<sup>th</sup> Ave between W 11<sup>th</sup> St and W 5<sup>th</sup> St
  - f. W 5<sup>th</sup> St west of Main St
  - g. W 3<sup>rd</sup> St between 2<sup>nd</sup> St and Main St
  - h. 2<sup>nd</sup> Street between 4<sup>th</sup> St and 1<sup>st</sup> St
  - i. E 2<sup>nd</sup> St
  - j. Lambert Ave
2. Any motor vehicle licensed for five tons or more, having a fixed terminal, making a scheduled or definite stop within the City for the purpose of loading or unloading, shall proceed over or upon the designated routes set out in this section to the nearest point of its scheduled or definite stop and shall proceed thereto, load or unload and return, by the most direct route to its point of departure from the designated route.
3. The owner, or any other person, employing or otherwise directing the driver of any vehicle shall not require or knowingly permit the operation of such vehicle upon a street in any manner contrary to this section.

3-3-45 VEHICULAR NOISE.

1. It shall be unlawful for any person to make, continue or cause any disturbing, excessive or offensive noise which results in discomfort or annoyance to any reasonable person of normal sensitivity by means of radio, compact disk player, stereo, speakers, cassette tape player or similar sound device in a motor vehicle.
2. The operation of any radio, compact disk player, stereo, speakers, cassette tape player or similar sound device in such a manner so as to be audible at a distance of two hundred (200') from the motor vehicle shall constitute evidence of a prima facie violation of this section.

3-3-46 ENGINE AND COMPRESSION BRAKES.

1. It shall be unlawful for the driver of any vehicle to use or operate or cause to be used or operated within the City, any engine brake, compression brake or mechanical exhaust device designed to aid in the braking or deceleration of any vehicle that results in excessive, loud, unusual or explosive noise from such vehicle.
2. The usage of an engine brake, compression brake or mechanical exhaust device designed to aid in braking or deceleration in such a manner so as to be audible at a distance of three hundred feet (300') from the motor vehicle shall constitute evidence of a prima facie violation of this section.

BICYCLE REGULATIONS

3-3-47 DEFINITIONS. For the purpose of this Chapter the following terms are defined:

1. "Bicycles" shall mean either of the following:
  - a. A device having two wheels and having at least one saddle or seat for the use of a rider which is propelled by human power.
  - b. A device having two or more wheels with fully operable peddles and an electric motor less than seven hundred fifty watts (one horsepower), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden, is less than twenty miles per hour.

(Code of Iowa, Sec. 321.1)  
(Amended in 2008)

3-3-48 TRAFFIC CODE APPLIES TO PERSONS RIDING BICYCLES. Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to drivers of vehicles by the laws of this State regarding rules of the road applicable to vehicles or by the traffic Ordinances of this City applicable to drivers of vehicles, except as to those

provisions which by their nature can have no application. Whenever a person dismounts from a bicycle such person shall be subject to all regulations applicable to pedestrians.

3-3-49 RIDING ON BICYCLES. A person propelling a bicycle shall not ride other than astride a permanent and regular seat.

No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

3-3-50 RIDING ON ROADWAYS AND BICYCLE PATHS. Every person operating a bicycle upon a roadway shall ride as near to the right-hand side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

Persons riding bicycles upon a roadway shall not ride more than two (2) abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

3-3-51 SPEED. No person shall operate a bicycle at a speed greater than is reasonable and prudent under existing conditions.

3-3-52 EMERGING FROM ALLEY OR DRIVEWAY. The operators of a bicycle emerging from an alley, driveway, or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right of way to all pedestrians approaching on the sidewalk or sidewalk area, and upon entering the roadway shall yield the right of way to all vehicles approaching on said roadway.

3-3-53 CARRYING ARTICLES. No person operating a bicycle shall carry any package, bundle, or article which prevents the rider from keeping at least one hand upon the handle bars.

3-3-54 PARKING. Bicycles shall be parked upon the roadway of a street against the curb, or upon the sidewalk in a rack to support bicycles, or against a building, or at the curb, in such a manner as to afford the least obstruction to pedestrian traffic.

3-3-55 RIDING ON SIDEWALKS. No person shall ride a bicycle on a sidewalk within a business district.

When signs are erected on a sidewalk or roadway prohibiting the riding of bicycles on the sidewalk or roadway, no person shall disobey such signs.

Whenever a person is riding a bicycle upon a sidewalk, the person shall yield the right of way to any pedestrian and shall give a timely audible signal before overtaking and passing a pedestrian.

3-3-56 LAMPS AND OTHER EQUIPMENT ON BICYCLES. Every bicycle when in use at nighttime shall be equipped with a lamp on the front that emits a white light visible from a distance of at least 500 feet to the front and with a red reflector on the rear of a type that is visible from all distances from 50 feet to 300 feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector.

Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheel skid on dry, level, clean pavement.

## SNOWMOBILES

### 3-3-57 SNOWMOBILE DEFINITIONS.

1. "Snowmobile" means a self-propelled vehicle designed for travel on snow or ice in a natural terrain steered by wheels, skis or runners.
2. "Operate" means to control the operation of a snowmobile.
3. "Operator" means a person who operates or is in actual control of a snowmobile.

3-3-58 PERMITTED AREAS OF OPERATION. Snowmobiles will be allowed to operate in the City as follows:

The route established herein shall be the only permitted snowmobile route and the snowmobiles shall be operated within the roadways of said public streets and shall also be subject to the following regulations.

3-3-59 REGULATIONS. It shall be unlawful for any person to operate a snowmobile under the following circumstances:

1. On private property of another without the express permission to do so by the owner or occupant of said property.
2. On public school grounds, park property, playgrounds, recreational areas and golf courses without express permission to do so by the proper public authority.
3. In a manner so as to create loud, unnecessary or unusual noise so as to disturb or interfere with the peace and quiet of other persons.
4. In a careless, reckless or negligent manner so as to endanger the safety of any person or property of any other person.

5. Without having such snowmobile registered as provided for by Iowa Statute except that this provision shall not apply to the operation of a snowmobile on the private property of the owner by the owner or a member of his immediate family.
6. Within the right-of-way of any public street or alley within the City unless the operator shall have a valid driver's license; or an instruction permit and accompanied by a qualified licensed driver.
7. No person shall operate a snowmobile in the City from ten o'clock (10:00) p.m. to six o'clock (6:00) a.m., except for the purpose of loading and unloading a snowmobile from another vehicle or trailer.

3-3-60 EQUIPMENT REQUIRED. All snowmobiles operated within the City shall have the following equipment:

1. Mufflers which are properly attached and which reduce the noise of operation of the vehicle to the minimum noise necessary for operating the vehicle and no person shall use a muffler cut-out, by-pass or similar device on said vehicle.
2. Adequate brakes in good operating condition and at least one headlight and one taillight in good operating condition.
3. A safety or so-called "dead-man" throttle in operating condition; a safety or "dead-man" throttle is defined as a device which when pressure is removed from the accelerator or throttle causes the motor to be disengaged from the driving track.

3-3-61 UNATTENDED VEHICLES. It is unlawful for the owner or operator to leave or allow a snowmobile to be or remain unattended on public property while the motor is running or the key left in the ignition.

3-3-62 RESTRICTION OF OPERATION. The City Council may, by resolution, prohibit the operation of snowmobiles within the right-of-way of the public roads, streets or alley or other City property within the City when the public safety and welfare so requires.

3-3-63 TRAFFIC REGULATION. Each person operating a snowmobile shall strictly observe all traffic signs and signals and all other traffic rules and regulations applicable thereto, and shall obey the orders and directions of any police officer of the City authorized to direct or regulate traffic.

#### OFF-ROAD VEHICLES

3-3-64 DEFINITIONS. For use in this Chapter the following terms are defined:

1. "All-terrain vehicle" (ATV) means a motor vehicle designed to travel on three or more wheels and designed primarily for off-road recreational use. "All-terrain vehicle" includes

off-road utility vehicles as defined in Section 321I.1, but does not include farm tractors or equipment, construction equipment, forestry vehicles, or lawn and grounds maintenance vehicles.

2. "Off-road motorcycle" means a two-wheeled motor vehicle that has a seat or saddle designed to be straddled by the operator and handlebars for steering control and that is intended by the manufacturer for use on natural terrain. "Off-road motorcycle" includes a motorcycle that was originally issued a certificate of title and registered for highway use under Chapter 321, but which contains design features that enable operation over natural terrain.
3. "Off-road utility vehicle" means a motorized flotation-tire vehicle with not less than four and not more than six low-pressure tires that is limited in engine displacement to less than one thousand five hundred cubic centimeters and in total dry weight to not more than one thousand eight hundred pounds and that has a steering wheel for control.

(Code of Iowa, Sec. 321I.1(1))

3-3-65 OPERATION OF OFF-ROAD VEHICLES. The operation of ATV or off-road motorcycles shall comply with the following restrictions:

1. Streets. Only on such streets as may be designated by the City Council.  
(Code of Iowa 321.234A)  
(Code of Iowa 321I)
2. Prohibited Operation. Shall not be operated on sidewalks, railroad right-of-way, parks, or other City land.
3. Operation During Darkness. Every all-terrain vehicle operated during the hours of darkness shall display a lighted headlamp and tail lamp.  
(Code of Iowa 321I.13)
4. Compliance with State Code. All operation shall comply with Iowa Code Chapter 321I.
5. In a manner so as to create loud, unnecessary or unusual noise so as to disturb or interfere with the peace and quiet of other persons.

3-3-66 RESERVED

3-3-67 RESERVED

3-3-68 RESERVED

GOLF CARTS

### 3-3-69 DEFINITIONS.

1. "Golf cart" means a three or four wheeled recreational vehicle generally used for transportation of person(s) in the sport of golf, which is limited in engine displacement of less than 800 cubic centimeters and total dry weight of less than 800 pounds.
2. "Operate" means to ride in or on, other than as a passenger, use, or, control the operation of a golf cart in any manner, whether or not the golf cart is moving.
3. "Operator" means a person, who operates or is in actual physical control of a golf cart.
4. "Roadway" means that portion of a street improved, designated, or ordinarily used for vehicular travel.
5. "Street" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular travel.

### 3-3-70 OPERATION ON ROADWAYS, STREETS

1. The operation of the golf carts, on city streets, is to be only by persons possessing a valid driver's license or by special permit for disabilities and 16 years of age or older.  
(Code of Iowa, Sec. 321.247)
2. It is unlawful for any parent, guardian, or other person having the care, custody, and control of a minor under the age of sixteen (16) years to knowingly or negligently permit or allow such a minor to violate the provisions of this Section.  
(Code of Iowa, Sec. 321.219)
3. The operation of golf cars on city streets is to be only from sunrise to sunset unless equipped with proper headlights. They shall not be operated when visibility is such that there is insufficient light to clearly see person and vehicles at a distance of 500 feet.  
(Code of Iowa, Sec. 321.247)
4. The number of occupants in the motorized golf cart may not exceed the design occupant load.

### 3-3-71 EQUIPMENT REQUIRED

1. Golf carts without roofs shall be equipped with a bicycle safety flag for operation on city streets.
2. Golf carts shall be equipped with adequate brakes to be operated on city streets.  
(Code of Iowa, Sec. 321.247)

3. Golf carts shall be in good mechanical condition and thoroughly safe for transportation of passengers.
4. Golf cart operators and passengers are required to wear seatbelts if golf carts are equipped with them from the original manufacturer.

3-3-72 UNLAWFUL OPERATION. A person shall not drive or operate a golf cart:

1. In a careless or reckless, or negligent manner as to endanger the person or property of another or cause injury or damage thereto.  
(Code of Iowa, Sec. 321.277 & 321.277A)
2. While under the influence of intoxicating liquor or narcotics or habit-forming drugs.  
(Code of Iowa, Sec. 321J.2)
3. In or on any park, playground, sidewalk, or upon any publicly owned property except with the permission of the governing body thereof.

3-3-73 PENALTY. A person who violates Sections 3-3-69 thru 3-3-72 is guilty of a simple misdemeanor punishable as a scheduled violation under Iowa Code.  
(Code of Iowa, Sec. 321J.2)

#### PENALTIES AND PROCEDURE

3-3-74 NOTICE OF FINE PLACED ON ILLEGALLY PARKED VEHICLE. Whenever any motor vehicle without a driver is found parked or stopped in violation of any of the restrictions imposed by any Ordinance of this City or State law, the officer finding such vehicle shall prepare a notice of parking fine giving the registration number, and other identifying information to such vehicle in a conspicuous place and directing the driver of the vehicle to appear within thirty days, or to pay the local scheduled fine.

3-3-75 PRESUMPTION IN REFERENCE TO ILLEGAL PARKING. In any prosecution charging a violation of any parking Ordinance or State law governing the standing, stopping, or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of any such Ordinance or law, together with proof that the defendant named in the complaint was at the time of such parking violation the registered owner of such vehicle, shall constitute prima facie evidence that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which such violation occurred.

3-3-76 LOCAL PARKING FINES. Scheduled fines as follows are established, payable by mail or in person at the City Clerk's office within thirty days of the violation, for the following parking violations:

	2013 Malvern Code Reference Number	Fine	Penalty after 72 Hours—1 <sup>st</sup> Offense	Penalty 2 <sup>nd</sup> Offense	Penalty 3 <sup>rd</sup> Offense	Penalty 4 <sup>th</sup> Offense and Subsequent
48 Hours on Public Property	69.06	\$25.00	\$50.00	\$100.00	\$200.00	\$300.00
Blocking Fire Hydrant	69.07(7)	\$25.00	\$50.00	\$100.00	\$200.00	\$300.00
Camper Dollied Down	69.11(4)	\$25.00	\$50.00	\$100.00	\$200.00	\$300.00
Prohibited Parking	69.01	\$25.00	\$50.00	\$100.00	\$200.00	\$300.00
No Parking Zone	69.01	\$25.00	\$50.00	\$100.00	\$200.00	\$300.00
Blocking Alley	69.07(15)	\$25.00	\$50.00	\$100.00	\$200.00	\$300.00
Illegal Parking	69.01, 69.07	\$25.00	\$50.00	\$100.00	\$200.00	\$300.00
Street Cleaning	_____	\$25.00	\$50.00	\$100.00	\$200.00	\$300.00
Snow Removal Ban	_____	\$25.00	\$50.00	\$100.00	\$200.00	\$300.00
Truck/Semi Trailer	69.09(1-4)	\$25.00	\$200.00	\$500.00	\$500.00	\$500.00
Persons with Disabilities Parking	69.08(3,4)	\$100.00	\$200.00	\$500.00	\$500.00	\$500.00

If an owner of a vehicle has three or more outstanding parking violations against said vehicle, the simple notice of a fine shall be issued in the amount of \$300.00 and vehicle should be impounded per section 3-3-31.

3-3-77 FAILURE TO PAY PARKING CITATIONS. If a violator of the restrictions on stopping, standing, or parking under the parking Ordinances of this City or of State law fails to make payment of the scheduled fine as specified on a parking citation affixed to such motor vehicle within the thirty (30) days, the City shall send the owner of the motor vehicle to which the parking citation was affixed a letter informing the owner of the violation and warning that in the event the penalty is not paid within five days from date of mailing, a court citation will be issued requiring a court appearance and subjecting the violator to court costs.

## TITLE III COMMUNITY PROTECTION

### CHAPTER 4 RAILROAD REGULATION

3-4-1	Definitions	3-4-4	Street Crossing Obstructions
3-4-2	Warning Signals	3-4-5	Maintenance of Crossings
3-4-3	Street Crossing Signs and Devices	3-4-6	Flying Switches

3-4-1 DEFINITIONS. For use in this chapter, the following terms are defined as follows:

1. The term "railroad train" shall mean an engine or locomotive with or without cars, coupled thereto, operated on rails.  
(Code of Iowa, Sec. 321.1(58))
2. The term "operator" shall mean any individual, partnership, corporation or other association that owns, operates, drives or controls a railroad train.

3-4-2 WARNING SIGNALS. Operators shall sound a bell at least 1,000 feet before a street crossing is reached and shall ring the bell continuously until the crossing is passed. Operators also shall sound a whistle at least 1,000 feet before reaching every intersection of the track and street, sidewalk, alley or similar public crossing within the City limits, unless such crossing is protected by a mechanical warning device or flagman as required under Section 3-4-5 of this chapter.

(Code of Iowa, Sec. 327G.13)

3-4-4 STREET CROSSING OBSTRUCTIONS. A railroad corporation or its employees shall not operate a train in such a manner as to prevent vehicular use of a highway, street, or alley for a period of time in excess of ten minutes except in any of the following circumstances:

(Code of Iowa, Sec. 327G.32)

1. When necessary to comply with signals affecting the safety of the movement of trains.
2. When necessary to avoid striking an object or person on the track.
3. When the train is disabled.
4. When necessary to comply with governmental safety regulations including, but not limited to, speed Ordinances and speed regulations.

An employee is not guilty of a violation if the employee's action was necessary to comply with the direct order or instructions of a railroad corporation or its supervisors. Guilt is then with the railroad corporation.

3-4-5 MAINTENANCE OF CROSSINGS. Operators shall construct and maintain good, sufficient and safe crossings over any street traversed by their rails.

(Code of Iowa, Sec. 327G.15)

## TITLE III COMMUNITY PROTECTION

### CHAPTER 5 FIRE PROTECTION

3-5-1	Establishment and Purpose	3-5-5	Liability Insurance
3-5-2	Volunteer Fire Fighters	3-5-6	Fires Outside City Limits
3-5-3	Fire Fighter's Duties	3-5-7	Mutual Aid
3-5-4	Worker's Compensation	3-5-8	Authority to Cite Violations

3-5-1 ESTABLISHMENT AND PURPOSE. A volunteer fire department is hereby established to prevent and extinguish fires and to protect lives and property against fires, to promote fire prevention and fire safety, and to answer all emergency calls for which there is no other established agency.

(Code of Iowa, Sec. 364.16)

3-5-2 VOLUNTEER FIRE FIGHTERS. A maximum of thirty (30) residents of Malvern, Iowa, and the area within two miles of the City of Malvern limits at least age eighteen (18) shall be appointed to serve as a volunteer fire fighter. Prior to appointment as a volunteer fire fighter said volunteer fire fighter must pass a medical physical examination.

(Code of Iowa, Sec. 362.10)

3-5-3 FIRE FIGHTER'S DUTIES. When called by the Fire Chief, all fire fighters shall report for duty immediately in the manner directed by the Fire Chief. All fire fighters shall be subject to call at any time. Fire Fighters shall obey strictly the commands of any other fire fighter who has been appointed by the Fire Chief to be in command temporarily. Fire fighters shall report for training as ordered by the Fire Chief.

(Code of Iowa, Sec. 372.13(4))

3-5-4 WORKER'S COMPENSATION. The City Council shall contract to insure the City against liability for worker's compensation for volunteer fire fighters. All volunteer fire fighters shall be covered by the contract.

3-5-5 LIABILITY INSURANCE. The City Council shall contract to insure against liability of the City or members of the department for injuries, death or property damage arising out of and resulting from the performance of departmental duties.

3-5-6 FIRES OUTSIDE CITY LIMITS. The department shall answer calls to fires and other emergencies outside the City limits if the Fire Chief determines that such emergency exists and that such action will not endanger persons and property within the City limits or pursuant to an agreement with the County or Township.

(Code of Iowa, Sec. 364.16)

3-5-7 MUTUAL AID. Subject to approval by resolution of the Council, the department may enter into mutual aid agreements with other legally constituted fire departments. Copies of any such agreements shall be filed with the Clerk.

(Code of Iowa, Sec. 364.4 [2 & 3])

3-5-8 AUTHORITY TO CITE VIOLATIONS. Fire officials acting under the authority of Chapter 100 of the Code of Iowa may issue citations in accordance to Chapter 805 of the Code of Iowa, for violations of state and/or local fire safety regulations.

(Code of Iowa, Sec. 100.41)

**TITLE III COMMUNITY PROTECTION**

**CHAPTER 6 RESERVED**

## TITLE III COMMUNITY PROTECTION

### CHAPTER 7 REGULATING PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

3-7-1	Definitions	3-7-8	Obstruction of Pedestrian or Vehicular Traffic
3-7-2	Exemptions		
3-7-3	Permits	3-7-9	Display of Permit
3-7-4	Requirements	3-7-10	Permit Not Transferable
3-7-5	Hours of Solicitation	3-7-11	Revocation of Permit
3-7-6	Consumer Protection Law	3-7-12	Food Trucks
3-7-7	Bond Required		

3-7-1 DEFINITIONS. For use in this chapter, the following terms are defined as follows:

1. A "peddler" is any person carrying or transporting goods or merchandise who sells or offers for sale for immediate delivery such goods or merchandise from house-to-house or upon the public street.
2. A "solicitor" is any person who solicits or attempts to solicit from house-to-house or upon public streets orders for commercial goods, wares, subscriptions, publications, periodicals, merchandise, or services to be delivered or fulfilled at a future date.

For the purposes of this chapter, "solicitor" does not include a person who contacts another person at such person's residence without prior invitation to enlist support for or against, or solicit funds for patriotic, philanthropic, charitable, political, or religious purposes, whether or not there is an incidental purpose involving the sale of some goods or service.

3. A "transient merchant" includes every merchant, whether an individual person, a firm, corporation, partnership, or association, who brings or causes to be brought within the municipality any goods, wares, or merchandise of any kind, nature, or description, with the intention of temporarily or intermittently selling or offering to sell at retail such goods, wares, or merchandise. Temporary association with a local merchant, dealer, trader, or auctioneer, for conducting such transient business in connection with, as part of, or in the name of any local merchant, dealer, trader, or auctioneer, does not exempt any such person, firm, or corporation from being considered a transient merchant.

The provisions of this chapter shall not be construed to apply to persons selling at wholesale to merchants, nor to persons running a huckster wagon, or selling or distributing livestock feeds, fresh meats, fish, fruit, or vegetables, nor to persons selling their own work or production either by themselves or their employees.

3-7-2 EXEMPTIONS. The provisions of this chapter shall not apply to nonprofit civic, charitable, religious, or educational groups engaged in retail sale for the purposes of fund raising.

3-7-3 PERMITS. Before any person or organization engages in any of the practices defined herein, they must comply with all applicable Ordinances, and must also obtain from the City Clerk a permit in accordance with the provisions of sections 3-7-4 and 3-7-5. This permit shall extend no longer than sixty days. A fee of \$30.00 shall be paid at the time of registration to cover the cost of investigation and issuance.

(Code of Iowa, Sec. 9C.2)

3-7-4 REQUIREMENTS. Any applicant engaged in any activity described in 3-7-1 of this chapter must file with the City Clerk an application in writing that gives the following information:

1. Name and social security number.
2. Permanent and local addresses and, in case of transient merchants, the local address from which proposed sales will be made.
3. A brief description of the nature of the sales method.
4. Name and address of the firm for or on whose behalf the orders are solicited, or the supplier of the goods offered for sale.
5. Length of time for which the permit is desired.
6. A statement as to whether or not the applicant has been convicted of any crime, and if so, the date, the nature of the offense, and the name of the court imposing the penalty.
7. Motor vehicle make, model, year, color, and registration number, if a vehicle is to be used in the proposed solicitation.

3-7-5 HOURS OF SOLICITATION. No person may conduct those activities described in Section 3-7-1 except between the hours of 8:00 a.m. and 6:00 p.m. on each day, and no solicitation shall be done on Sundays or legal holidays.

3-7-6 CONSUMER PROTECTION LAW. All solicitors and peddlers shall be informed of, agree to comply with, and comply with the State law, Section 555A.3, Code of Iowa, requiring a notice of cancellation to be given in duplicate, properly filled out, to each buyer to whom such person sells a product or service and, comply with the other requirements of the law.

3-7-7 BOND REQUIRED. Before a permit under this chapter is issued, each person subject to this Ordinance shall post with the Secretary of State, a bond, by a surety company authorized to insure the fidelity of others in Iowa, in the amount of \$1,000 to the effect that the registrant

and the surety consent to the forfeiture of the principal sum of the bond or such part thereof as may be necessary: (1) to indemnify the City for any penalties or costs occasioned by the enforcement of this chapter, and (2) to make payment of any judgment rendered against the registrant as a result of a claim or litigation arising out of or in connection with the registrant's peddling or solicitation. The bond shall not be retired until one year from the expiration of the permit.

3-7-8 OBSTRUCTION OF PEDESTRIAN OR VEHICULAR TRAFFIC. No person, while engaged in any of the practices described in Section 3-7-1, shall block or obstruct the path of any pedestrian or vehicular traffic, or block or obstruct any way of ingress or egress to roads, buildings, or other enclosures or conveyances, including, but not limited to, vehicles, elevators, and escalators.

3-7-9 DISPLAY OF PERMIT. Each solicitor or peddler shall at all times while doing business in this City keep in his or her possession the permit provided for in Section 3-7-3 of this Chapter, and shall, upon the request of prospective customers, exhibit the permit as evidence that he or she has complied with all requirements of this Chapter. Each transient merchant shall display publicly the permit in his or her place of business.

3-7-10 PERMIT NOT TRANSFERABLE. Permits issued under the provisions of this Chapter are not transferable in any situation and are to be applicable only to the person filing the application.

3-7-11 REVOCATION OF PERMIT. The City Council after notice and hearing, may revoke any permit issued under this Ordinance where the permittee in the application for the permit or in the course of conducting his or her business has made fraudulent or incorrect statements or has violated this Ordinance or has otherwise conducted business in an unlawful manner.

3-7-12 FOOD TRUCKS. Operators of food trucks or other vehicles, trailers or portable stands selling ready to eat meals or food must first acquire a permit from the City Clerk. The fee for said permit shall be \$25/day.

**TITLE III COMMUNITY PROTECTION**

**CHAPTER 8 RESERVED**

## **TITLE III COMMUNITY PROTECTION**

### **CHAPTER 9 ALCOHOLIC BEVERAGES**

3-9-1	Purpose	3-9-3	Action by Council
3-9-2	Required Obedience to Provisions of this Chapter and State Law	3-9-4	Transfers

3-9-1    **PURPOSE.** The purpose of this chapter is to provide for administration of licenses and permits and for local regulations and procedures for the conduct of the sale and consumption of beer, wine, and liquor, for the protection of the safety, health, and general welfare of this community.

(Code of Iowa, Sec. 364.1)

3-9-2    **REQUIRED OBEDIENCE TO PROVISIONS OF THIS CHAPTER AND STATE LAW.**  
The following sections of the Iowa Code are hereby adopted by reference:

1. 123.2 and 123.3 General Prohibition and Definitions
2. 123.18 Favors From Licensee or Permittee
3. 123.22 State Monopoly
4. 123.28 Open Alcoholic Beverage Containers
5. 123.30 Liquor Control Licenses - Classes
6. 123.31 Application Contents
7. 123.33 Records
8. 123.34 Expiration - License or Permit
9. 123.35 Simplified Renewal Procedure
10. 123.36 Liquor Fees - Sunday Sales
11. 123.38 Nature of Permit or License - Surrender - Transfer
12. 123.39 Suspension or Revocation of License or Permit - Civil Penalty
13. 123.40 Effect of Revocation
14. 123.44 Gifts of Liquors Prohibited

15. 123.46 Consumption in Public Places - Intoxication - Right to Chemical Test - Notifications - Exoneration
16. 123.47 Persons Under Legal Age - Penalty
17. 123.49 Miscellaneous Prohibitions
18. 123.50 Criminal and Civil Penalties
19. 123.51 Advertisements for Alcoholic Liquor, Wine or Beer
20. 123.52 Prohibited Sale
21. 123.90 Penalties Generally
22. 123.95 Premises Must Be Licensed - Exception as to Conventions and Social Gatherings
23. 123.122 through 123.145 Beer Provisions (Division II)
24. 123.150 Sunday Sales Before New Year's Day
25. 123.171 through 123.182 Wine Provisions (Division V)
26. 321.284 Open Containers in Motor Vehicles - Drivers
27. 321.284A Open Containers in Motor Vehicles - Passengers

3-9-3 ACTION BY COUNCIL. The City Council shall approve or disapprove the application. Action taken by the City Council shall be endorsed on the application. The application, fee, penal bond, and certificate of dram shop liability insurance (if applicable) shall be forwarded to the Iowa Alcoholic Beverages Division for further action as provided by law.

(Code of Iowa, Sec. 123.32(2))

3-9-4 TRANSFERS. The City Council may, in its discretion, authorize a licensee or permittee to transfer the license or permit from one location to another within the City, provided that the premises to which the transfer is to be made would have been eligible for a license or permit in the first instance and the transfer will not result in the violation of any law or Ordinance. An applicant for a transfer shall file with the application for transfer proof of dram shop liability insurance and penal bond covering the premises to which the license is to be transferred.

(Code of Iowa, Sec. 123.38)

**TITLE III COMMUNITY PROTECTION**

**CHAPTER 10 JUNK AND ABANDONED VEHICLES**

3-10-1	Purpose	Abandoned Vehicles
3-10-2	Definitions	3-10-8 Junk Vehicles Declared a Nuisance
3-10-3	Removal of Abandoned Vehicles	
3-10-4	Notification of Owners and Lienholders	3-10-9 Notice to Abate
3-10-5	Impoundment Fees and Bonds	3-10-10 Abatement by Municipality
3-10-6	Hearing Procedures	3-10-11 Collection of Cost of Abatement
3-10-7	Auction or Disposal of	3-10-12 Exceptions
		3-10-13 Interference with Enforcement

3-10-1 PURPOSE. The purpose of this chapter is to protect the health, safety, and welfare of the citizens and safety of property of this City by providing for removal of abandoned motor vehicles and the elimination of the open storage of abandoned and junk motor vehicles and machinery except in authorized places.

(Code of Iowa, Sec. 3641.1)

3-10-2 DEFINITIONS. For the purpose of this chapter, the following terms are defined as follows:

1. "Abandoned vehicle" means any of the following:
  - a. A vehicle that has been left unattended on public property for more than twenty-four hours and lacks current registration plates or two or more wheels or other parts which render the vehicle inoperable; or unsafe or
  - b. A vehicle that has remained illegally on public property for more than twenty-four hours; or
  - c. A vehicle that has been unlawfully parked on private property or has been placed on private property without the consent of the owner or person in control of the property for more than twenty-four hours; or
  - d. A vehicle that has been legally impounded by order of the Mayor or Mills County Sheriff Department and has not been reclaimed for a period of ten days; or
  - e. Any vehicle parked on the street determined by the Mayor or Mills County Sheriff Department to create a hazard to other vehicular traffic.

(Code of Iowa, Sec. 321.89(1)(b))

A vehicle that has been impounded pursuant to Section 321J.4B of the Code of Iowa by order of the court and whose owner has not paid the impoundment fees after notification by the person or agency responsible for carrying out the impoundment order.

2. "Private property" means any real property within the City which is not public property as defined in this section.
3. "Public property" means any public right-of-way open for the purposes of vehicular travel.
4. A "junk vehicle" means any vehicle without current license plates or which has any one of the following characteristics:
  - a. Any vehicle with a broken or cracked windshield, or window or headlight or any other cracked or broken glass.
  - b. Any vehicle with a broken or loose fender, door or bumper or hood or door handle or window handle or steering wheel, trunk top or trunk handle or tail pipe.
  - c. Any vehicle which has become the habitat of rats, mice, or snakes, or any other vermin or insects.
  - d. Any motor vehicle if it lacks an engine or two or more wheels or other structural parts which render said motor vehicle totally inoperable.
  - e. Flammable Fuel. Any unlicensed vehicle which contains gasoline or any other flammable fuel.
  - f. Any vehicle which is used for storage or accumulation of junk, trash, debris, garbage or vehicular component parts.
  - g. Any motor vehicle, recreational vehicle, boat trailer or semi-trailer which lacks a current registration or a component so as to render the vehicle unfit for legal use.
  - h. Any stock car, racing car or vehicular component parts.
  - i. Any other vehicle which, because of its defective or obsolete condition, in any other way constitutes a threat to the public health and safety.  
(Cedar Falls v. Flett 330 N.W. 2nd 251, 253, Iowa 1983)
5. "Vehicle" means every device in, upon, or by which a person or property is or may be transported or drawn upon a highway or street, excepting devices moved by human power or used exclusively upon stationary rails or tracks, and shall include without limitation a motor

vehicle, automobile, truck, trailer, motorcycle, tractor, buggy, wagon, farm machinery, or any combination thereof.

### 3-10-3 REMOVAL OF ABANDONED VEHICLES.

1. The Mills County Sheriff may, without prior notice or hearing, remove and impound any abandoned vehicle as defined in section 3-10-2 (1). The Mills County Sheriff Department or a City designated official may hire other personnel, equipment, and facilities for the purpose of removing, preserving, storing, or disposing of abandoned vehicles.
2. The impoundment and storage of all vehicles pursuant to this chapter shall be in such areas or places designated by the City Council.
3. When a vehicle is taken into custody and impounded under the provisions of this chapter, the Mills County Sheriff Department or Mayor if the Mills County Sheriff Department is unavailable, shall maintain a record of the vehicle, listing the color, year of manufacture, manufacturer's trade name, body style, vehicle identification number, and license plate and year displayed on the vehicle **if available**. The records shall include the date and hour of tow, location towed from, location towed to, person or firm doing the towing, reason for towing, and the name of the officer authorizing the tow.  
(Code of Iowa, Sec. 321.89(2))
4. Nothing in this chapter shall govern the procedures of any police officer in taking into custody and impounding any vehicle to be used or proposed to be used as evidence in a criminal case involving crimes other than violations of this chapter.

### 3-10-4 NOTIFICATION OF OWNERS AND LIENHOLDERS.

1. When a vehicle is taken into custody under the provisions of this chapter or under any provisions of State law, the Mills County Sheriff and/or Mayor by order of the City Council, shall notify, within three days, by certified mail with five-days return receipt, the last known registered owner of the vehicle, addressed to their last known addresses of record, that the abandoned vehicle has been taken into custody. Notice shall be deemed given when mailed. The notice shall:
  - a. Describe the year, make, model, and **license plate** of the vehicle if available.
  - b. Describe the location of the facility where the vehicle is being held.
  - c. Inform the persons receiving notice:
    - (1) of their right to reclaim the vehicle and personal property within ten days after the effective date of the notice;

- (2) that the right can be exercised upon payment of all towing, preservation, notice, and storage charges resulting from placing the vehicle in custody;
  - (3) that failure of the owner or lienholders to exercise their right to reclaim the vehicle within the reclaiming period shall be deemed a waiver by the owner and all lienholders of all right, title, claim, and interest in the vehicle;
  - (4) that failure to reclaim the vehicle is deemed consent to the sale of the vehicle at a public auction or disposal of the vehicle to a demolisher.
- d. State that any person claiming rightful possession of the vehicle or personal property who disputes the planned disposition of the vehicle or personal property by the Mills County Sheriff Department or Mayor or the assessment of fees and charges provided by this chapter may request a hearing to contest these matters in accordance with the provisions of Section 3-10-6.
  - e. State that a request for a hearing must be in writing and received by the department prior to the expiration of the ten day reclaiming period.
  - f. State that in the event a hearing is requested immediate release of the vehicle may be obtained by posting a cash bond as required by Section 3-10-5.  
(Code of Iowa, Sec. 321.89(3)(a))
2. The owner, lienholders or any person receiving notice may, by written request received by the City of Malvern prior to the expiration of the ten day reclaiming period, obtain an additional fourteen days within which the vehicle may be reclaimed.  
(Code of Iowa, Sec. 321.89(3)(c))
3. Notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned shall be sufficient to meet the requirements of this chapter. The published notice may contain multiple listings of abandoned vehicles but shall be published within the same time requirements and shall contain the same information as prescribed for mailed notice in this section. Published notice shall be used if:
    - a. the identity of the last registered owner cannot be determined, or
    - b. the registration contains no address for the owner, or
    - c. it is impossible to determine with reasonable certainty the identity and address of all lienholders.  
(Code of Iowa, Sec. 321.89(3)(b))
4. If the persons receiving notice do not request a hearing or exercise their right to reclaim the vehicle or personal property within the reclaiming period, the owner of the vehicle or owners

of the personal property shall no longer have any right, title, claim, or interest in or to the vehicle.

5. No court in any case in law or equity shall recognize any right, title, claim, or interest of the owner and lienholders after the ten day reclaiming period.  
(Code of Iowa, Sec. 321.89(3))

### 3-10-5 IMPOUNDMENT FEES AND BOND.

1. Before the owner or other person lawfully entitled to possession of any vehicle that has been impounded under the provisions of this chapter or any other provision of law may recover such vehicle, such person shall present to the Mills County Sheriff Department or Mayor if the Mills County Sheriff Department is unavailable, evidence of such person's identity and right to possession of the vehicle, shall sign a receipt for its return, and shall pay the costs of:
  - a. an impoundment fee
  - b. towing charges
  - c. preservation charges
  - d. storage charges
  - e. notice charges

(Code of Iowa, Sec. 321.89(3)(a))

2. The amount of the charges specified in a-e shall be set by the City Council. The notice charges shall be limited to the actual cost.
3. If a hearing is requested under Section 3-10-4 (1)(e), the owner or person lawfully entitled to possession of the vehicle shall be permitted to secure the immediate release of the vehicle upon posting a cash bond in an amount equal to the sum of:
  - a. the fees required by Section 3-10-5(1)
  - b. the amount of the fine or penalty for each violation for which there is an outstanding or otherwise unsettled traffic violation notice or warrant.

3-10-6 HEARING PROCEDURES.

1. The registered owner, any lienholder of record, or duly authorized agents thereof, may object to the legality of the impoundment or the assessment of fees and request a hearing thereon. No person shall be entitled to more than one hearing on each impoundment. Upon receipt of a timely objection to the impoundment, the objector shall be informed of the reason for the impoundment and a hearing shall be held, without unnecessary delay, before the City Council pursuant to 1-4-1 at seq.

(Code of Iowa, Sec. 321.89(3))

3-10-7 AUCTION OR DISPOSAL OF ABANDONED VEHICLES. The Mills County Sheriff shall follow the procedures in State law for the auction or disposal of abandoned vehicles.

(Code of Iowa, Sec. 321.89(4))

3-10-8 JUNK VEHICLES DECLARED A NUISANCE. Except as hereinafter provided, it is hereby declared that the parking, leaving, or storage of a junk vehicle upon either public or private property within the corporate limits of the City of Malvern, Iowa, constitutes a threat to the health and safety of the citizens and is a nuisance within the meaning of Section 657.1 of the Code of Iowa.

If any junk vehicle is stored upon private property or public property in violation thereof, the owner of the property shall be liable for said violation.

3-10-9 NOTICE TO ABATE.

1. Whenever the Mills County Sheriff Department or Mayor if the Mills County Sheriff Department is unavailable, shall find a junk vehicle placed or stored on private property within the City in violation of Section 3-10-8, the Mayor shall notify, by certified mail with five days' return receipt, the following persons:
  - a. the owner of the property.
  - b. the occupant of the property.
2. The notice to abate shall:
  - a. describe, to the extent possible, the year, make, model, and color of the vehicle.
  - b. describe the location of the vehicle.
  - c. state that the vehicle constitutes a nuisance under the provisions of this chapter.
  - d. state that the owner of the property shall remove or repair the said junk vehicle within ten days.

3-10-10 ABATEMENT BY MUNICIPALITY. If the person notified to abate a nuisance or condition neglects or fails to abate as directed, the City may perform the required action to abate, keeping an accurate account of the expense incurred. The itemized expense account shall be filed with the City Clerk who shall pay such expenses on behalf of the municipality.

(Code of Iowa, Sec. 364.12(3)(h))

3-10-11 COLLECTION OF COST OF ABATEMENT. The Clerk shall mail a statement of the total expense incurred to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within one month, the Clerk shall certify the costs to the County Treasurer and the costs shall then be collected with, and in the same manner, as general property taxes.

(Code of Iowa, Sec. 364.12(3)(h))

3-10-12 EXCEPTIONS. This chapter shall not apply to the following:

1. A vehicle in an enclosed building.
2. A vehicle on the premises of a business enterprise operated in a district properly zoned therefor, as authorized under the Zoning Ordinance or restricted residence district of this City, when necessary to the operation of said business enterprise.
3. A vehicle in an appropriate storage space or depository maintained in a lawful place and lawful manner by this City.

3-10-13 INTERFERENCE WITH ENFORCEMENT. No person shall interfere in any way with the enforcement provision of this chapter.

## TITLE III COMMUNITY PROTECTION

### CHAPTER 11 LITTERING PROHIBITED

1. As used in this Code, “**discard**” means to place, cause to be placed, throw, deposit or drop, and “**litter**” means any garbage, rubbish, trash, refuse, waste material and yard waste.
2. No person shall discard any litter within the City of Malvern, except as provided and approved by the City of Malvern, by collecting and discarding such litter in approved areas or approved receptacles.
3. It is unlawful for any person to deposit or place any garbage, rubbish, trash, refuse, waste material or yard waste in any street, alley, lane, public place, private property, or body of water within the City.
4. It is unlawful to place garbage, refuse or yard waste on the private property of another, or into another garbage, refuse or yard waste containers for the purpose of being hauled away.
5. It is unlawful to permit garbage, yard waste or refuse to remain for more than ten (10) days on private property that is under one’s ownership, possession or control. Yard waste may be retained more than ten (10) days if composting is being completed.
6. Notwithstanding the above provisions, garbage, refuse or yard waste may be placed on the untraveled portions of streets, alleys, lanes, public places or on private property to be hauled away, provided the garbage, refuse or yard waste is kept in place in the manner prescribed in this Code.

#### Section            Anti-Scavenging.

It shall be a violation of this Code for any person to sort through, scavenge or remove any garbage, waste, refuse, rubbish or recycling material that has been placed in a designated garbage or recycling container. Unauthorized collection, removal or scavenging of material placed in a garbage or recycling container shall be a violation of this Code and punishable as set forth in the Municipal Code.

## **TITLE III COMMUNITY PROTECTION**

### **CHAPTER 12 DRUG PARAPHERNALIA**

3-12-1 Definitions  
3-12-3 Prohibition

3-12-2 Exemption

3-12-1 **DEFINITIONS.** As used in this Section, "drug paraphernalia" means all equipment, products, or materials of any kind used or attempted to be used in combination with a controlled substance, except those items used in combination with the lawful use of a controlled substance, to knowingly or intentionally and primarily do any of the following:

1. Manufacture a controlled substance.
2. Inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.
3. Test the strength, effectiveness, or purity of a controlled substance.
4. Enhance the effect of a controlled substance.

(Code of Iowa, Sec. 124.414)

3-12-2 **EXEMPTION.** "Drug paraphernalia" does not include hypodermic needles or syringes if manufactured, delivered, sold, or possessed for a lawful purpose.

(Code of Iowa, Sec. 124.414)

3-12-3 **PROHIBITION.** It is unlawful for any person to knowingly or intentionally manufacture, deliver, sell, or possess drug paraphernalia.

(Code of Iowa, Sec. 124.414)

## TITLE III COMMUNITY PROTECTION

### CHAPTER 13 OPEN BURNING

3-13-1 Definitions

3-13-3 Permit

3-13-2 Open Burning Restrictions

3-13-4 City Burning

#### 3-13-1 DEFINITIONS.

1. Disaster rubbish shall mean rubbish created after a natural disaster that may contain items such as tree branches, limbs and leaves and bushes.
2. Yard waste includes vegetation items found within a person's yard such as grass clippings, tree limbs and leaves.

3-13-2 OPEN BURNING RESTRICTED. No person shall allow, cause or permit open burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack, except that open burning is permitted in the following circumstances:

(IAC, 567-23.2[455B] and 567-100.2)

1. Disaster Rubbish. The open burning of rubbish, including landscape waste, for the duration of the community disaster period in instances where the Mayor declares emergency burning conditions.  
(IAC, 567-23.2[3a])
2. Trees and Tree Trimmings. The open burning of trees and tree trimmings at a City-operated burning site, provided such burning is conducted in compliance with the rules established by the State Department of Natural Resources.  
(IAC, 567-23.2[3b])
3. Flare Stacks. The open burning or flaring of waste gases, provided such open burning or flaring is conducted in compliance with applicable rules of the State Department of Natural Resources.  
(IAC, 567-23.2[3c])
4. Yard Waste. The burning of all yard waste (except trees) once each spring and once each fall. The temporary suspension of the burning ban for yard waste shall begin the second Friday in April and continue for ten (10) days and also the second Friday in November continuing for ten (10) days. These days may be changed at any time by vote of the council.
5. Recreational Fires. Barbecue grills and other outdoor grills or fireplaces and fire pits, provided they are used with fuels appropriate for their design.

6. School Bonfire. The East Mills Community School District or its successor is allowed one annual bonfire on school property, under the supervision of the Fire Department.
7. Training Fires. Fires set for the purpose of bona fide training of public or industrial employees in fire fighting methods, provided that the training fires are conducted in compliance with rules established by the State Department of Natural Resources.  
(IAC, 567-23.2[3g])
8. Pesticide Containers and Seed Com Bags. Paper or plastic pesticide containers and seed com bags resulting from farming activities occurring on the premises if burned in accordance with rules established by the State Department of Natural Resources.  
(IAC, 567-23.2[3h])
9. Agricultural Structures. The open burning of agricultural structures if in accordance with rules and limitations established by the State Department of Natural Resources.  
(IAC, 567-232[3i])
10. Variance. Any person wishing to conduct open burning of materials not permitted herein may make application for a variance to the Director.  
(IAC, 567-23.2[2])
11. Zone A. Any land in any zone with type A designation is exempt from burning ban laws but must notify Mills County on all burns.

3-13-3 Permit. A permit to allow burning at any time may be issued by the Mayor and Fire Chief. The issuance of a permit does not attest to the safety of the burn and does not render the City liable for the outcome.

3-13-4 City Burning. The City retains the right to burn as needed regardless of whether the temporary burn ban suspension is active at the time of burn.

## **TITLE III COMMUNITY PROTECTION**

### **CHAPTER 14 PARK RULES AND REGULATIONS**

3-14-1	Purpose	3-14-9	Restrooms, Water Hydrants, and Electrical Outlets
3-14-2	Prohibited Destructive Acts		
3-14-3	Use of Drives Required	3-14-10	Fees
3-14-4	Fired	3-14-11	Boating
3-14-5	Littering	3-14-12	Swimming
3-14-6	Parks Closed	3-14-13	Disorderly Conduct
3-14-7	Camping	3-14-14	Tobacco Use Prohibited
3-14-8	Firearms, Fireworks, Etc.		

3-14-1 **PURPOSE.** The purpose of this chapter is to facilitate the enjoyment of park facilities by the general public by establishing rules and regulations governing the use of park facilities. Park Rules and Regulations apply to all lands, waters and properties under the jurisdiction of the Park Board

3-14-2 **PROHIBITED DESTRUCTIVE ACTS.** It is unlawful for any person to destroy, remove, injure, or deface plant life, natural features, wild animals (excluding fish caught legally), buildings, or other property, or to construct or operate for private or commercial purpose any business or structure, or to remove sand, ice, earth, stone, wood, or other natural materials within the boundaries of all lands, waters, and properties under the jurisdiction of the Park Board.

3-14-3 **USE OF DRIVES REQUIRED.** No person shall drive any car, cycle or other vehicle, or ride or lead any horse, in any portion of a park except upon the established drives or roadways therein or such other places as may be officially designated by the City. No private vehicle is permitted to obstruct the roadway. Vehicles shall be parked in officially established parking lots or spots. The speed limits in all parks shall be 15 miles per hour.

3-14-4 **FIRES.** No fires shall be built, except in a place provided therefor, and such fire shall be extinguished before leaving the area unless it is to be immediately used by some other party.

3-14-5 **LITTERING.** No person shall place, deposit, or throw any waste, refuse, litter or foreign substance in any area or receptacle except those provided for that purpose. Receptacles are to be used only for waste, refuse, litter, or other foreign substance that is generated or used within the boundaries of a park. No person shall place or cause to be placed any waste, refuse, litter, or other foreign substance that is not generated or used within the boundaries of a park either within a designated receptacle or otherwise within the boundaries of a park.

3-14-6 **PARKS CLOSED.** No person, except those camping in designated areas, shall enter or remain within any park between the hours of ten o'clock (10:00) p.m. and six o'clock (6:00) a.m. except by express permission of the Park Board. Such permission not to be unreasonably withheld with sufficient notice and assurances.

3-14-7 **CAMPING.** Camping is restricted to the Boehner Pond park area only, unless express permission is given in a particular instance, pursuant to section 3-14-7. Any person who camps on the lands, waters, and properties under the jurisdiction of the Park Commission shall register his/her name and address with the City Clerk during regular business hours. No person shall be permitted to camp in a park longer than a consecutive period of two (2) weeks. After any two (2) week consecutive stay, such person shall vacate the camping area and not return to the area for camping purposes for a period of at least seventy-two (72) hours after departure. Only tent camping is allowed on any grassy area of the park. No vehicles or trailers shall be parked or driven on the grass, unless to allow access for visitors with disabilities that necessitates such accommodation. Trailers and motor camping units shall only use officially designated camping sites provided for that purpose, and only after securing proper registration; until properly registered, any unit within the boundaries of the park may only park said unit in an officially designated parking lot, but may not habitant therein. Shelters are not for lodging use and shall remain available for all park visitors.

3-14-8 **FIREARMS.** The possession and use by the public of firearms, fireworks or weapons of any kind is prohibited.

3-14-9 **RESTROOMS, WATER HYDRANTS, AND ELECTRICAL OUTLETS.** Restrooms and utilities are provided for the convenience of those using the parks. They shall not be used by anyone other than those engaged in lawful recreational visitation of the parks.

3-14-10 **FEES.** The Park Commission shall have the power to establish fees and admissions for the use of all park areas, including grounds, bodies of water, facilities, buildings, services, and otherwise. A person who does not comply with such regulations shall be excluded from the given area for the entire duration of any non-compliance.

3-14-11 **BOATING.** Boating is permitted on park waters by boats that are not powered by a motor. The Park Commission may grant express permission for instructional boating by area groups.

3-14-12 **SWIMMING.** No person shall swim in park waters except in areas and during time periods officially designated for that purpose.

3-14-13 **DISORDERLY CONDUCT.** No person shall use language or conduct that is threatening, abusive, insulting, profane, or indecent.

3-14-14 **TOBACCO USE PROHIBITED.** The use of any tobacco products is strictly prohibited, and signage notifying the public shall be posted on park grounds. Persons violating this ordinance shall be instructed to either discontinue use of tobacco products on park grounds or leave said grounds. If the person fails to comply, then said person's right to be present on said property will terminate and a trespassing complaint will be made to law enforcement.

## TITLE III COMMUNITY PROTECTION

### CHAPTER 15 FIREWORKS

3-15-1 Definitions	3-15-4 Limitations
3-15-2 Display Fireworks	3-15-5 Applicability
3-15-3 Consumer Fireworks and Novelties	

3-15-1 DEFINITIONS. For purposes of this section:

1. “Consumer fireworks” includes first-class consumer fireworks and second-class consumer fireworks as those terms are defined in section 100.19, subsection 1. “Consumer fireworks” does not include novelties enumerated in chapter 3 of the American pyrotechnics association’s standard 87-1 or display fireworks enumerated in chapter 4 of the American pyrotechnics association’s standard 87-1.
2. “Display fireworks” includes any explosive composition, or combination of explosive substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and includes fireworks containing any explosive or flammable compound, or other device containing any explosive substance. “Display fireworks” does not include novelties or consumer fireworks enumerated in chapter 3 of the American pyrotechnics association’s standard 87-1.
3. “Novelties” includes all novelties enumerated in chapter 3 of the American pyrotechnics association’s standard 87-1, and that comply with the labeling regulations promulgated by the United States consumer product safety commission.

3-15-2 DISPLAY FIREWORKS. A person, firm, partnership, or corporation who offers for sale, exposes for sale, sells at retail, or uses or explodes any display fireworks, commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars. However, a city council of a city or a county board of supervisors may, upon application in writing, grant a permit for the display of display fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals approved by the city or the county board of supervisors when the display fireworks will be handled by a competent operator, but no such permit shall be required for the display of display fireworks at the Iowa state fairgrounds by the Iowa state fair board, at incorporated county fairs, or at district fairs receiving state aid. Sales of display fireworks for such display may be made for that purpose only.

1. A person who uses or explodes display fireworks while the use of such devices is prohibited or limited by an ordinance or resolution adopted by the county or city in which the firework is used commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars.
2. A person who uses or explodes display fireworks while the use of such devices is suspended by an order of the state fire marshal commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars.

### 3-15-3 Consumer fireworks and novelties.

1. A person or a firm, partnership, or corporation may possess, use, or explode consumer fireworks in accordance with this subsection and subsection 4.
2. A person, firm, partnership, or corporation who sells consumer fireworks to a person who is less than eighteen years of age commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars. A person who is less than eighteen years of age who purchases consumer fireworks commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars.
  - a. A person who uses or explodes consumer fireworks or novelties while the use of such devices is prohibited or limited by an ordinance adopted by the county or city in which the fireworks are used commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars.
  - b. A person who uses or explodes consumer fireworks or novelties while the use of such devices is suspended by an order of the state fire marshal commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars.

### 3-15-4 Limitations.

1. A person shall not use or explode consumer fireworks on days other than June 1 through July 8 and December 10 through January 3 of each year, all dates inclusive.
2. A person shall not use or explode consumer fireworks at times other than between the hours of 9:00 a.m. and 10:00 p.m., except that on the following dates consumer fireworks shall not be used at times other than between the hours specified:
  - a. Between the hours of 9:00 a.m. and 11:00 p.m. on July 4 and the Saturdays and Sundays immediately preceding and following July 4.
  - b. Between the hours of 9:00 a.m. on December 31 and 12:30 a.m. on the immediately following day.
  - c. Between the hours of 9:00 a.m. and 11:00 p.m. on the Saturdays and Sundays immediately preceding and following December 31.
3. A person shall not use consumer fireworks on real property other than that person's real property or on the real property of a person who has consented to the use of consumer fireworks on that property.
4. A person who violates this subsection commits a simple misdemeanor. A court shall not

order imprisonment for violation of this subsection.

### 3-15-5 Applicability.

1. This section does not prohibit the sale by a resident, dealer, manufacturer, or jobber of such fireworks as are not prohibited by this section, or the sale of any kind of fireworks if they are to be shipped out of the state, or the sale or use of blank cartridges for a show or the theater, or for signal purposes in athletic sports or by railroads or trucks, for signal purposes, or by a recognized military organization.
2. This section does not apply to any substance or composition prepared and sold for medicinal or fumigation purposes.
3. Unless specifically provided otherwise, this section does not apply to novelties.

## TITLE IV MENTAL AND PHYSICAL HEALTH

### CHAPTER 1 ANIMAL CONTROL

4-1-1	Definitions	4-1-9	At Large Prohibited
4-1-2	Livestock	4-1-10	Injured Animals at Large
4-1-3	Releasing Animals	4-1-11	Animal Nuisances
4-1-4	Molesting Animals	4-1-12	Impounding
4-1-5	Animal Control officer	4-1-13	Dangerous Animals
4-1-6	License	4-1-14	Keeping a Vicious Animal
4-1-7	Number Restricted	4-1-15	Pit Bull Dogs Prohibited
4-1-8	Immunization	4-1-16	Fees

4-1-1 DEFINITIONS. For use in this chapter the following terms are defined as follows:

"Animal" means a nonhuman vertebrate.

(Code of Iowa, Sec. 717B.1)

1. "Animal shelter" means the premises and/or building which the Mayor may from time to time designate as the location for the impoundment of animals.
2. "At large" means off the premises of the owner and not under the control of a competent person, restrained within a motor vehicle, or housed in a veterinary hospital or kennel.
3. "Bite" means any puncture, laceration, abrasion, bruise, harassment, molestation, scratch or any other break in the skin of a human, caused by an animal.
4. "Cat" means both male and female animals of the feline species, whether neutered or not.
5. "Dog" means both male and female animals of the canine species, whether neutered or not.
6. "Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or which demands immediate action to protect the public health, safety and/or welfare, or the safety or welfare of an animal.
7. "Kennel" means "boarding kennel" or "commercial kennel" as defined in Chapter 162 of the Code of Iowa.
8. "Livestock" means an animal belonging to the bovine, caprine, equine, ovine or porcine species; farm deer, as defined in Section 481A.1 of the Code of Iowa; ostriches, rheas, emus or poultry.

(Code of Iowa, Sec. 717.1)

9. "Owner" means any person owning, keeping, sheltering, or harboring, an animal.

4-1-2 LIVESTOCK. It is unlawful for a person to keep livestock within the City except by written consent of the Council or except in compliance with the City's zoning regulations.

4-1-3 RELEASING ANIMALS. It is unlawful for any person except the owner of an animal or an authorized agent of the owner to willfully open any door or gate on any private premises for the purpose of enticing or enabling any animal to leave the private premises and be at large, as defined herein, or to drop off or abandon such animal.

4-1-4 MOLESTING ANIMALS. It is unlawful for any person to willfully molest, tease, provoke or mistreat an animal while it is confined on its owner's premises.

4-1-5 ANIMAL CONTROL OFFICER. The Council shall annually appoint and designate a person as the City's Animal Control Officer, who shall be qualified to perform the duties of animal control under the laws of the State. The officer's compensation shall be set by the Council.

4-1-6 LICENSE. Every owner of a dog or cat over the age of six (6) months shall procure a dog license from the City Clerk-Treasurer on or before thirty first (31<sup>st</sup>) day of January of each year. The annual license fee shall be \$10 for every intact dog or cat and \$5 for every sterilized dog or cat.

The annual license fee shall become delinquent on February 1st of the year in which the same is due and payable as required in this section, shall be considered delinquent thirty (30) days after such animal has come into the possession of the owner or reached six months of age; and a penalty of \$3.00 shall be added to the cost of each unpaid license fee on and after such date.

Application for license shall be made in writing on form provided by the Malvern City Clerk's office and include all required information. Upon payment of the license fee, completion of the application, and providing proof of a current vaccination against rabies, the City Clerk-Treasurer shall issue to the owner a license which shall contain the name of the owner, the owner's place of residence and a description of the dog or cat. The City Clerk-Treasurer shall keep a duplicate of each license issued as a public record.

Upon issuance of the license, the City Clerk-Treasurer shall deliver to the owner a metal tag stamped with the number of the license and the year for which it is issued. The license tag shall be securely fastened to a collar or harness which shall be worn by the dog or cat for which the license is issued. Replacement tags may be obtained by filing an affidavit with the City of Malvern that a license tag has been lost or destroyed and payment of \$2.50.

Any dog found running at large without the license tag attached to its collar or harness shall be deemed unlicensed.

4-1-7 NUMBER RESTRICTED. It is unlawful for any person to own, keep or harbor at any time more than a total of four (4) dogs or cats combined, over the age of six months per dwelling unit in the City; provided, however, this section does not apply to catteries or kennels as licensed under the Code of Iowa, which must be registered with the City by providing a copy of the State license to the Clerk.

4-1-8 IMMUNIZATION. All dogs six (6) months or older shall be vaccinated against rabies. Before issuance of the license the owner shall furnish a veterinarian's certificate showing that the dog for which the license is sought has been vaccinated, and that the vaccination does not expire within six (6) months from the effective date of the dog license. It shall be a violation of this Ordinance for any dog to not be vaccinated against rabies. A tag showing evidence of proper vaccination shall be worn by every dog when not confined.

(Code of Iowa, Sec. 351.33)

4-1-9 AT LARGE PROHIBITED.

1. The owner of an animal shall at all times restrain such animal to prevent it from being or running at large. An animal found at large shall be seized and impounded. If the Animal Control Officer is unable to apprehend the animal, or if the owner of the animal refuses to relinquish the same, the Animal Control Officer shall serve the owner a ticket requiring payment of an enforcement/impoundment fee to the City.
2. If a cat does not bear a current rabies vaccination tag, the owner of such cat shall at all times restrain such animal to prevent it from being or running at large, and an owner of a cat bearing a current rabies vaccination tag must restrain such animal from running at large to the extent necessary to prevent it from causing damage to either public or private property. A cat found at large not bearing a current rabies vaccination tag or a cat wearing such vaccination tag but causing property damage may in the discretion of the Animal Control Officer be seized and impounded. If the Animal Control Officer is unable to apprehend such cat or if the owner of the cat refuses to relinquish the same, the Animal Control Officer may serve the owner a ticket.

(Code of Iowa, Sec. 351.41)

3. It is lawful for any person who finds an animal at large to seize and hold the animal. Any person so seizing and holding an animal may confine it within a fenced yard, house, garage or other structure owned by said person or by physically restraining such animal on a harness, collar or leash. The person seizing and holding the animal shall be responsible for the humane treatment of the animal while it is under that person's custody, and shall notify the City within forty-eight (48) hours that the animal is in such person's custody. The provisions of this section shall not infringe upon any right or duty created by Section 351.26 or Section 351.27 of the Code of Iowa.

4-1-10 INJURED ANIMALS AT LARGE.

1. In the event that an injured animal is found at large, the Mayor or Animal Control Officer shall impound such animal. Upon impounding an injured animal, the Mayor or Animal Control Officer shall attempt as soon as practicable to notify the owner of the animal's location and condition. Upon being so notified, the owner of such animal shall either immediately take custody of such animal or cause said animal to be transported to a veterinarian or authorize its destruction in accordance with Iowa Code Chapter 717B.
2. In the event an injured animal at large cannot be apprehended, or if it displays vicious tendencies which would make its capture unduly hazardous, or in the event that an animal is found at large so seriously injured as to make its recovery improbable, or its condition deteriorates to that point, the Mayor or Animal Control Officer may immediately destroy such animal in accordance with Iowa Code Chapter 717B.
3. In the event an animal regulated by Chapter 481A or 481B of the Code of Iowa is found injured at large, the Mayor or Animal Control Officer, if practicable, shall consult with an officer of the Department of Natural Resources before destroying such animal.

4-1-11 ANIMAL NUISANCES. It shall be unlawful for any person to permit an animal under such person's control or within such person's custody to commit a nuisance. An animal shall be considered a nuisance if it:

1. Damages, soils, defiles or defecates on private property other than the owner's or on public walks and recreation areas unless such waste is immediately removed and properly disposed of by the owner.
2. Causes unsanitary, dangerous or offensive conditions.
3. Causes a disturbance by excessive barking or other noisemaking or chases vehicles, or molests, attacks or interferes with persons or other domestic animals.

(Code of Iowa, Sec. 657.1)

4-1-12 IMPOUNDING.

1. Any unlicensed or unvaccinated dog found at large or any licensed dog found at large in violation of Sections 4-1-3 and 4-1-4 of this chapter shall be seized and impounded, or, at the discretion of the Mayor, the owner may be served a summons to appear before a proper court to answer charges made thereunder.
2. Owners of licensed dogs shall be notified within two (2) days that upon payment of impounding fees, the dog will be returned. If the impounded licensed dogs are not recovered by their owners within seven (7) days after notice, the dogs shall be disposed of as provided in Section 717B.4 Code of Iowa.

3. Impounded unlicensed dogs may be recovered by the owner, upon proper identification, by payment of the license fee, impounding fee and boarding costs, and the costs of vaccination if vaccination is required by Section 4-1-3. If such dogs are not claimed within seven (7) days after notice, they shall be disposed of in a humane manner as directed by the City Council.

(Code of Iowa, Sec. 351.37)

4. Any animal found to have bitten a person or other animal shall be confined as directed by the Mayor.

(Code of Iowa, Sec. 351.39)

5. This section shall not apply to a law enforcement dog or horse used by the law enforcement agency, that is acting in the performance of its duties, which has bitten a person.

(Code of Iowa, Sec 351.39)

#### 4-1-13 DANGEROUS ANIMALS.

1. Dangerous Animals Prohibited. No person shall keep, shelter, or harbor for any purpose within the City limits, a dangerous animal.
2. Definitions. A dangerous animal is:
  - a. Any animal which is not naturally tame or gentle, and which is of a wild nature or disposition, and which is capable of killing, inflicting serious injury upon, or causing disease among human beings or domestic animals, and having known tendencies as a species to do so.
  - b. The following are animals which shall be deemed to be dangerous animals per se:
    - (1) Lions, tigers, jaguars, leopards, cougars, lynx, and bobcats;
    - (2) Wolves, coyotes, and foxes;
    - (3) Badgers, wolverines, weasels, skunks and mink;
    - (4) Raccoons;
    - (5) Bears;
    - (6) Monkeys, chimpanzees, and apes;
    - (7) Alligators and crocodiles;

(8) Scorpions; gila monsters;

(9) Snakes that are venomous or constrictors;

(10) Bats;

(11) Any dog with a propensity, tendency or disposition to attack, to cause injury to or to otherwise endanger the safety of humans or other domestic animals, or any dog that has been cited for running at large more than twice in one year.

c. Any animals declared to be dangerous by the City Council.

3. Dangerous Animals Exceptions. The keeping of dangerous animals shall not be prohibited in the following circumstances:

a. The keeping of dangerous animals in a public zoo, bona fide educational or medical institution, humane society, or museum where they are kept as live specimens for the public to view, or for the purpose of instruction, research or study, and has obtained the written approval of the City Council.

4-1-14 KEEPING A VICIOUS ANIMAL. It shall be unlawful for any person or persons to harbor or keep a vicious animal within the City. A vicious animal is deemed so when it shall have attacked or bitten any person without provocation, or when the propensity to attack or bite persons or other animals shall exist and such propensity is known or ought to reasonably be known to the owner thereof.

1. The Mayor, in his or her discretion or upon receipt of a complaint alleging that a particular animal is a vicious animal may, when said animal does not meet the criteria set out in Section 4-1-14 initiate proceedings to declare such animal a vicious animal. The person owning, keeping, sheltering, or harboring the animal in question shall be given not less than twenty-four (24) hours' written notice of the time and place of said hearing. Said notice shall set forth the description of the animal in question, and the basis for the allegation of viciousness, and shall also indicate that if the animal is determined to be vicious, the owner will be required to remove it from the City, or allow it to be destroyed. The notice shall be served upon any adult residing at the premises where the animal is located, or may be posted on those premises if no adult is present to accept service.
2. If an animal meets the criteria set forth in Section 4-1-14 or if after hearing the Mayor determines that an animal is vicious, the Mayor shall order the person owning, sheltering, harboring or keeping the animal to remove it from the City, or to cause it to be destroyed in a humane manner. The order shall immediately be served upon the person against whom issued in the same manner as the notice of hearing. If the order is not complied with within three (3) days of its issuance, the Mayor or Animal Control Officer is authorized to seize and impound the animal. An animal so seized shall be impounded for

a period of seven (7) days. If at the end of the impoundment period the person against whom the order was issued has not petitioned the Mills County District Court for a review of said order, the Mayor shall cause the animal to be destroyed.

3. Any animal found at large which displays vicious tendencies may be processed as a vicious animal pursuant to the foregoing, unless the animal is so vicious that it cannot safely be apprehended, in which case the Mayor or Animal Control Officer may immediately destroy it, or unless its ownership is not ascertainable, in which case the Mayor or Animal Control Officer may destroy it after three (3) days' impoundment.
4. Any animal which is alleged to be vicious and which is under impoundment or quarantine at the impoundment facility shall not be released to the owner, but shall continue to be held at the expense of the owner pending the outcome of the hearing. All costs of such impoundment or quarantine shall be paid by the owner regardless of whether or not the animal is determined to be vicious.
5. The prohibition contained in this section shall not apply to the keeping of guard dogs. However, guard dogs must be kept within a structure or a fenced enclosure at all times, and any guard dog found at large may be processed as a vicious animal pursuant to the provisions of this section. Any premises guarded by a guard dog shall be prominently posted with a sign containing the wording "guard dog," "vicious dog," or words of similar import, and the owner of such premises shall inform the City that a guard dog is on duty at the premises.

#### 4-1-15 PIT BULL DOGS PROHIBITED.

1. It shall be unlawful for any person to own, possess, keep, exercise control over, maintain, harbor, transport, or sell within the city of Malvern, Iowa, any pit bull.
2. Definitions. For the purposes of this section:
  - a. An "owner" is defined as any person who owns, possesses, keeps, exercises control over, maintains, harbors, transports or sells an animal.
  - b. A "pit bull" is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying the majority of physical traits of any one or more of the above breeds (more so than any other breed), or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds. The A.K.C. and U.K.C. standards for the above breeds are on file in the office of the director of public health.

- c. "Muzzled" means that the jaws of the pit bull are confined by a device that prevents the pit bull from biting.
  - d. A "secure temporary enclosure" is an enclosure used for purposes of transporting a pit bull and which includes a top and bottom permanently attached to the sides except for a "door" for removal of the pit bull. Such enclosure must be constructed so that the pit bull cannot exit the enclosure on its own.
3. Exceptions. Failure by the owner to comply and remain in compliance with any of the terms of any applicable exception shall subject the pit bull to immediate impoundment and disposal pursuant to subsection 5 this section, and shall operate to prevent the owner from asserting such exception as a defense in any prosecution under Section 4-1-14(1).
- a. The owner of a pit bull currently licensed as of December 14, 2009 and who maintains the pit bull at all times in compliance with the requirements of subsection 4 of this section and all other applicable requirements of this chapter, may keep a pit bull within the city.
  - b. The city approved animal shelter may temporarily harbor and transport any pit bull for purposes of enforcing the provisions of this chapter.
  - c. A licensed veterinarian may temporarily harbor any pit bull for the purpose of care and treatment of the animal.
  - d. A person may temporarily transport into and hold in the city a pit bull only for the purpose of showing such pit bull in a place of public exhibition, contest or show sponsored by a dog club association or similar organization. However, the sponsor of the exhibition, contest, or show must receive written permission from the Mayor or Animal Control Officer, must obtain any other permits or licenses required by city ordinance, and must provide protective measures adequate to prevent pit bulls from escaping or injuring the public at least seven days prior to said exhibition, contest or show. The person who transports and holds a pit bull for showing shall, at all times when the pit bull is being transported within the city to and from the place of exhibition, contest, or show, keep the pit bull confined in a "secure temporary enclosure" as defined in Section 4-1-15(2)
4. The owner of any pit bull, currently licensed as of the date of publication of the ordinance codified in this section, shall be allowed to keep such pit bull within the city only if the owner complies with and provides sufficient evidence that the owner is in compliance with all of the following regulations:
- a. The owner of the pit bull shall keep current the license for such pit bull through annual renewal. Such license is not transferable and shall be renewable only by the

holder of the license or by a member of the immediate family of such licensee who is at least eighteen (18) years of age.

- b. The owner of a pit bull must be at least eighteen (18) years of age.
- c. The owner shall present to the Mayor or Animal Control Officer proof that the owner has procured liability insurance in the amount of at least one hundred thousand dollars (\$100,000), covering any damage or injury that may be caused by a pit bull during the duration of its license. The policy shall contain a provision requiring the insurance company to provide written notice to the City of Malvern, attention to the City Clerk *or* Mayor or Animal Control Officer not less than fifteen (15) days prior to any cancellation, termination or expiration of the policy.
- d. The owner shall, at the owner's own expense, have the pit bull spayed or neutered and shall present to the Mayor or Animal Control Officer written proof from a licensed veterinarian that this sterilization has been performed.
- e. The owner shall, at the owner's expense, bring the pit bull to the city approved animal shelter or licensed veterinarian, where a person authorized by the Mayor or Animal Control Officer shall cause an identifying microchip to be inserted beneath the skin of the pit bull. The Mayor or Animal Control Officer shall maintain a file containing the registration numbers and names of the pit bulls and the names and addresses of the owners. The owner shall notify the Mayor or Animal Control Officer of any change of address.
- f. At all times when a pit bull is at the property of the owner, the owner shall keep the pit bull in "confinement" as that term is defined in Section 4-1-15(2). At all times when a pit bull is away from the property of the owner the owner shall keep the pit bull, either securely leashed with a leash of a fixed length no longer than four feet, and muzzled, or in a "secure temporary enclosure," as that term is defined in Section 4-1-15(2).
- g. The owner shall not sell or otherwise transfer the pit bull to any person except a member of the owner's immediate family who is at least eighteen (18) years of age, who will then become the owner and will be subject to all of the provisions of this section. The owner shall notify the Mayor or Animal Control Officer immediately in the event that the pit bull is lost, stolen, dies, or has a litter. In the event of a litter, the owner must deliver the puppies to the city approved animal shelter for destruction or permanently remove the puppies from Malvern and provide sufficient evidence of such removal by the time the puppies are weaned, but in no event shall the owner be allowed to keep in Malvern a pit bull puppy born after December 14, 2009 that is more than eight weeks old. Any pit bull puppies kept contrary to the provisions of this section are subject to immediate impoundment and disposal pursuant to subsection 4-1-14(4).

- h. The owner shall have posted at each possible entrance to the owner's property where the pit bull is kept, a conspicuous and clearly legible pit bull sign purchased at the owners expense. Such pit bull sign must be at least eight inches by ten (10) inches in rectangular dimensions and shall contain only the words "PIT BULL DOG" in lettering not less than two inches in height.
  - i. Notwithstanding any provisions to the contrary, the Mayor or Animal Control Officer is authorized to immediately impound any pit bull found in the City of Malvern which does not fall within the exceptions listed in Section 4-1-15(3), and the city approved animal shelter may house or dispose of such pit bull in such manner as the Mayor or Animal Control Officer may deem appropriate, except as the procedures in Section 4-1-15(3) below otherwise require.
5. When the Mayor or Animal Control Officer has impounded any pit bull dog pursuant to this section, and the owner of such dog disputes the classification of such dog as a pit bull, the owner of such dog may file a written petition with the Mayor or Animal Control Officer for a hearing concerning such classification no later than seven days after impoundment. Such petition shall include the name and address, including mailing address, of the petitioner. The Mayor or Animal Control Officer will then issue a notice of hearing date by mailing a copy to the petitioner's address no later than ten (10) days prior to the date of the hearing. When no written request from the owner for a hearing is received by the, Mayor or Animal Control Officer within seven days of impoundment, the pit bull shall be humanely destroyed.

The hearing, if any, will be held before the Mayor or Animal Control Officer or a hearing officer designated by the director. The appellant-owner of such dog shall bear the burden of proof. Any facts that the petitioner wishes to be considered shall be submitted under oath or affirmation, either in writing or orally at the hearing. The Mayor or Animal Control Officer or hearing officer shall make a final determination whether the dog is a pit bull as defined in Section 4-1-15(2). Such final determination shall be considered a final order of the Mayor or Animal Control Officer subject to review as provided in Section 4-1-14.

If the dog is found to be a pit bull, it shall be humanely destroyed, unless the owner produces evidence deemed sufficient by the Mayor or Animal Control Officer that the pit bull is to be permanently taken out of Malvern, and the owner pays the cost of impoundment. If the dog is found not to be a pit bull, the dog shall be released to the owner and all charges and fees incurred will also be at the owner's expense.

The procedures in this section shall not apply, and the owner is not entitled to such a hearing with respect to any dog that was impounded as the immediate result of an attack or bite. In those instances, the dog shall be handled, and the procedures governed by the provisions of Section 4-1-15.

4-1-16 FEES. Fees for the impoundment of animals shall be the prevailing fees as established by Council resolution.

1. In the event that an animal is observed at large but cannot be captured for impoundment, or in the event its owner refuses to relinquish possession of such animal for impoundment, an enforcement/impoundment fee ticket may be issued to the owner requiring the payment of a fee for the City's cost in attempting to impound the animal and to enforce the provisions of Section 4-1-12.
2. In the event that an animal required to be vaccinated for rabies pursuant to Section 4-1-8 is not vaccinated, an enforcement/impoundment fee ticket may be issued to the owner requiring the payment of a fee for the City cost in enforcing said provisions.
3. For the purposes of this section, an enforcement/impoundment ticket may be served by either delivering the ticket personally to the owner or by posting the ticket at the residence of the owner.

## TITLE V HUMAN DEVELOPMENT - EDUCATION AND CULTURE

### CHAPTER 1 LIBRARY SERVICES

5-1-1	Public Library	5-1-7	Non-Resident Use
5-1-2	Library Trustees	5-1-8	Expenditures
5-1-3	Qualifications of Trustees	5-1-9	Annual Report
5-1-4	Organization of the Board	5-1-10	Injury to Books or Property
5-1-5	Powers and Duties	5-1-11	Theft
5-1-6	Contracting with Other Libraries	5-1-12	Notice Posted

5-1-1 PUBLIC LIBRARY. The public library for the City is known as the Malvern Public Library. It is referred to in this chapter as the Library.

5-1-2 LIBRARY TRUSTEES. The Board of Trustees of the Library, hereinafter referred to as the Board, consists of seven (7) members. Five (5) of the members must be residents of the City. Two (2) of the members may reside outside the City limits, but shall live within the area serviced by telephone prefix 624. All members are to be appointed by the Mayor with the approval of the Council.

5-1-3 QUALIFICATIONS OF TRUSTEES. Members shall be over the age of eighteen (18) years.

5-1-4 ORGANIZATION OF THE BOARD. The organization of the Board shall be as follows:

1. Term of Office. All appointments to the Board shall be for six (6) years, except to fill vacancies. Each term shall commence on July first. Appointments shall be made every two (2) years of one-third (1/3) the total number or as near as possible, to stagger the terms.
2. Vacancies. The position of any Trustee shall be vacated if such member moves permanently from the City (or telephone prefix 624 area) and shall be deemed vacated if such member is absent from six (6) consecutive regular meetings of the Board, except in the case of sickness or temporary absence from the City. Vacancies in the Board shall be filled in the same manner as an original appointment except that the new Trustee shall fill out the unexpired term for which the appointment is made.
3. Compensation. Trustees shall receive no compensation for their services.

5-1-5 POWERS AND DUTIES. The Board shall have and exercise the following powers and duties:

1. Officers. To meet and elect from its members a President, a Secretary, and such other officers as it deems necessary.
2. Physical Plant. To have charge, control and supervision of the Library, its appurtenances, fixtures and rooms containing the same.
3. Charge of Affairs. To direct and control all affairs of the Library.
4. Hiring of Personnel. To employ a librarian, and authorize the librarian to employ such assistants and employees as may be necessary for the proper management of the Library, and fix their compensation; provided, however, that prior to such employment, the compensation of the librarian, assistants and employees shall have been fixed and approved by a majority of the members of the Board voting in favor thereof.
5. Removal of Personnel. To remove the librarian, by a two-thirds vote of the Board, and provide procedures for the removal of the assistants or employees for misdemeanor, incompetence or inattention to duty, subject however, to the provisions of Chapter 35C of the Code of Iowa.
6. Purchases. To select, or authorize the librarian to select, and make purchases of books, pamphlets, magazines, periodicals, papers, maps, journals, other Library materials, furniture, fixtures, stationery and supplies for the Library within budgetary limits set by the Board.
7. Use by Nonresidents. To authorize the use of the Library by nonresidents and to fix charges therefor unless a contract for free service exists.
8. Rules and Regulations. To make and adopt, amend, modify or repeal rules and regulations, not inconsistent with this Code of Ordinances and the law, for the care, use, government and management of the Library and the business of the Board, fixing and enforcing penalties for violations.
9. Expenditures. To have exclusive control of the expenditure of all funds allocated for Library purposes by the Council, and of all moneys available by gift or otherwise for the erection of Library buildings, and of all other moneys belonging to the Library including fines and rentals collected under the rules of the Board.
10. Gifts. To accept gifts of real property, personal property, or mixed property, and devises and bequests, including trust funds; to take the title to said property in the name of the Library; to execute deeds and bills of sale for the conveyance of said property; and to expend the funds received by them from such gifts, for the improvement of the Library.

11. Enforce the Performance of Conditions on Gifts. To enforce the performance of conditions on gifts, donations, devises and bequests accepted by the City on behalf of the Library.

(Code of Iowa, Ch. 661)

12. Record of Proceedings. To keep a record of its proceedings.

13. County Historical Association. To have authority to make agreements with the local County historical association where such exists, and to set apart the necessary room and to care for such articles as may come into the possession of the association. The Trustees are further authorized to purchase necessary receptacles and materials for the preservation and protection of such articles as are in their judgment of a historical and educational nature and pay for the same out of funds allocated for Library purposes.

5-1-6 CONTRACTING WITH OTHER LIBRARIES. The Board has power to contract with other libraries in accordance with the following:

1. Contracting. The Board may contract with any other boards of trustees of free public libraries, with any other city, school corporation, private or semiprivate organization, institution of higher learning, township, or County, or with the trustees of any County library district for the use of the Library by their respective residents.

(Code of Iowa, Sec. 392.5 & Ch. 28E)

2. Termination. Such a contract may be terminated at any time by mutual consent of the contracting parties. It also may be terminated by a majority vote of the electors represented by either of the contracting parties. Such a termination proposition shall be submitted to the electors by the governing body of a contracting party on a written petition of not less than five percent (5%) in number of the electors who voted for governor in the territory of the contracting party at the last general election. The petition must be presented to the governing body not less than forty ( 40) days before the election. The proposition may be submitted at any election provided by law that is held in the territory of the party seeking to terminate the contract.

5-1-7 NONRESIDENT USE. The Board may authorize the use of the Library by persons not residents of the City or County in any one or more of the following ways:

1. Lending. By lending the books or other materials of the Library to nonresidents on the same terms and conditions as to residents of the City, or County, or upon payment of a special nonresident Library fee.
2. Depository. By establishing depositories of Library books or other materials to be loaned to nonresidents.

3. Bookmobiles. By establishing bookmobiles or a traveling library so that books or other Library materials may be loaned to nonresidents.
4. Branch Library. By establishing branch libraries for lending books or other Library materials to nonresidents.

5-1-8 EXPENDITURES. All money appropriated by the Council for the operation and maintenance of the Library shall be set aside in an account for the Library. Expenditures shall be paid for only on orders of the Board, signed by its President and Secretary. The warrant-writing officer is the Clerk.

(Code of Iowa, Sec. 384.20 & 392.5)

5-1-9 ANNUAL REPORT. The Board shall make a report to the Council immediately after the close of the fiscal year. This report shall contain statements as to the condition of the Library, the number of books added, the number circulated, the amount of fines collected, and the amount of money expended in the maintenance of the Library during the year, together with such further information as may be required by the Council.

5-1-10 INJURY TO BOOKS OR PROPERTY. It is unlawful for a person willfully, maliciously or wantonly to tear, deface, mutilate, injure or destroy, in whole or in part, any newspaper, periodical, book, map, pamphlet, chart, picture or other property belonging to the Library or reading room.

(Code of Iowa, Sec. 716.1)

5-1-11 THEFT. No person shall take possession or control of property of the Library with the intent to deprive the Library thereof.

(Code of Iowa, Sec. 714.1)

5-1-12 NOTICE POSTED. There shall be posted in clear public view within the library notices informing the public of the following:

1. Failure To Return. Failure to return Library materials for two (2) months or more after the date the person agreed to return the Library materials, or failure to return Library equipment for one (1) month or more after the date the person agreed to return the Library equipment, is evidence of intent to deprive the owner, provided a reasonable attempt, including the mailing by restricted certified mail of notice that such material or equipment is overdue and criminal actions will be taken, has been made to reclaim the materials or equipment.

(Code of Iowa, Sec. 714.5)

2. Detention and Search. Persons concealing Library materials may be detained and searched pursuant to law.

(Code of Iowa, Sec. 808.12)

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 1 MOBILE HOME REGULATION

6-1-1	Definitions	6-1-4	Emergency and Temporary Parking
6-1-2	Location of Mobile Homes	6-1-5	Traffic Code Applicable
6-1-3	Special Permits for Location of Mobile Homes Outside Mobile Home Parks	6-1-6	Building Requirements
		6-1-7	Reserved

6-1-1 DEFINITIONS. For use in this chapter the following terms are defined as follows:

1. "Factory-built structure" means any structure which is, wholly or in substantial part, made, fabricated, formed, or assembled in manufacturing facilities for installation, or assembly and installation, on a building site. "Factory-built structure" includes the terms "mobile home," "manufactured home", and "modular home."

(Code of Iowa, Sec. 103A.3(8))

2. "Manufactured home" means a factory-built structure built under authority of 42 U.S.C. Section 5403, that is required by federal law to display a seal from the United States Department of Housing and Urban Development, and was constructed on or after June 15, 1976.

(Code of Iowa, Sec. 435.1(3))

3. "Mobile home" means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons; but shall also include any such vehicle with motive power not registered as a motor vehicle in Iowa. Mobile homes were constructed before June 15, 1976.

(Code of Iowa, Sec. 435.1(5))

4. "Mobile home park" means a site, lot, field, or tract of land upon which three or more mobile homes or manufactured homes, or a combination of any of these homes, are placed on developed spaces and operated as a for-profit enterprise with water, sewer or septic, and electrical services available.

(Code of Iowa, Sec. 435.1(6))

5. "Modular home" means a factory-built structure which is manufactured to be used as a place of human habitation, is constructed to comply with the Iowa State Building Code for modular factory-built structures.

(Code of Iowa, Sec. 435.1(7))

6-1-2 LOCATION OF MOBILE HOMES. All mobile homes shall be placed or parked in a mobile home park unless permitted otherwise by State law. This section shall not apply to mobile homes parked or placed upon private property as part of a dealer's or a manufacturer's stock not used as a place for human habitation.

6-1-3 SPECIAL PERMITS FOR LOCATION OF MOBILE HOMES OUTSIDE MOBILE HOME PARKS. The City Council, upon application of a mobile home owner, may grant a permit for a mobile home to be located for a limited time on premises outside mobile home parks. The City Council shall issue such special permits when it appears that location within local mobile home park is impracticable or impossible and public health, safety, and welfare interests will not be seriously affected by granting the permit. Special permits shall not be granted for periods in excess of one year but upon expiration of a special permit reapplication may be made. Application for the permit shall include:

1. A statement concerning the practicability of location within a local mobile home park.
2. A description of sanitation facilities contained within the mobile home and those facilities available at the proposed location.
3. A statement of the desired duration of the special permit.

6-1-4 EMERGENCY AND TEMPORARY PARKING. Emergency or temporary parking of mobile homes upon the streets, alleys, or highways, or any other public or private place for a period not in excess of seven days shall not constitute a violation of 6-1-2, but such parking shall be subject to any prohibitions or regulations contained in other Ordinances of this City.

6-1-5 TRAFFIC CODE APPLICABLE. The owner of a mobile home park may elect to have City traffic provisions of the City Code apply to real property in the mobile home park and any person located on the real property. The owner of a mobile home park may waive this right by filing a waiver with the County Recorder.

6-1-6 BUILDING REQUIREMENTS. All mobile homes, modular homes and factory built homes as defined in the Iowa Code located outside a mobile home park shall comply with all Ordinances relating to residences or homes in the community and shall be affixed to a permanent perimeter foundation unless it is incompatible with the structural design of the home. Any home located outside a mobile home park on the date this ordinance takes effect shall be exempt from the permanent foundation requirement. (The effective date of this Ordinance is/was March 8, 2001).\*  
(Code of Iowa, Sec. 435.26)

6-1-7 RESERVED

**TITLE VI PHYSICAL ENVIRONMENT**

**CHAPTER 2 UTILITIES - SANITARY SYSTEM**

6-2-1	Definitions	6-2-5	Use of the Public Sewers
6-2-2	Use of Public Sewers Required	6-2-6	Protection from Damage
6-2-3	Private Sewage Disposal	6-2-7	Powers and Authority to Inspectors
6-2-4	Building Sewers and Connections	6-2-8	Penalties

6-2-1 DEFINITIONS. Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

1. "BOD" (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 C, expressed in milligrams per liter or parts per million.
2. "Building Drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.  
(IAC 567-69.3(1))
3. "Building Sewer" shall mean the extension from the building drain to the public sewer or other place of disposal.  
(IAC 567-69.3(1))
4. "Combined Sewer" shall mean a sewer receiving both surface runoff and sewage.
5. "Garbage" shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sales of produce.
6. "Industrial Wastes" shall mean the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.
7. "Natural Outlet" shall mean any outlet into watercourse, pond, ditch, or other body of surface or groundwater.
8. "Person" shall mean any individual, firm, company, association, society, corporation, or group.
9. "pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

10. "Properly Shredded Garbage" shall mean the waste from the preparation, cooking, dispensing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch (1.27 centimeters) in any dimension.
11. "Public Sewer" shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.
12. "Sanitary Sewer" shall mean a sewer which carries sewage and to which storm, surface, and groundwaters are not intentionally admitted.
13. "Sewage" shall mean a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and stormwaters as may be present.
14. "Sewage Treatment Plant" shall mean any arrangement of devices and structures used for treating sewage.
15. "Sewage Works" shall mean all facilities for collecting, pumping, treating, and disposing of sewage.
16. "Sewer" shall mean a pipe or conduit for carrying sewage.
17. "Slug" shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration of flows during normal operation.
18. "Storm Drain" (sometimes termed "storm sewer") shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes other than unpolluted cooling water.
19. "Superintendent" shall mean the Superintendent of Public Utilities of the City of Malvern or the Superintendent's authorized deputy, agent, or representative.
20. "Suspended Solids" shall mean solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.
21. "Watercourse" shall mean a channel in which a flow of water occurs, either continuously or intermittently.

#### 6-2-2 USE OF PUBLIC SEWERS REQUIRED.

1. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.
2. It shall be unlawful to discharge to any natural outlet within the City, or in any area under the jurisdiction of said City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Ordinance.  
(Code of Iowa, Sec. 364.12(3)(f))
3. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.
4. The owner of any house, building, or property used for human occupancy, employment, recreation, or other purposes, situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the City, is hereby required at such owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Ordinance, provided that said public sewer is within one hundred fifty (150) feet of the property line. Billing for sanitary sewer service shall begin the date of official notice to connect to the public sewer.  
(Code of Iowa, Sec. 364.12(3)(f))  
(IAC 567-69.3(3))

#### 6-2-3 PRIVATE SEWAGE DISPOSAL.

1. Where a public sanitary or combined sewer is not available under the provision of Section 6-2-2(4), the building sewer shall be connected to a private sewage disposal system complying with the provisions of this section.
2. Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the Superintendent. A permit and inspection fee of \$25.00 shall be paid to the City at the time the application is filed.
3. A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. The Superintendent shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 72 hours of the receipt of notice by the Superintendent.

4. The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the Department of Natural Resources of the State of Iowa and the County Health Department. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than 15,000 square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.
5. At such times as a public sewer becomes available to a property served by a private sewage disposal system, as provided in 6-2-2(4), a direct connection shall be made to the public sewer in compliance with this Ordinance, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable material.  
(Code of Iowa, Sec. 364.12(3)(f))
6. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City.
7. No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the County Health Officer.
8. When a public sewer becomes available, the building sewer shall be connected at the building owner's expense, to said sewer within sixty (60) days and the private sewage disposal system shall be cleaned of sludge and filled with clean bank-run gravel or dirt.  
(Code of Iowa, Sec. 364.12(3)(f))

#### 6-2-4 BUILDING SEWERS AND CONNECTIONS.

1. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent.
2. There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for service to establishments producing industrial wastes. In either case, the owner or the owner's agent shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. A permit and inspection fee of \$50.00 for a residential, commercial or industrial building sewer permit shall be paid to the City at the time the application is filed.

Before a permit may be issued for excavating for plumbing in any public street, way or alley, the person applying for such permit shall have executed unto the City of Malvern and deposited with the City Clerk a corporate surety in the sum of five thousand dollars (\$5,000.00) conditioned that the applicant will perform faithfully all work with due care and skill, and in accordance with the laws, rules and regulations established under the authority of any Ordinances of the City of Malvern

pertaining to plumbing. This bond shall state that the person will indemnify and save harmless the City of Malvern and the owner of the premises against all damages, costs, expenses, outlay and claims of every nature and kind arising out of unskillfulness or negligence on the applicant's part in connection with plumbing or excavating for plumbing as prescribed in this Ordinance. Such bond shall remain in force and must be executed for a period of two (2) years except that on such expiration it shall remain in force as to all penalties, claims and demands that may have accrued thereunder prior to such expiration.

3. All cost and expense incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
4. A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.
5. Old building sewers may be used in connection with new building sewers only when they are found, upon examination and testing by the Superintendent, to meet all requirements of this Ordinance. The Superintendent may require that the old sewer be excavated for the purpose of facilitating inspection. No old cesspool or septic tank shall be connected to any portion of a building sewer that is also connected to the public sewer. Cesspools and septic tanks shall be located, and drained in a manner approved by the Superintendent and removed or filled with sand, crushed rock or any other solid material approved by the Superintendent, except as exempted by the Superintendent.
6. The building sewer shall be constructed in accordance with applicable portions of the last published (State Plumbing Code of Iowa), applicable specifications of the American Society for Testing and Materials (ASTM) and applicable portions of the Water Pollution Control Federation (WPCF) Manual of Practice No. 9."
  - a. Each connection to the public sewer shall be made to the fittings designated for that property. If a fitting in the public sewer is not available for the designated property, the connection shall then be made under the direct supervision of the Superintendent. Connections to the public sewer not made to an existing wye or tee shall be made by a hole cutter or careful chisel cutting. The connection shall be rendered water and gas tight, by use of rubber gaskets. The building sewer shall not protrude into the public sewer.
  - b. All building sewers shall be constructed of the following materials conforming to the indicated standards:

Vitrified Clay Pipe VCP

- (1) Pipe and Fittings - ASTM C-700 "Standard Specification or Vitrified Clay Pipe, Extra Strength, Standard Strength and Perforated."
- (2) Coupling and Joints - ASTM C-425 "Standard Specification for Compression Joints for Vitrified Clay Pipe and Fittings".

#### Extra Heavy Cast Iron Soil Pipe

- (1) Pipe and Fittings - ASTM A-74 "Standard Specification for Cast Iron Soil Pipe and Fittings."
- (2) Joints - ASTM C-564 "Standard Specification for Rubber Gaskets for Cast Iron Soil Pipe and Fittings."

#### Polyvinyl Chloride (PVC)

Polyvinyl Chloride (PVC) and joints shall be installed according to the manufacturers' recommendations and shall conform to:

- (1) Pipe - A.S.T.M. D-3034, "Type P.S.M. Poly (PVC) and Fittings."

Minimum wall thickness:

- 4" - 0.125"
- 6" - 0.180"
- 8" - 0.240"
- 10" - 0.300"

- (2) Joints - A.S.T.M. D-1869, A.S.T.M. D-1312, "Flexible Elastomeric Seals."

- c. No building sewer for residential or commercial buildings shall be less than four inches in diameter. No building sewer for industries or multiple dwellings shall be less than six inches in diameter.
- d. Unless otherwise authorized, all building sewers shall have a grade of not less than one - eighth (1/8) inch per foot. A grade of one-fourth (1/4) inch per foot shall be used wherever practical.
- e. All excavation shall be open trench work unless authorized by the Superintendent. The foundation in the trench shall be formed to prevent any subsequent settlement of the pipes. If the foundation is good firm earth, the earth shall be pared or molded to give a full support to the lower quadrant of each pipe. Bell holes shall be dug. Where the floor of the trench is of hard or rocky material, the trench shall be

excavated to four inches below the pipe and brought back to the proper grade with gravel, coarse sand or similar material so as to provide a firm foundation and uniform support for the building sewer line. Backfilling shall be placed in layers and solidly tamped or packed up to two feet above the pipe. Back-filling shall not be done until final inspection is made by the Superintendent. Building sewers shall be laid straight at uniform grade between connections or fittings.

- f. Cleanouts shall be provided for each change in direction or grade if the change exceeds 45 degrees and at least every 100 feet.
7. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. The depth shall be sufficient to afford protection from frost. All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the said Superintendent. Pipe laying and backfill shall be performed in accordance with A.S.T.M. Specification (Designation C12). No backfill shall be placed until the work has been inspected by the Superintendent or the Superintendent's representative. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.
8. No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.
9. The connection of the building sewer into the public sewer shall conform to the requirements of the Plumbing Code or other applicable rules and regulations of the City, or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Superintendent before installation.
10. Each and every part of the building sewer shall be inspected and approved by the Superintendent before being concealed or back-filled. The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Superintendent or the Superintendent's representative.
11. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.
12. The City shall, in no event, be held responsible for claims made against it by reason of the breaking of any mains or service pipes, or by reason of any other interruption of the service

caused by the breaking of machinery or stoppage for necessary repairs; and no person shall be entitled to damages nor have any portion of a payment refunded for any interruption.

13. The premises receiving sanitary sewer service, shall at all reasonable hours, be subject to inspection by duly authorized personnel of the City.
14. The Owner of the property served by a building sewer shall be responsible for the operation, maintenance, repair, blockage, surface replacement, and any damage resulting from operation, maintenance repair and blockage of said building sewer, from the point of connection with the building drain to the Public Sewer.

#### 6-2-5 USE OF THE PUBLIC SEWERS.

1. No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, including interior and exterior foundation drains, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer. Applications may be cancelled and/or sewer service discontinued by the City for any violation of any rule, regulation or condition of service, and especially for any of the following reasons:
  - a. Misrepresented in the application as to the property or fixtures to be serviced by the sanitary sewer system.
  - b. Non-payment of bills.
  - c. Improper or imperfect service pipes and fixtures, or failure to keep same in suitable state of repair.
2. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the Superintendent. Industrial cooling water or unpolluted process waters may be discharged, on approval of the Superintendent, to a storm sewer, combined sewer, or natural outlet.
3. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:
  - a. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
  - b. Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant,

including but not limited to cyanides in excess of two (2) mg/l as CN in the wastes as discharged to the public sewer.

- c. Any waters or wastes having a ph lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.
  - d. Solid or viscous substances in quantities of such size capable of causing obstruction to the flow of sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
  - e. Any water or wastes having (1) a 5-day bio-chemical oxygen demand greater than 300 parts per million by weight, or (2) containing more than 350 parts per million by weight, or suspended solids, or (3) having an average daily flow greater than 2 percent of the average sewage flow of the City, shall be subject to the review of the Superintendent. Where necessary in the opinion of the Superintendent, the owner shall provide at the owner's expense, such preliminary treatment as may be necessary to (1) reduce the biochemical oxygen demand to 300 parts per million by weight, or (2) reduce the suspended solids to 350 parts per million by weight, or (3) control the quantities and rates of discharge of such waters or wastes. Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Superintendent and no construction of such facilities shall be commenced until said approvals are obtained in writing.
4. No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Superintendent that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming an opinion as to the acceptability of these wastes, the Superintendent will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are:
- a. Any liquid or vapor having a temperature higher than one hundred fifty (150) F (65 C).
  - b. Any water or wastes containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150 F) (0 and 65 C).

- c. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths (3/4) horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Superintendent.
- d. Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not.
- e. Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances, or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the Superintendent for such materials.
- f. Any waters or wastes containing phenols or other taste-or-odor-producing substances, -in such concentrations exceeding limits which may be established by the Superintendent as necessary after treatment of the composite sewage, to meet with requirements of the State, Federal, or other public agencies with jurisdiction for such discharge to the receiving waters.
- g. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable State or Federal regulations.
- h. Any waters or wastes having a pH in excess of 9.5.
- i. Materials which exert or cause:
  - (1) Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).
  - (2) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).
  - (3) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
  - (4) Unusual volume of flow or concentration of waters constituting "slugs" as defined herein.
- j. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such

degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

5. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in 6-2-5(4), and which in the judgment of the Superintendent, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Superintendent may:
  - a. Reject the wastes,
  - b. Require pretreatment to an acceptable condition for discharge to the public sewers.
  - c. Require control over the quantities and rates of discharge, and/or
  - d. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provision of 6-2-5(10) of this article.

If the Superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Superintendent, and subject to the requirements of all applicable codes, Ordinances, and laws.

6. Grease, oil, and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent, and shall be located as to be readily and easily accessible for cleaning and inspection.
7. Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at the owner's expense.
8. When required by the Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Superintendent. The manhole shall be installed by the owner at the owner's expense, and shall be maintained by the owner so as to be safe and accessible at all times.
9. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this Ordinance shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the

American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a twenty-four (24) hour composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24 hour composite of all outfalls where pH's are determined from periodic grab samples).

10. No statement contained in this article shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment, therefore, by the industrial concern.

#### 6-2-6 PROTECTION FROM DAMAGE.

1. No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the sewage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

(Code of Iowa, Sec. 716.1)

#### 6-2-7 POWERS AND AUTHORITY TO INSPECTORS.

1. The Superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this Ordinance. The Superintendent or the Superintendent's representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.
2. While performing the necessary work on private properties referred to in 6-2-7(1), the Superintendent or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by the City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in Section 6-2-5(8).

3. The Superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

6-2-8 PENALTIES.

1. Any person found to be violating any provision of this Ordinance except Section 6-2-6 shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
2. Any person violating any of the provisions of this Ordinance is liable to the City for any expense, loss, or damage occasioned the City by reason of such violations.

Footnote: See 384.38(3) concerning establishing districts and connection fees (H.F. 2343, 1994 legislative session).

**TITLE VI PHYSICAL ENVIRONMENT**

**CHAPTER 3 UTILITIES - WATER SYSTEM**

6-3-1	Enforcement	6-3-18	Shutting Off Water Supply
6-3-2	Adoption of State Plumbing Code	6-3-19	Operation of Curb Valves and Hydrants
6-3-3	License Required	6-3-20	Cross Connections Prohibited
6-3-4	Mandatory Connections	6-3-21	Boilers and Pressure Vessels
6-3-5	Permit	6-3-22	Service Interruptions
6-3-6	Fee for Permit	6-3-23	Liability Limited
6-3-7	Water Supply Control	6-3-24	Line Extension
6-3-8	Making the Connection	6-3-25	Service Refused
6-3-9	Excavations	6-3-26	Well Protection
6-3-10	Tapping Mains	6-3-27	Water Meter Used
6-3-11	Installation of Water Service Pipe	6-3-28	Fire Sprinkler System-Exception
6-3-12	Responsibility for Water Service Pipe	6-3-29	Meter Setting
6-3-13	Failure to Maintain	6-3-30	Meter Cost
6-3-14	Curb valve	6-3-31	Meter Repairs
6-3-15	Interior Valve	6-3-32	Meter Tests
6-3-16	Inspection and Approval	6-3-33	Estimated Readings
6-3-17	Completion by the City	6-3-34	Construction Use

6-3-1 **ENFORCEMENT.** The Superintendent of public utilities shall supervise the installation of water service pipes and their connections to the water main and enforce all regulations pertaining to water services in this City in accordance with this chapter. This chapter shall apply to all replacements of existing service pipes as well as to new ones. The City Council shall make such rules, not in conflict with the provisions of this chapter, as needed for the detailed operation of the waterworks. In the event of an emergency the Superintendent may make temporary rules for the protection of the system until due consideration by the City Council may be had.

(Code of Iowa, Sec. 372.13(4))

6-3-2 **ADOPTION OF STATE PLUMBING CODE.** The installation of any water-service pipe and any connection with the municipal water system shall comply with all pertinent and applicable provisions, whether regulatory, procedural or enforcement provisions, of the State Plumbing Code as amended and as published by the Iowa Department of Public Health, which is hereby adopted. An official copy of the State Plumbing Code as adopted and a certified copy of this Ordinance are on file in the office of the City Clerk for public inspection.

6-3-3 **LICENSE REQUIRED.** All installation of water service pipes and connections to the municipal water system shall be made by a plumber licensed by this City. The Superintendent shall have the power to suspend the license of any plumber for violation of any of the provisions of this

Ordinance. A suspension, unless revoked, shall continue until the next regular meeting of the City Council. The Superintendent shall notify the plumber immediately by personal written notice of the suspension, the reasons for the suspension, and the time and place of the City Council meeting at which the plumber will be granted a hearing. At this City Council meeting the Superintendent shall make a written report to the City Council stating the Superintendent's reasons for the suspension, and the City Council, after fair hearing, shall revoke the suspension or take any further action that is necessary and proper.

6-3-4 MANDATORY CONNECTIONS. All residences and business establishments within the City limits intended or used for human habitation, occupancy or use shall be connected to the public water supply if it is reasonably available and if the building is not furnished with pure and wholesome water from some other source.

6-3-5 PERMIT. Before any person, firm, corporation or other association shall make a connection with the public water system, a written permit must be obtained from the Superintendent. The application for the permit shall be filed with the Superintendent on blanks furnished by the Superintendent. The application shall include a legal description of the property, the name of the property owner, the name and address of the person who will do the work, and the general uses of the water. No different or additional uses shall be allowed except by written permission of the Superintendent. The Superintendent shall issue the permit, bearing the Superintendent's signature and stating the time of issuance, if the proposed work meets all the requirements of this Ordinance and if all fees required under this Ordinance have been paid. Work under any permit must be begun within six (6) months after it is issued. The Superintendent may at any time revoke the permit for any violation of this Ordinance and require that the work be stopped. The owner or plumber may appeal such action in the manner provided in Section 6-3-3 of this Ordinance.

(Code of Iowa, Sec. 372.13(4))

6-3-6 FEE FOR PERMIT. Before any permit is issued the person who makes the application shall pay a fee of **three-hundred fifty dollars (\$350.00)** to the City Clerk to cover the cost of issuing the permit and supervising, regulating and inspecting the work.

6-3-7 WATER SUPPLY CONTROL. The plumber who makes the connection to the municipal water system shall install a main shut-off valve of the inverted key type on the water-service pipe near the curb with a suitable lock of a pattern approved by the Superintendent. The shut-off valve shall be covered with a heavy metal cover having the letter "W" marked thereon, visible and even with the pavement or ground.

The plumber also shall install a shut-off valve and waste cock on every service pipe inside the building near the entrance of the water-service pipe into the building; this must be located so that the water can be shut off conveniently and the pipes drained. Where one service pipe is installed to supply more than one customer, there shall be separate shut-off valves inside the building for each customer so that service to one customer can be shut off without interfering with service to the others.

6-3-8 MAKING THE CONNECTION. Any connection with the municipal water system must be made under the direct supervision of the Superintendent or the Superintendent's authorized assistant. All taps in the water main must be at least (12) inches apart and on the side and near the top and not in any case within 18 inches of the hub.

(Code of Iowa, Sec. 372.13(4))

6-3-9 EXCAVATIONS. Excavations to do work under this Ordinance shall be dug so as to occasion the least possible inconvenience to the public and to provide for the passage of water along the gutter. All such excavations shall have proper barricades at all times, and warning lights placed from one-half hour before sunset to one-half hour after sunrise. In refilling the excavation the earth must be laid in layers and each layer tamped thoroughly to prevent settlement, and this work, and any street, sidewalk, pavement or other public property that is affected, must be restored to as good a condition as it was previous to the excavation. The plumber must maintain the affected area in good repair to the satisfaction of the City Council for three months after refilling. All water service pipes must be laid so as to prevent rupture by settlement or freezing. No excavation shall be made within six (6) feet of any laid water or sewer pipe while the ground is frozen, and no water or sewer pipe shall be exposed to frost, except by special written permission of the Superintendent.

6-3-10 TAPPING MAINS. All taps into water mains shall be made by or under the direct supervision of the Superintendent and in accord with the following:

(Code of Iowa, Sec. 372.13[4])

1. Independent Services. No more than one house, building or premises shall be supplied from one tap unless special written permission is obtained from the Superintendent and unless provision is made so that each house, building or premises may be shut off independently of the other.
2. Sizes and Location of Taps. All mains six (6) inches or less in diameter shall receive no larger than a three-fourths (3/4) inch tap. All mains of over six (6) inches in diameter shall receive no larger than a one inch tap. Where a larger connection than a one inch tap is desired, two (2) or more small taps or saddles shall be used, as the Superintendent shall order. All taps in the mains shall be made in the top half of the pipe, at least eighteen (18) inches apart. No main shall be tapped nearer than two (2) feet of the joint in the main.
3. Corporation Stop. A brass corporation stop, of the pattern and weight approved by the Superintendent, shall be inserted in every tap in the main. The corporation stop in the main shall be of the same size as the service pipe.
4. Location Record. An accurate and dimensional sketch showing the exact location of the tap shall be filed with the Superintendent in such form as the Superintendent shall require.

6-3-11 INSTALLATION OF WATER SERVICE PIPE. Water service pipes from the main to the meter setting shall be Type K copper. The use of any other pipe material for the service line shall

first be approved by the Superintendent. Pipe must be laid sufficiently waving, and to such depth, as to prevent rupture from settlement or freezing.

6-3-12 RESPONSIBILITY FOR WATER SERVICE PIPE. All costs and expenses incident to the installation, connection and maintenance of the water service pipe from the main to the building served shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation or maintenance of said water service pipe.

6-3-13 FAILURE TO MAINTAIN. When any portion of the water service pipe which is the responsibility of the property owner becomes defective or creates a nuisance and the owner fails to correct such nuisance within 48 hours, the City may do so and assess the costs thereof to the property.

(Code of Iowa, Sec. 364.12[3a & h])

6-3-14 CURB VALVE. There shall be installed within the public right-of-way a main shut-off valve on the water service pipe of a pattern approved by the Superintendent. The shut-off valve shall be constructed to be visible and even with the pavement or ground.

6-3-15 INTERIOR VALVE. There shall be installed a shut-off valve on every service pipe inside the building as close to the entrance of the pipe within the building as possible and so located that the water can be shut off conveniently. Where one service pipe supplies more than one customer within the building, there shall be separate valves for each such customer so that service may be shut off for one without interfering with service to the others.

6-3-16 INSPECTION AND APPROVAL. All water-service pipes and their connections to the municipal water system must be inspected and approved in writing by the Superintendent before they are covered, and the Superintendent shall keep a record of such approvals. If the Superintendent refuses to approve the work, the plumber or owner must proceed immediately to correct the work so that it will meet with the Superintendent's approval. Every person who uses or intends to use the municipal water system shall permit the Superintendent or the Superintendent's authorized assistants to enter the premises to inspect and make necessary alterations or repairs at all reasonable hours and on proof of authority.

(Code of Iowa, Sec. 372.13(4))

6-3-17 COMPLETION BY THE CITY. Should any excavation be left open or partly refilled for twenty-four (24) hours after the water-service pipe is installed and connected with the municipal water system, or should the work be improperly done, the Superintendent shall have the right to finish or correct the work, and the City Council shall assess the costs to the property owner or the plumber. If the plumber is assessed, the plumber must pay the costs before the plumber can receive another permit, and the plumber's bond required by the Plumbing Ordinance shall be security for the assessment. If the property owner is assessed, such assessment shall be collected with and in the same manner as general property taxes.

(Code of Iowa, Sec. 364.12(3)(h))

6-3-18 SHUTTING OFF WATER SUPPLY. The Superintendent may shut off the supply of water to any customer because of any violation of the regulations contained in these Water Service System chapters that is not being contested in good faith. The supply shall not be turned on again until all violations have been corrected and the Superintendent has ordered the water to be turned on.

6-3-19 OPERATION OF CURB VALVE AND HYDRANTS. It is unlawful for any person except the Superintendent to turn water on at the curb valve, and no person, unless specifically authorized by the City, shall open or attempt to draw water from any fire hydrant for any purpose whatsoever.

6-3-20 CROSS CONNECTIONS PROHIBITED. Connection, cross connection or permitting the same of any separate water supply to premises which receive water from the City is prohibited.

6-3-21 BOILERS AND PRESSURE VESSELS. Customers having boilers and/or pressure vessels receiving a supply of water from the City must have a check valve on the water supply line and a vacuum valve on the steam line to prevent collapse in case the water supply from the City is discontinued or interrupted for any reason, with or without notice.

6-3-22 SERVICE INTERRUPTIONS. The utility shall make all reasonable efforts to eliminate interruption of service, and when such interruptions occur will endeavor to reestablish service with the shortest possible delay. Whenever the service is interrupted for the purpose of working on the distribution system or the station equipment, all customers affected by such interruption will be notified in advance whenever it is possible to do so.

6-3-23 LIABILITY LIMITED. The utility shall in no event be held responsible for claims made against it by reason of the breaking of any main or service pipe or by reason of any other interruption of the supply of water caused by the breaking of machinery or stoppage for necessary repairs; and no person shall be entitled to damages or have any portion of a payment refunded for any interruption of service which, in the opinion of the City, may be deemed necessary.

6-3-24 LINE EXTENSIONS. The City will construct extensions to its water lines to points within its service area, but the City is not required to make such installations unless the customer pays to the City the entire cost of the installation, and subject to the following provisions:

1. Contract. All line extensions shall be evidenced by a contract signed by the City and the person advancing funds for said extension.
2. Calculation of Refunds. If refund of the advance is to be made, the following method shall apply: twenty percent (20%) of the total gross revenue of water sales per year for each service connected to the new extension described in the agreement.
3. Refund Not Available. No refund shall be made from any revenue received from any lines leading up to or beyond the particular line extension covered by the contract.

4. Rights of City. All decisions in connection with the manner of installation of any extension and maintenance thereof shall remain in the exclusive control of the City and such extension shall be the property of the City and no other person shall have any right, title or interest therein.

6-3-25 SERVICE REFUSED. The City may refuse service to persons not presently customers when in the opinion of the City the capacity of the facilities will not permit such service.

6-3-26 WELL PROTECTION. The purpose of this ordinance is to regulate and restrict potential sources of contamination within 200 feet of public water wells in the City of Malvern, Iowa. No structures or facility of the type enumerated in the Iowa Administrative Code Section 567-43.3(7)(455b) shall be constructed, located, or maintained with within the distances set forth in the table below from the public water wells in Malvern, Iowa.

TABLE A: SEPARATION DISTANCES SOURCE OF CONTAMINATION	REQUIRED MINIMUM DISTANCE FROM WELL, IN FEET	
	Deep Well	Shallow Well
<b>WASTEWATER STRUCTURES:</b>		
Point of Discharge to Ground Surface		
Sanitary & industrial discharges	400	400
Water treatment plant wastes	50	50
Well house flood drains	5	5
<b>Sewers &amp; Drains</b>		
Sanitary & storm sewers, drains	0-25 feet: prohibited 25-75 feet if water main pipe 75-200 feet if sanitary sewer pipe	0-25 feet: prohibited 25-75 feet if water main pipe 75-200 feet if sanitary sewer main pipe
Sewer force mains	0-75 feet: prohibited 75-400 feet if water main pipe 400-1000 feet if water main or sanitary sewer pipe	0-75 feet: prohibited 75-400 feet if water main pipe 400-1000 feet if water main or sanitary sewer main pipe
Water plant treatment process wastes that are treated onsite	0-5 feet: prohibited 5-50 feet if sanitary sewer pipe	0-5 feet: prohibited 5-50 feet if sanitary sewer main pipe
Water plant wastes to sanitary sewer	0-25 feet: prohibited 25-75 if water main pipe	0-25 feet: prohibited 25-75 feet if water main pipe

	75-200 feet if sanitary sewer pipe	75-200 feet if sanitary sewer pipe
Well house floor drains to sewers	0-25 feet: prohibited 25-75 if water main pipe 75-200 feet if sanitary sewer pipe	0-25 feet: prohibited 25-75 feet if water main pipe 75-200 feet if sanitary sewer pipe
Well house floor drains to surface	0-5 feet: prohibited 5-50 feet if sanitary sewer pipe	0-5 feet: prohibited 5-50 feet if sanitary sewer main pipe.
<b>Land Disposal of Treated Wastes</b>		
Irrigation of wastewater	200	400
Land application of solid wastes	200	400
<b>Other</b>		
Cesspools & earth pit privies	200	400
<b>TABLE A: SEPARATION DISTANCES</b> SOURCE OF CONTAMINATION	<b>REQUIRED MINIMUM DISTANCE FROM WELL, IN FEET</b>	
	Deep Well	Shallow Well
Concrete vaults & septic tanks	100	200
Lagoons	400	1000
Mechanical wastewater treatment plants	200	400
Soil absorption fields	200	400
<b>CHEMICALS:</b>		
Chemical application to ground surface	100	200
Chemical & mineral storage above ground	100	200
Chemical & mineral storage on or under ground	200	400
Transmission pipelines (such as fertilizer, liquid, petroleum, or anhydrous ammonia)	200	400
<b>ANIMALS:</b>		
Animal pasturage	50	50
Animal enclosure	200	400
Earthen silage storage trench or pit	100	200
<b>ANIMALS:</b>		
Land application of liquid or slurry	200	400
Land application of solids	200	400
Solids stockpile	200	400
Storage basin or lagoon	400	1000
Storage tank	200	400
<b>MISCELLANEOUS:</b>		
Basements, pits, sumps	10	10
Cemeteries	200	200

Cisterns	50	100
Flowing streams or other surface water bodies	50	50
Railroads	100	200
Private wells	200	400
Solid waste landfills and disposal sites	1000	1000

6-3-27 WATER USE METERED. All water furnished customers shall be measured through meters furnished by the City and installed by the City in a location easily accessible to meter readers and repairmen and protected from freezing. The superintendent shall be permitted to enter premises of any customer at any reasonable time to read, remove, or change a meter.

6-3-28 FIRE SPRINKLER SYSTEMS - EXCEPTION. Fire sprinkler systems may be connected to water mains by direct connection without meters under the direct supervision of the Superintendent. No open connection can be incorporated in the system, and there shall be no valves except a main control valve at the entrance to the building which must be sealed open.

6-3-29 METER SETTING. The property owner shall provide all necessary piping and fittings for proper setting of the meter including a valve on the discharge side of the meter. Meter pits may be used only upon approval of the Superintendent and shall be of a design and construction approved by the Superintendent.

6-3-30 METER COSTS. A meter rental of fifty dollars (\$50.00) for each residential property owner or one hundred dollars (\$100.00) for each residential tenant or seventy-five dollars (\$75.00) for each business/commercial property owner shall be charged by the City.

6-3-31 METER REPAIRS. Whenever a water meter is found to be out of order the Superintendent shall have it repaired. If it is found that damage to the meter has occurred due to the carelessness or negligence of the customer or property owner, then the property owner shall be liable for the cost of repairs.

6-3-32 METER TESTS. Upon the written request of any customer, the meter serving said customer shall be tested by the City. Such test will be made without charge to the customer if the meter has not been tested within twelve (12) months preceding the requested test; otherwise, a charge of two dollars (\$2.00) will be made and then only if the test indicates meter accuracy within the limits of two percent (2%).

6-3-33 ESTIMATED READINGS. Where a meter has ceased to register or meter reading could not be obtained, the quantity of water consumed for billing purposes will be based upon an average of the prior twelve (12) months' consumption, and the conditions of water service prevailing during the period in which the meter failed to register.

6-3-34 CONSTRUCTION USE. Water for building or construction purposes will be furnished by meter measurement, only after suitable deposit has been made, the minimum deposit being ten

dollars (\$10.00), and the amount determined by the City depending upon the size of the construction work contemplated. All water for building or construction purposes, as set forth in the permit, must pass through one and the same meter. Water so supplied shall be discharged through a hose or pipe directly upon material to be wet, or into a barrel or other container, and in no case upon the ground or into or through a ditch or trench, and all use of water by other than the applicant or use of water for any purpose or upon any premises not so stated or described in the application must be prevented by the applicant, or water service may be discontinued without notice.

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 4 UTILITIES - REFUSE COLLECTION

6-4-1	Definitions	6-4-6	Necessity of Permits
6-4-2	Duty to Provide Cans	6-4-7	Burning of Refuse
6-4-3	Administration	6-4-8	Refuse Other Than Garbage
6-4-4	Storage	6-4-9	Sanitary Landfill
6-4-5	Collections		

6-4-1 DEFINITIONS. For use in this chapter, the following terms are defined as follows:

1. "Refuse". Includes all garbage, rubbish, ashes, or other substances offensive to sight or smell, dangerous to the public health or detrimental to the best interests of the community except dead animals not killed for food.
2. "Garbage". Includes all animal, fruit, vegetable, and other refuse resulting from the preparation of food and drink.
3. "Rubbish". Includes all other refuse not falling within the term "garbage" except those objects too large to be placed in cans.
4. "Can". Means a container for the storage of garbage or rubbish, which is:
  - a. Provided with a handle and tight fitting cover.
  - b. Made of non-corrosive material.
  - c. Water-tight.
  - d. With a capacity of no more than thirty-five (35) gallons.

6-4-2 DUTY TO PROVIDE CANS. Each person shall provide cans or approved containers for the storage of garbage and rubbish accumulating on the premises owned or occupied by such owner. Such cans or containers shall be kept covered and reasonably clean at all times. The cans or containers shall be in a position readily accessible to the collector.

It shall be the duty of the owner of each household residing in a building arranged for more than one family unit to provide proper cans for garbage and rubbish.

6-4-3 ADMINISTRATION. Administration of this chapter shall be by the Superintendent of refuse, or such employee designated by the Superintendent.

(Code of Iowa, Sec. 372.13(4))

6-4-4 STORAGE. All garbage must be drained. All rubbish shall be placed in a can except as otherwise provided.

6-4-5 COLLECTIONS. All garbage and rubbish shall be taken from dwellings at least once each week and from public establishments as frequently as the City Council may require.

All cans for garbage and rubbish shall be kept as provided in the rules and regulations for collection of refuse.

6-4-6 NECESSITY OF PERMIT. No person shall collect garbage or rubbish except such person's otherwise by contract or permit, approved by the Superintendent of refuse and issued by the Clerk.

In the event any business, firm, or corporation may elect to dispose of refuse or waste matter as may accumulate on any premises, property, or location, the same may be done provided that such disposal and transporting of any refuse or waste matter complies with the provisions of this chapter, is approved by the City and a permit issued by the Clerk.

6-4-7 BURNING OF REFUSE.

1. It shall be unlawful for any person to burn or incinerate any garbage, rubbish, or refuse within the City except by permission of the City Council.
2. This section shall not apply to any incinerator operated under a license granted by the City or any burning conducted under the direction of the fire department for training purposes.
3. This section shall not apply to outdoor cooking appliances used for residential recreational purposes using commonly acceptable fuels.

6-4-8 REFUSE OTHER THAN GARBAGE. Each person shall dispose of all refuse other than garbage and rubbish accumulation on the premises such person owns or occupies before it becomes a nuisance. If it does become a nuisance, it shall be subject to provisions of Title III, Chapter 2 of this Code.

6-4-9 SEPARATION OF YARD WASTE REQUIRED. All yard waste shall be separated by the owner or occupant from all other solid waste accumulated on the premises and shall be composted or burned on the premises in accordance with Section 105.05(4) of this chapter. As used in this section, "yard waste" means any debris such as grass clippings, leaves, garden waste, brush and trees. Yard waste does not include tree stumps.

6-4-10 SANITARY LANDFILL. The City Council by resolution may designate a sanitary landfill and establish reasonable rules and regulations necessary to control its use by the public and make charge for the use thereof.

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 5 UTILITIES - BILLING CHARGES

6-5-1	Utility Defined	6-5-8	Water Rates
6-5-2	Districts	6-5-9	Refuse Collection Rates
6-5-3	Disposition of Fees and Charges	6-5-10	Rate of Sewer Rent and Manner of Payment
6-5-4	Billing, Penalty	6-5-11	Special Rates
6-5-5	Discontinuing Services, Fees	6-5-12	Determination and Payment of Sewer Rent From Premises With Private Water Systems
6-5-6	Residential Rental Property		
6-5-7	Customer Guarantee Deposits		

6-5-1 UTILITY DEFINED. For use in this chapter, utility is the sewer, water, and refuse collection systems operated by the City.

6-5-2 DISTRICTS. There shall be one sewer and water district which encompasses all of the City of Malvern, Iowa.

6-5-3 DISPOSITION OF FEES AND CHARGES. All money received under this chapter shall be deposited in the City treasury not later than the last day of the month in which it was received and a written report of the amount and source of the fees and charges shall be on file with the City Clerk.

6-5-4 BILLING, PENALTY. Utility bills shall be due on the first of the month following the period for which service is billed. Payment shall be made to the City Clerk. Bills shall become delinquent after the fifteenth of the month in which due and bills paid after said day shall have added a penalty of ten (10) percent of the amount of the bill for utility service. When the fifteenth falls on Saturday or Sunday, the City Clerk shall accept payment on the next office day without penalty.

(Code of Iowa, Sec. 384.84(1))

6-5-5 DISCONTINUING SERVICE, FEES.

1. If any account is not paid within thirty days from the end of any given period, the service to such owner or person so supplied with the utility shall be discontinued after the following procedures have been complied with:
2. Notice. *PeopleService* shall notify each delinquent customer that service will be discontinued if payment of the combined service account, including late payment charges, is not received by the date specified in the notice of delinquency. Such notice shall be sent by ordinary mail and shall inform the customer of the nature of the delinquency and afford the customer the opportunity for a hearing prior to the discontinuance.

3. **Twenty-four Hour Notice.** A twenty-four (24) hour notice will be posted at the residence stating the date the supply of water will be shut off and the delinquent amount. An administrative fee of \$15.00 for posting a twenty-four (24) hour notice will be charged to the customer.
4. **Notice to Landlords.** If the customer is a tenant, and if the owner or landlord of the property has made a written request for notice, the notice of delinquency shall also be given to the owner or landlord.
5. **Hearing.** If a hearing is requested by noon of the day preceding the shut off, the Water Committee (consisting of the Clerk and/or Deputy Clerk, Mayor and/or a Council Member and a *PeopleService* representative) shall conduct an informal hearing and shall make a determination as to whether the disconnection is justified. If the Committee finds that disconnection is justified, then such disconnection shall be made, unless payment has been received.
6. **Fees.** A fee of twenty dollars (\$20.00) shall be charged before service is restored to a delinquent customer. No fee shall be charged for the usual or customary trips in the regular changes in occupancies of property.
7. A lien shall not be certified to the County Treasurer for collection unless thirty (30) days prior written notice by ordinary mail of the intent to certify a lien is given to the account holder of the delinquent account. If the account holder is a tenant, and if the owner or property lessor of the property has made a written request for notice, the notice shall also be given to the owner.

(Code of Iowa, Sec. 384.84 (3))

8. If the property in which there are delinquent utilities owing is sold before the City certifies the lien to the County Treasurer, the City may certify the delinquent utilities against another property located in this state owned by the delinquent user.

(Code of Iowa, Sec. 384.84(3)(a)(3))

**6-5-6 RESIDENTIAL RENTAL PROPERTY.** Residential rental property where a charge for any of the services of water, sewer systems, storm water drainage systems, sewage treatment, solid waste collection, and solid waste disposal is paid directly to the City by the tenant is exempt from a lien for delinquent rates or charges associated with such services if the landlord gives written notice to the City utility that the property is residential rental property and that the tenant is liable for the rates or charges. A City utility may require a deposit not exceeding the usual cost of ninety (90) days of the services of water, sewer systems, storm water drainage systems, sewage treatment, solid waste collection, and solid waste disposal to be paid to the utility. Upon receipt, the utility or enterprise shall acknowledge the notice and deposit. A written notice shall contain the name of the tenant responsible for the charges, the address of the residential rental property that the tenant is to occupy, and the date that the occupancy begins. A change in tenant shall require a new written notice to be given to the City utility within thirty (30) business days of the change in tenant. When

the tenant moves from the rental property, the City utility shall return the deposit, within ten days, if the charges for the services of water, sewer systems, storm water drainage systems, sewage treatment, solid waste collection, and solid waste disposal are paid in full.

A change in the ownership of the residential rental property shall require written notice of such change to be given to the City utility within thirty (30) business days of the completion of the change of ownership. The lien exemption for rental property does not apply to charges for repairs related to a service of water, sewer systems, storm water drainage systems, sewage treatment, solid waste collection, and solid waste disposal if the repair charges become delinquent.

(Code of Iowa, Sec. 384.84(3)(d))

(Code of Iowa, Sec. 384.84(3)(e))

(Amended in 2012)

6-5-7 CUSTOMER GUARANTEE DEPOSITS. Customer deposits shall be required of all customers who are tenants, or others having no established credit record, and of those who have an unacceptable credit record or who have a prior record of failure to pay water bills rendered. Such deposit shall be equal to the estimated typical bill for the type of use contracted for, and be set to the nearest five (\$5.00) dollars. Deposits of customers having established acceptable credit records for three (3) years shall have their deposits returned. An occurrence or recurrence of a bad payment record may be the occasion for the City Clerk to require a new or larger deposit for the continuation of service.

(Code of Iowa, Sec. 384.84(1))

6-5-8 WATER RATES. Water shall be furnished at the following monthly rates per property serviced within the City limits:

(Code of Iowa, Sec. 384.84(1))

Residential and Commercial

**The first 1,000 gal. \$40.00 (minimum bill)**

**All over 1,000 gal. \$7.00 per 1,000 gallons**

**Beginning June 30, 2021 a \$.20 rate increase for the first 1,000 gallons (minimum bill) used will be added to each bill and a \$.10 rate increase per every 1,000 gallons over the first 1,000. The increases shall occur on June 30<sup>th</sup> of each subsequent year through and including June 30, 2023.**

6-5-9 REFUSE COLLECTION RATES. Shall be determine and collected by the refuse collection company when contracting with the City of Malvern.

6-5-10 RATE OF SEWER RENT AND MANNER OF PAYMENT. Each customer shall pay sewer service charges for the use of and for the service supplied by the municipal sanitary sewer system based upon the amount of water consumed as follows:

Gallons Used Per Month	Rate
First 1,000 gallons	<b>\$17.70 (minimum bill)</b>
All over 1,000 gallons	<b>\$6.35 per 1,000 gallons</b>

**Beginning June 30, 2019, a \$.20 rate increase for the first 1,000 gallons (minimum bill) used will be added to each bill and a \$.10 rate increase per every 1,000 gallons over. The increases shall occur on June 30<sup>th</sup> of each subsequent year through June 30, 2021.**

(Code of Iowa, Sec. 384.84(1))

6-5-11 SPECIAL RATES. Where, in the judgment of the Superintendent and the Council, special conditions exist to the extent that the application of the sewer charges provided in Section 6-5-10 would be inequitable or unfair to either the City or the customer, a special rate shall be proposed by the Superintendent and submitted to the Council for approval by resolution.

(Code of Iowa, Sec. 384.84)

6-5-12 DETERMINATION AND PAYMENT OF SEWER RENT FROM PREMISES WITH PRIVATE WATER SYSTEMS. Users whose premises have a private water system shall pay a sewer rent in proportion to the water used and determined by the City Council either by an estimate agreed to by the user or by metering the water system. The rates shall be the same as provided in Section 6-5-10 applied as if a City water bill were to be paid. Rent shall be paid at the same time and place as provided in Section 6-5-10.

(Code of Iowa, Sec. 384.84(1))

Footnote: See Code of Iowa, Sec. 384.38(3) concerning establishing districts and connection fees.

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 6 STREET CUTS AND EXCAVATIONS

6-6-1	Excavation Permit Required	6-6-4	Safety Measures
6-6-2	Application for Permit	6-6-5	Backfilling and Restoration
6-6-3	Permit Fees	6-6-6	Driveway Culverts
		6-6-7	Rules and Regulations

6-6-1 EXCAVATION PERMIT REQUIRED. Excavating within the right-of-way of public streets and alleys, and of public grounds, and the cutting of surfacing or pavings of the traveled way therein, shall not be done by any person, firm, association, or corporation without obtaining a permit from the City Clerk.

(Code of Iowa, Sec. 364.12(2))

6-6-2 APPLICATION FOR PERMIT. No person shall commence excavation in any public street or public ground until that person has applied to the City Clerk for an excavation permit. Such application shall indicate the location of the excavation, the name and address of the applicant who is to do the work, whether public liability insurance is in force, and that the applicant has checked the underground map of all utilities, and other owners of underground facilities, and that the applicant has notified those persons or companies of the time that excavation will commence. The making of an application shall be deemed notice to the City of the plan to cut the street surfacing or pavements, and to obstruct the public way. Such permits shall not be valid until six hours after receipt unless the Clerk waives this requirement.

In an emergency, authorized persons or companies may commence excavations provided that they shall have made a reasonable effort to inform the City and the utilities whose underground utilities might be involved in any way, and those involved in the excavation shall make written application at the earliest practicable moment. The Clerk may provide on the form for the certification that the applicant has notified all utilities and other parties required by this Ordinance.

6-6-3 PERMIT FEES. The permit fee shall be \$15.00 for the cost of each inspection. A single excavation shall be deemed to constitute all the digging necessary for a single connection, or a cut for installing a main not exceeding 100 feet in length. An additional fee of \$15.00 shall be required for every additional 100 feet, or major fraction thereof, of main excavation. All fees are doubled if excavation commences before a permit is obtained.

6-6-4 SAFETY MEASURES. Any person, firm, or corporation cutting a pavement or surfacing or excavating in the streets shall erect suitable barricades, maintain warning lights from sunset to sunrise each night, and take such other precautions as necessary for the safety of the public, whether vehicles or pedestrians. Vehicles, equipment, materials, excavated material, and similar items shall likewise be protected by lights and warning devices, such as traffic cones, flags, etc. Where traffic

conditions warrant, the party excavating may be required to provide flagmen, if in the judgment of the Mills County Sheriff Department or Mayor the public safety requires it. Compliance with City Ordinances and regulations shall not be deemed to waive the requirements that the party excavating shall comply with all the requirements of the labor safety laws and the rules of the Iowa Department of Labor, nor shall any failure be deemed a responsibility of the City.

1. Insurance Required. Each applicant shall also file a certificate of insurance indicating that the applicant is carrying public liability insurance in effect for the duration of the permit covering the applicant and all agents and employees for the following minimum amounts:
  - a. Bodily Injury - \$50,000.00 per person; \$100,000.00 per accident.
  - b. Property Damage- \$50,000.00 per accident.

6-6-5 BACKFILLING AND RESTORATION. Any person excavating in the streets shall be responsible for the backfilling of the excavation in accordance with City specifications and the restoration of the pavement or surfacing to as good a condition as that existing prior to the excavation. If any excavator fails to backfill or restore the pavement or surfacing properly within forty-eight hours of the completion of the underground work, the City reserves the right to backfill and resurface or install new paving and charge the cost thereof to the party excavating. If any backfilling or pavement or surfacing restoration is not in accordance with the City specifications, the City is authorized to remove such material as is necessary and to backfill and restore the pavement or surfacing properly.

**6-6-6 DRIVEWAY CULVERTS. The property owner shall provide and install, at the owner's expense, any culvert deemed necessary under any driveway or any other access to the owner's property; and before installing a culvert, permission must first be obtained from the City. The property owner shall maintain said culvert(s). Any additional or subsequent driveway or other access to the property shall be installed at the expense of the property owner. In the event repairs are needed at any time with respect to culverts, it shall be the responsibility of the property owner to make such repairs; and in the event the owner fails to do so, the City shall have the right to make the repairs. If the property owner fails to reimburse the City for the cost of said repairs, the cost shall be certified to the County Treasurer and specially assessed against the property as provided by law.**

1. **Permit Required. No installation of any culvert shall be commenced without first obtaining a permit therefor. A written application for such permit shall be filed with the City and shall contain the following:**
  - a. **A property owner desiring to install a new entrance and/or modify an existing entrance to an existing parcel or tract of land shall file an application with the City and pay the required fee. The application shall identify the road and location of said entrance. The City shall cause a detailed review of the proposed**

**entrance site and application to determine if it will comply with the location requirements set forth in this Ordinance. In the event this Ordinance does not cover a circumstance, then the driveway must conform to the Urban Design Standards for Public Improvements.**

**If the site satisfies all criteria, the City may issue a permit as well as establish the culvert diameter and length. If the proposed entrance location fails to meet one or more location and/or design requirements, the City may reject the application, explaining the reasons for such action and advising what changes are necessary to obtain a permit.**

- b. Variance Procedure. If a property owner desires to build an entrance at a location that fails to meet the criteria set forth in this Ordinance, he/she may file a request for a variance. Such a request should identify the location of the proposed entrance and describe how full compliance with ordinance requirements constitutes an undue hardship. The variance application form along with the application fee shall be provided to the City, who shall present it to the City Council within twenty (20) days of receipt. After consideration of the request and any other relevant information, the City Council will approve or deny the variance.**
  - c. Permit Time Limit. An entrance permit shall become null and void if the entrance it pertains to has not been installed within ninety, (90) days following the date of issue.**
- 4. Allowable Pipe Materials: All culvert pipe shall be new, riveted, annular corrugated, galvanized or aluminized steel pipe that complies with Iowa D.O.T Specification 4141. Concrete pipe and spiral pipe are not acceptable materials for entrance culverts. Pipe wall thickness shall be determined according to the depth of cover tables contained in the Iowa D.O.T. Standard Road Plan No. RF-32. 2 2/3 x 1/2 corrugations may be used for pipe diameters up to thirty-six (36) inches. Forty-two (42) inch through 120 inch diameter pipe shall have 3 x 1 corrugations. The City shall determine and specify the gauge of the culvert. A professional engineer licensed in the State of Iowa shall design pipes larger than 120 inch.**

**When required, new culvert pipe diameter shall match existing pipe diameter. The installer shall properly join existing and new culverts utilizing only manufacturer recommended jointing methods.**

- 5. Diameter and Length: The City shall determine the required diameter and length for each culvert based on the entrance width, road grade, ditch depth, traffic volume, and drainage area served by the culvert; however, no culvert may be less than eighteen (18) inches in diameter.**

**6. Design Types: A standard, straight-line grade culvert is permissible unless the total drop from inlet to outlet exceeds six (6) feet. For larger drops, the City may require the culvert be built with nearly level inlet and outlet sections connected together by a steeper section.**

**7. Culvert Accessories:**

**In certain situations, culverts shall be built with special accessories.**

- a. Pipe Aprons. The City may require pipe aprons along paved roads having a traffic volume in excess of 800 vehicles per day. In such cases, the property owner shall install a Safety Slope Apron, per Iowa D.O.T. Standard Road Plan RF-44.**
- b. Headwalls. All culverts of diameter forty-eight (48) inches and larger shall have a reinforced concrete headwall and slope collar installed on the inlet end, as specified by the City. The property owner also may be required to install outlet headwalls.**
- c. Anti-Seepage Collars. The City may require the installation of a metal diaphragm or concrete anti-seepage collars to prevent entrance washouts.**
- d. Wood, Brick, Concrete or Stone End-Walls. Wood, brick, concrete, stone, or masonry end-walls/retaining walls shall not be erected within the public right of way unless approved by the City.**

**8. Fill Materials: Fill material shall consist of earth capable of supporting vegetation. Rubble such as broken concrete and fieldstone may not be used as fill material. Also, no contaminated soil as defined by the Iowa Department of Natural Resources or debris is allowed as fill material.**

6-6-7 RULES AND REGULATIONS. The City Council may by resolution establish such rules and regulations for the manner of making cuts and related matters involving excavations.

**TITLE VI PHYSICAL ENVIRONMENT**

**CHAPTER 7 SUBDIVISION REGULATIONS**

**GENERAL PROVISIONS**

- 6-7-1 Short Title
- 6-7-2 Purpose
- 6-7-3 Application
- 6-7-4 Recording of Plat

**DEFINITIONS**

- 6-7-5 Terms Defined

**IMPROVEMENTS**

- 6-7-6 Improvements Required
- 6-7-7 Inspection
- 6-7-8 Minimum Improvements
- 6-7-9 Completion of Improvements
- 6-7-10 Performance Bond

**MINIMUM STANDARDS FOR THE DESIGN OF SUBDIVISIONS**

- 6-7-11 Minimum Standards

**PROCEDURES AND SUBMISSION REQUIREMENTS FOR PLATS**

- 6-7-12 Procedures and Submission Requirements for Plats
- 6-7-13 Pre-Application Conference
- 6-7-14 Sketch Plan Required
- 6-7-15 Presentation to Planning Commission or City Council
- 6-7-16 Subdivision Classified
- 6-7-17 Plats Required
- 6-7-18 Requirements of Preliminary Plat
- 6-7-19 Referral of Preliminary Plat
- 6-7-20 Action by the City Engineer
- 6-7-21 Action by the Governing Body
- 6-7-22 Final Plat
- 6-7-23 Referral Final Plat
- 6-7-24 Requirements of the Final Plat
- 6-7-25 Final Plat Attachments
- 6-7-26 Fees
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**OTHER PROVISIONS**

- 6-7-28 Variances
- 6-7-29 Chain Subdividing
- 6-7-30 Enforcement
- 6-7-31 Penalties
- 6-7-32 Changes and Amendments
- 6-7-33 Extraterritorial Review Agreement

**GENERAL PROVISIONS**

6-7-1 **SHORT TITLE.** This chapter shall be known and may be cited as "The City of Malvern, Iowa, Subdivision Control Ordinance."

6-7-2 **PURPOSE.** The purpose of this Ordinance is to provide minimum standards for the design, development and improvement of all new subdivisions and resubdivisions of land, so that existing developments will be protected, and so that adequate provisions are made for public

facilities and services, and so that growth occurs in an orderly manner, consistent with the Comprehensive Plan, and to promote the public health, safety and general welfare of the citizens of the City of Malvern, Iowa.

(Code of Iowa, Sec. 354.1 and 364.1)

6-7-3 APPLICATION. Every owner who divides any original parcel of land, forty (40) acres or part thereof, entered of record in the office of the County Recorder as a single lot, parcel or tract on or before the effective date of these regulations (June 22, 1987) into three or more lots, parcels, or tracts for the purpose, whether immediate or future, of laying out an addition, subdivision, building lot or lots, acreage or suburban lots, transfer of ownership or building development within the City or

- within two (2) miles north or south of the corporate limits of the City;
- within one (1) mile east and west of the corporate limits of the City,

shall cause plats of such area to be made in the form, and containing the information, as hereinafter set forth before selling any lots therein contained or placing the plat on record.

(Code of Iowa, Sec. 354.9)

6-7-4 RECORDING OF PLAT. No subdivision plat, resubdivision plat or street dedication within the City of Malvern, Iowa, or:

- within two (2) miles north or south of the corporate limits of the City;
- within one (1) mile east and west of the corporate limits of the City,

as provided in Section 354.9, Code of Iowa, shall be filed for record with the County Recorder, or recorded by the County Recorder, until a final plat of such subdivision, resubdivision, or street dedication has been reviewed and approved in accordance with the provisions of this Ordinance.

Upon the approval of the final plat by the governing body, it shall be the duty of the subdivider to immediately file such plat with the County Auditor and County Recorder, as required by law. Such approval shall be revocable after thirty (30) days, unless such plat has been duly recorded and evidence thereof filed with the City Clerk within such thirty (30) days.

(Code of Iowa, Sec. 354.9)

## DEFINITIONS

6-7-5 TERMS DEFINED. For the purposes of this Ordinance, certain words herein shall be defined as and interpreted as follows. Words used in the present tense shall include the future, the singular shall include the plural, the plural shall include the singular, the term "shall" is always mandatory, and the term "may" is permissive.

1. "Acquisition Plat" means the graphical representation of the division of land or rights in land, created as the result of a conveyance or condemnation for right-of-way purposes by an agency of the government or other persons having the power of eminent domain.  
(Code of Iowa, Sec. 354.2(1))
2. "Aliquot Part" means a fractional part of a section within the United States public land survey system. Only the fractional parts one-half, one-quarter, one-half of one-quarter, or one-quarter of one quarter shall be considered an aliquot part of a section.  
(Code of Iowa, Sec. 354.2(2))
3. "Alley" means public property dedicated to public use primarily for vehicular access to the back or side of properties otherwise abutting on a street.
4. "Auditor's Plat" means a subdivision plat required by either the Auditor or the Assessor, prepared by a surveyor under the direction of the auditor.  
(Code of Iowa, Sec. 354.2(3))
5. "Block" means an area of land within a subdivision that is entirely bounded by streets, railroad rights-of-way, rivers, tracts of public land, or the boundary of the subdivision.
6. "Building Lines" means a line on a plat between which line and public right-of-way no building or structures may be erected.
7. "City Engineer" means the professional engineer registered in the State of Iowa designated as City Engineer by the governing body or other hiring authority.
8. "Comprehensive Plan" means the general plan for the development of the community, that may be titled master plan, comprehensive plan or some other title, which plan has been adopted by the governing body. Such "Comprehensive Plan" shall include any part of such plan separately adopted, and any amendment to such plan or parts thereof.
9. "Conveyance" means an instrument filed with a Recorder as evidence of the transfer of title to land, including any form of deed or contract.  
(Code of Iowa, Sec. 354.2(5))
9. "Cul-de-Sac" means a street having one end connecting to another street, and the other end terminated by a vehicular turn around.
10. "Division" means dividing a tract or parcel of land into two parcels of land by conveyance or for tax purposes. The conveyance of an easement, other than public highway easement, shall not be considered a division for the purpose of this chapter.  
(Code of Iowa, Sec. 354.2(6) and 355.1(2))

11. "Easement" means an authorization by a property owner for another to use a designated part of said owner's property for a specified purpose.
12. "Flood Hazard Area" means any area subject to flooding by a one percent (1%) probability flood, otherwise referred to as a one hundred (100) year flood; as designated by the Iowa Department of Natural Resources or the Federal Emergency Management Agency.
13. "Floodway" means the channel of a river or other watercourse and the adjacent lands that must be reserved in order to discharge the waters of a one hundred (100) year flood without cumulatively raising the waterway surface elevation more than one (1) foot.
14. "Forty-Acre Aliquot Part" means one-quarter of one-quarter of a section.  
(Code of Iowa, Sec. 354.2(7))
15. "Governing Body" means the City Council of the City of Malvern, Iowa.  
(Code of Iowa, Sec. 354.2(8))
16. "Government Lot" means a tract, within a section, that is normally described by a lot number as represented and identified on the township plat of the United States public land survey system.  
(Code of Iowa, Sec. 354.2(9) and 355.1(3))
17. "Improvements" means changes to land necessary to prepare it for building sites including but not limited to grading, filling, street paving, curb paving, sidewalks, walk ways, water mains, sewers, drainageways, and other public works and appurtenances.
18. "Lot" means a tract of land represented and identified by number or letter designation on an official plat.  
(Code of Iowa, Sec. 354.2(10))
19. "Lot, Corner". The term "corner lot" means a lot situated at the intersection of two streets.
20. "Lot, Double Frontage". The term "double frontage lot" means any lot that is not a corner lot that abuts two streets.
21. "Metes and Bounds Description" means a description of land that uses distances and angles, uses distances and bearings, or describes the boundaries of the parcel by reference to physical features of the land.  
(Code of Iowa, Sec. 354.2(11))
22. "Official Plat" means either an auditor's plat or a subdivision plat that meets the requirements of this chapter and has been filed for record in the offices of the Recorder, Auditor, and Assessor.  
(Code of Iowa, Sec. 354.2(12))

23. "Original Parcel" means forty acres or part thereof entered of record in the office of the County Recorder as a single lot or parcel on or before (June 22, 1987).
24. "Owner" means the legal entity holding title to the property being subdivided, or such representative or agent as is fully empowered to act on its behalf.
25. "Parcel" means a part of a tract of land.  
(Code of Iowa, Sec. 354.2(13))
26. "Performance Bond" means a surety bond or cash deposit made out to the City of Malvern, Iowa, in an amount equal to the full cost of the improvements which are required by this Ordinance, said cost estimated by the City and said surety bond or cash bond being legally sufficient to secure to the City that the said improvements will be constructed in accordance with this Ordinance.
27. "Permanent Real Estate Index Number" means a unique number or combination of numbers assigned to a parcel of land pursuant to Section 441.29 of the Code of Iowa.  
(Code of Iowa, Sec. 354.2(14))
28. "Planning Commission" means the appointed commission designed by the governing body for the purpose of this Ordinance, and may also be the Zoning Commission, in which case such commission shall be known as the Planning and Zoning Commission.
29. "Plat" means a map drawing, or chart on which a subdivider's plan for the subdivision of land is presented, that said subdivider submits for approval and intends, in final form, to record.
30. "Plats Officer" means the individual assigned the duty to administer this Ordinance by the governing body or other appointing authority.
31. "Plat of Survey" means the graphical representation of a survey of one or more parcels of land, including a complete and accurate description of each parcel within the plat, prepared by a registered land surveyor.  
(Code of Iowa, Sec. 354.2(15) and 355.1(9))
32. "Proprietor" means a person who has a recorded interest in land, including a person selling or buying land pursuant to a contract, but excluding persons holding mortgage, easement, or lien interest.  
(Code of Iowa, Sec. 354.2(16))
33. "Resubdivision" means any subdivision of land that has previously been included in a recorded plat. In appropriate context it may be a verb referring to the act of preparing a plat of previously subdivided land.

34. "Street" means public property, not an alley, intended for vehicular circulation. In appropriate context the term "street" may refer to the right-of-way bounded by the property lines of such public property, or may refer to the paving installed within such right-of-way.
35. "Street, Arterial" means a street primarily intended to carry traffic from one part of the City to another, and not intended to provide access to abutting property.
36. "Street, Collector" means a street primarily designed to connect smaller areas of the community, and to carry traffic from local streets to arterial streets.
37. "Street, Local" means a street primarily designed to provide access to abutting property.
38. "Subdivider" means the owner of the property being subdivided, or such other person or entity empowered to act on the owner's behalf.
39. "Subdivision" means the accumulative effect of dividing an original lot, tract, or parcel of land, as of (June 22, 1987) into three (3) or more lots for the purpose of immediate or future sale or transfer for development purposes excluding public roadways, public utility extensions, and land taken by condemnation. The term includes a resubdivision or replatting. When appropriate to the context, the word may relate to the process of subdividing or the land subdivided.

Any person not in compliance with the provisions of the subdivision definition at the time of its effective date (June 22, 1987), shall not be required to comply with such provisions unless or until a new division, re-subdivision or replatting occurs following that effective date.

(Code of Iowa, Sec. 354.2(17) and 355.1(10))

40. "Subdivision Plat" means the graphical representation of the subdivision of land, prepared by a registered land surveyor, having a number or letter designation for each lot within the plat and succinct name or title that is unique for the county where the land is located.

(Code of Iowa, Sec. 354.2(18) and 355.1(11))

41. "Surveyor" means a registered land surveyor who engages in the practice of land surveying pursuant to Chapter 542B of the Code of Iowa.

(Code of Iowa, Sec. 354.2(19) and 355.1(12))

42. "Tract" means an aliquot part of a section, a lot within an official plat, or a government lot.

(Code of Iowa, Sec. 354.2(20))

43. "Utilities" means systems for the distribution or collection of water, gas, electricity, wastewater, and storm water.

## IMPROVEMENTS

6-7-6 IMPROVEMENTS REQUIRED. The subdivider shall, at said subdivider's expense, install and construct all improvements required by this Ordinance. All required improvements shall be installed and constructed in accordance with the design standards established for such improvements by the City, and as shown on the approved preliminary plat.

6-7-7 INSPECTION. All improvements shall be inspected to insure compliance with the requirements of this Ordinance. The cost of such inspection shall be borne by the subdivider and shall be the actual cost of the inspection to the City.

6-7-8 MINIMUM IMPROVEMENTS. The improvements set forth below shall be considered the minimum improvements necessary to protect the public health, safety and welfare.

(Code of Iowa, Sec. 364.1)

1. Streets and alleys. All streets and alleys within the platted area which are dedicated for public use shall be brought to the grade approved by the governing body after receiving the report and recommendations of the City Engineer.
2. Roadways. All roadways shall be surfaced with portland cement concrete or with asphaltic concrete over a crushed stone base as the governing body may require.
3. Curb and Gutter. Curb and gutter shall be required on all streets. All curb and gutter shall be constructed to the grade approved by the governing body after receiving the report and recommendations of the City Engineer. Newly constructed curbs and gutters shall comply with the Americans With Disabilities Guidelines (ADAAG).
4. Sidewalks. Sidewalks shall be required. Sidewalks shall be constructed to the grade approved by the governing body after receiving the report and recommendations of the City Engineer, and comply with the Americans with Disabilities Guidelines (ADAAG).
5. Water lines. Where a public water main is reasonably accessible, the subdivider shall connect with such water main and provide a water connection for each lot with service pipe installed to the property line in accordance with the City Water Department standards, procedures and supervision.
6. Sewers.
  - a. Where a public sanitary sewer is reasonably accessible, the subdivider shall connect or provide for the connection with such sanitary sewer and shall provide within the subdivision the sanitary sewer system as required to make the sewer accessible to each lot in the subdivision. Sanitary sewers shall be stubbed into each lot. Sewer systems shall be approved by the governing body and the State Department of Health and the construction subject to the supervision of the Superintendent of public utilities.

- b. Where sanitary sewers are not available, other facilities, as approved by the governing body and the State Department of Health must be provided for the adequate disposal of sanitary wastes.
- c. Adequate provisions shall be made for the disposal of storm waters, subject to the approval of the governing body and to the supervision of the Superintendent of public utilities.

6-7-9 **COMPLETION OF IMPROVEMENTS.** Before the governing body shall approve the final plat, all of the foregoing improvements shall be constructed and accepted by formal resolution of the governing body. Before passage of said resolution of acceptance, the Superintendent of public works shall report that said improvements meet all City specifications and Ordinances or other City requirements, and the agreements between subdivider and the City.

6-7-10 **PERFORMANCE BOND.** The completion requirement may be waived in whole or in part if the subdivider will post a performance bond with the governing body guaranteeing that improvements not completed will be constructed within a period of one (1) year from final acceptance of the plat, but final acceptance of the plat will not constitute final acceptance by the City of any improvements to be constructed. Improvements will be accepted only after their construction has been completed, and no public funds will be expended in the subdivision until such improvements have been completed and accepted by the City.

#### MINIMUM STANDARDS FOR THE DESIGN OF SUBDIVISIONS.

6-7-11 **MINIMUM STANDARDS.** The following standards shall be considered the minimum standards necessary to protect the public health, safety, and general welfare.

1. Relation to existing streets.
  - a. The arrangement, character, extent, width, grade and location of all streets shall be considered in their relation to existing and planned streets, to topographic conditions, to public convenience and safety, and in their appropriate relation to the proposed uses of the land to be served by such streets.
  - b. The arrangement of streets in a subdivision shall either provide for the continuation of appropriate projection of existing principal streets in surrounding areas or conform to a plat for the neighborhood approved by the governing body to meet a particular situation where topographical or other conditions made continuance or conformance to existing streets impracticable.
2. Acreage subdivisions.
  - a. Where the plat submitted covers only a part of the subdivider's plat, a sketch of the prospective future system of the unsubmitted part shall be furnished and the street system

of the part submitted shall be considered in the light of adjustments in connection with the street system of the part not submitted.

- b. Where the parcel is subdivided into larger tracts than for building lots such parcels shall be divided so as to allow for the opening of major streets and the ultimate extension of adjacent minor streets.
- c. Subdivisions showing unplatted strips or private streets controlling access to public ways will not receive approval.

3. Local streets.

- a. Local streets shall be so planned as to discourage through traffic.
- b. Cul-de-sac streets are permitted where topography and other conditions justify their use. Such streets shall not be longer than five hundred (500) feet and shall terminate with a turn-around, having an outside roadway diameter of at least eighty (80) feet and a street property line diameter of at least one hundred (100) feet. The right-of-way width of the straight portion of such streets shall be a minimum of fifty (50) feet. The property line at the intersection of the turn-around and the straight portion of the street shall be rounded at a radius of not less than twenty (20) feet.

4. Frontage streets.

- a. Where a subdivision abuts or contains an existing or proposed arterial street, the governing body may require marginal access streets, reverse frontage with screen planting contained in a nonaccess reservation along the rear property line, deep lots with rear service alleys, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- b. Where a subdivision borders on or contains a railroad right-of-way or limited access highway right-of-way, the governing body may require a street approximately parallel to and on each side of such right-of-way, at a distance suitable for the appropriate use of the intervening land, as for park purposes in residential districts. Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.

5. Half-streets. Half-streets shall be prohibited except where essential to the reasonable development of the subdivision in conformity with the other requirements of these regulations, and where the governing body finds it will be practicable to require the dedication of the other half when the adjoining property is subdivided. Wherever a half-street is adjacent to a tract to be subdivided, the other half of the street shall be platted within such tract.

6. Street Geometrics.

- a. Street jogs with centerline offsets of less than one hundred twenty-five (125) feet shall be avoided.
- b. A tangent at least one hundred (100) feet long shall be introduced between reverse curves on arterial and collector streets.
- c. When connecting street lines deflect from each other at any one point by more than ten (10) degrees, they shall be connected by a curve with a radius adequate to insure a sight distance of not less than two hundred (200) feet for minor and collector streets, and of such greater radii as the governing body shall determine for special cases.

7. Intersections.

- a. Insofar as is practical, acute angles between streets at their intersection are to be avoided.
- b. Streets shall be laid out so as to intersect as nearly as possible at right angles and no street shall intersect any other street at less than sixty (60) degrees.
- c. Property lines at street intersections shall be rounded with a radius of ten (10) feet, or of a greater radius where the governing body may deem it necessary. The governing body may permit comparable cutoffs or chords in place of rounded corners.

8. Street names. Streets that are in alignment with others already existing and named shall bear the name of the existing streets. The proposed names of new streets shall not duplicate or sound similar to existing street names. Street names shall be subject to the approval of the governing body.

9. Street grades.

- a. Street grades, wherever feasible, shall not exceed five (5) percent, with due allowance for reasonable vertical curves.
- b. No street grade shall be less than one-half (1/2) of one (1) percent.

10. Alleys.

- a. Alleys shall be provided in commercial and industrial districts, except that the governing body may waive this requirement where other definite and assured provision is made for service access, such as off-street loading, unloading and parking consistent with and adequate for the uses proposed.
- b. The width of an alley shall be twenty (20) feet.

- c. Alley intersections and sharp changes in alignment shall be avoided, but where necessary, corners shall be cut off sufficiently to permit safe vehicular movements.
- d. Dead-end alleys shall be avoided where possible, but if unavoidable, shall be provided with adequate turn-around facilities at the dead-end, as determined by the governing body.

11. Blocks.

- a. No block may be more than one thousand three hundred twenty (1,320) feet or less than five hundred (500) feet in length between the center lines of intersecting streets, except where, in the opinion of the governing body, extraordinary conditions unquestionably justify a departure from these limits.
- b. In blocks over seven hundred (700) feet in length, the governing body may require at or near the middle of the block a public way or easement of not less than ten (10) feet in width for use by pedestrians and/or as an easement for public utilities.

12. Lots.

- a. The lot size, width, depth, shape and orientation shall be appropriate for the location of the subdivision and for the type of development and use contemplated.
- b. Minimum lot dimensions and sizes.
  - (1) Residential lots where not served by public sewer shall not be less than eighty (80) feet wide nor less than ten thousand (10,000) square feet in area.
  - (2) Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.
  - (3) Corner lots for residential use shall have an extra ten (10) feet of width to permit appropriate building setback from and orientation to both streets.
- c. The subdividing of the land shall be such as to provide, by means of public street, each lot with satisfactory access to an existing public street.
- d. Double frontage and reverse frontage lots shall be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least ten (10) feet and across which there shall be no right of access, shall be provided along the line of lots abutting such a traffic artery or other disadvantageous use.

- e. Side lot lines shall be substantially at right angles to straight street lines or radial to curved street lines.
13. Building lines. Building lines shall be shown on all lots within the platted area. The governing body may require building lines in accordance with the needs of each subdivision.
14. Easements.
- a. Easement across lots or centered on rear or side lot lines shall be provided for utilities where necessary and shall be at least ten (10) feet wide.
  - b. Where a subdivision is traversed by a watercourse, drainage way, channel or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such watercourse, and further width for construction, or both, as will be adequate for the purpose.
15. Plat markers. Markers shall be placed at all block corners, angle points, points of curves in streets, and all such intermediate points as shall be required by the governing body. The markers shall be of such material, size and length as may be approved by the governing body.

#### PROCEDURES AND SUBMISSION REQUIREMENTS FOR PLATS

6-7-12 PROCEDURES AND SUBMISSION REQUIREMENTS FOR PLATS. In obtaining final approval of a proposed subdivision by the governing body, the subdivider and owner shall submit a plat in accordance with the requirements hereafter set forth and install improvements or provide a performance bond.

6-7-13 PRE-APPLICATION CONFERENCE. Whenever a subdivision located within the platting jurisdiction of the City is proposed, the owner and subdivider shall schedule a preapplication conference with the City Clerk. The conference should be attended by the City Clerk and such other City or utility representatives as is deemed desirable; and by the owner and said owner's engineer and/or planner, as deemed desirable.

The purpose of such conference shall be to acquaint the City with the proposed subdivision, and to acquaint the subdivider with the requirements, procedures, and any special problems relating to the proposed subdivision.

6-7-14 SKETCH PLAN REQUIRED. For the pre-application conference, the subdivider shall provide a map or sketch showing the location of the subdivision, the general location of any proposed streets and other improvements, and the general layout and arrangement of intended land uses, in relation to the surrounding area.

6-7-15 PRESENTATION TO PLANNING COMMISSION OR CITY COUNCIL. The subdivider may present the sketch plan to the governing body for review, prior to incurring significant costs preparing the preliminary or final plat.

6-7-16 SUBDIVISION CLASSIFIED. Any proposed subdivision or resubdivision shall be classified as minor subdivision or a major subdivision.

1. Minor Subdivision. Means any subdivision that contains not more than four (4) lots fronting on an existing street and that does not require construction of any public improvements, and that does not adversely affect the remainder of the parcel shall be classified as a minor plat.
2. Major Subdivision. Any subdivision that, in the opinion of the governing body, does not for any reason meet the definition of a minor subdivision, shall be classified as a major subdivision.

6-7-17 PLATS REQUIRED. In order to secure approval of a proposed subdivision, the owner and subdivider of any major subdivision shall comply with the requirements for a preliminary plat and the requirements for a final plat. The owner and subdivider of a minor subdivision or an auditor's plat may elect to omit the submission of a preliminary plat.

(Code of Iowa, Sec. 354.6)

6-7-18 REQUIREMENTS OF PRELIMINARY PLAT. The subdivider shall prepare and file with the City Clerk four (4) copies of a preliminary plat of adequate scale and size showing the following:

1. Title, scale, north point and date.
2. Subdivision boundary lines, showing dimensions, bearing angles, and references to section, townships and range lines or corners.
3. Present and proposed streets, alleys and sidewalks, with their right-of-way, in or adjoining the subdivision, including dedicated widths, approximate gradients, types and widths of surfaces, curbs, and planting strips, and location of street lights.
4. Proposed layout of lots, showing numbers, dimensions, radii, chords and the square foot areas of lots that are not rectangular.
5. Building setback or front yard lines.
6. Parcels of land proposed to be dedicated or reserved for schools, parks, playgrounds, or other public, semi-public or community purposes.
7. Present and proposed easements, showing locations, widths, purposes and limitation.

8. Present and proposed utility systems, including sanitary and storm sewers, other drainage facilities, water lines, gas mains, electric utilities, and other facilities, with the size, capacity, invert elevation and location of each.
9. Proposed name of the subdivision which shall not duplicate or resemble existing subdivision names in the county.
10. Names and addresses of the owner, subdivider, builder, and engineer, surveyor or architect who prepared the preliminary plat, and the engineer, surveyor or architect who will prepare the final plat.
11. Existing and proposed zoning of the proposed subdivision and adjoining property.
12. A general summary description of any protective covenants or private restrictions to be incorporated in the final plat.
13. Contours at vertical intervals of not more than two (2) feet if the general slope of the site is less than ten (10) percent and at vertical intervals of not more than five (5) feet if the general slope is ten (10) percent or greater, unless the City Council waives this requirement.

6-7-19 REFERRAL OF PRELIMINARY PLAT. The City Clerk shall forthwith refer two (2) copies of the preliminary plat to the City Engineer and (2) copies to the governing body.

6-7-20 ACTION BY THE CITY ENGINEER. The City Engineer shall carefully examine said preliminary plat as to its compliance with Section 354.8 of the Code of Iowa and the laws and regulations of the City of Malvern, Iowa, the existing street system, and good engineering practices, and shall, as soon as possible, submit the City engineer's findings in duplicate to the governing body together with one (1) copy of the plat received.

(Code of Iowa, Sec. 354.8)

6-7-21 ACTION BY THE GOVERNING BODY. The governing body shall, upon receiving the report of the City Engineer, as soon as possible, but not more than thirty (30) days thereafter, consider said report, negotiate with the subdivider on changes deemed advisable and the kind and extent of improvements to be made by the subdivider, and pass upon the preliminary plat as originally submitted or modified. If the governing body does not act within thirty (30) days, the preliminary plat shall be deemed to be approved, provided, however, that the subdivider may agree to an extension of the time for a period not to exceed an additional sixty (60) days. It shall then set forth its recommendations in writing, whether of approval, modification or disapproval.

1. In the event that substantial changes or modifications are made by the governing body or disapproval of the plat, it shall give its reasons therefor and it may request and cause the revised preliminary plat to be resubmitted in the same manner as the original plat.

2. If approved, the governing body shall express its approval as "Conditional Approval" and state the conditions of such approval, if any.
3. The action of the governing body shall be noted on two (2) copies of the preliminary plat, referenced and attached to any conditions determined. One (1) copy shall be returned to the subdivider and the other copy retained by the governing body.
4. The "Conditional Approval" by the governing body shall not constitute final acceptance of the addition or subdivision by the City but an authorization to proceed with preparation of the final plat.

6-7-22 FINAL PLAT. The final plat shall conform substantially to the preliminary plat as approved, and, if desired by the subdivider, it may constitute only that portion of the approved preliminary plat which the subdivider proposes to record and develop at the time, provided, however, that such portion conforms to all requirements of these regulations.

6-7-23 REFERRAL FINAL PLAT. The subdivider shall, within twelve (12) months of the "Conditional Approval" of the preliminary plat by the governing body prepare and file four (4) copies of the final plat and other required documents with the City Clerk as hereafter set forth, and upon the subdivider's failure to do so within the time specified, the "Conditional Approval" of the preliminary plat shall be null and void unless an extension of times is applied for and granted by the governing body. Upon receipt of the final plat and other required documents, the City Clerk shall transmit two (2) copies of the final plat to the governing body for its recommendations and approval.

Except for a final plat for a minor subdivision or an auditor's plat as set forth herein, no final plat shall be considered by the governing body until and unless a preliminary plat for the area included in the proposed final plat has been approved and has not expired and become void as set forth above.

At its discretion the governing body may refer the final plat to the City Engineer pursuant to the procedure established in 6-7-18.

(Code of Iowa, Sec. 354.8 and 355.8)

6-7-24 REQUIREMENTS OF THE FINAL PLAT. The final plat shall conform to the requirements of chapter 355, Code of Iowa, and shall be clearly and legibly drawn to a scale of not more than one hundred (100) feet to one (1) inch with permanent ink on a reproducible tracing material. It shall show:

1. The title under which the subdivision is to be recorded.
2. The linear dimensions in feet and decimals of a foot of the subdivision boundary, lot lines, streets and alleys. These should be exact and complete to include all distances, radii, arc, chords, points of tangency and central angles.

3. Street names and clear designations of public alleys. Streets that are continuations of present streets should bear the same name. If new names are needed, they should be distinctive. Street names may be required to conform to the City Plan.
4. Location, type, materials, and size of all monuments and markers including all U.S., county or other official bench marks.
5. The signature and acknowledgement of the subdivision land owner and the subdivision land owner's spouse.
6. A sealed certification of the accuracy of the plat and that the plat conforms to Section 354.8 of the Code of Iowa by the professional engineer or land surveyor who drew the final plat.

6-7-25 FINAL PLAT ATTACHMENTS. The final plat shall have the following attached to it:

1. A correct description of the subdivision land.  
(Code of Iowa, Sec. 354.6(2))
2. A certificate by the owner and the owner's spouse, if any, that the subdivision is with the free consent, and is in accordance with the desire of the owner and spouse. This certificate must be signed and acknowledged by the owner and spouse before some officer authorized to take the acknowledgements of deeds.  
(Code of Iowa, Sec. 354.11(1))
3. A complete abstract of title and an Attorney's opinion showing that the fee title to the subdivision land is in the owner's name and that the land is free from encumbrances other than those secured by an encumbrance bond.  
(Code of Iowa, Sec. 354.11(3))
4. A certificate from the County Treasurer that the subdivision land is free from taxes.  
(Code of Iowa, Sec. 354.11(5))
5. A certificate from the Clerk of District Court that the subdivision land is free from all judgments, attachments, mechanics or other liens of record in the Clerk's office.
6. A certificate from the County Recorder that the title in fee is in the owner's name and that it is free from encumbrances other than those secured by an encumbrance bond.  
(Code of Iowa, Sec. 354.11(2))
7. A certificate of dedication of streets and other public property.  
(Code of Iowa, Sec. 354.11(1))
8. A statement of restrictions of all types that run with the land and become covenants in the deeds of lots.

9. Resolution and certificate for approval by the governing body and for signatures of the Mayor and Clerk.

(Code of Iowa, Sec. 354.11(4))

10. Profiles, typical cross sections, and specifications of street improvements and utility systems, to show the location, size and grade. These should be shown on a fifty (50) foot horizontal scale and a five (5) foot vertical scale with west or south at the left.

10. A certificate by the City Clerk or similar official that all required improvements and installations have been completed, or that a performance bond guaranteeing completion has been approved by the City Attorney and filed with the City Clerk, or that the governing body has agreed that the City will provide the necessary improvements and installations and assess the costs against the subdivider or future property owners in the subdivision.

11. The encumbrance bond, if any, as specified in Sections 354.11 and 354.12, Code of Iowa.

6-7-26 FEES. Before a preliminary plat may be considered by the Commission, the subdivider or agent shall deposit with the City Treasurer a fee of seventy-five dollars (\$75.00) to be credited to the General Fund of the City.

6-7-27 ACTION BY THE GOVERNING BODY. Upon receipt of the plat, but not more than sixty (60) days following submission of the final plat to the Clerk as stated in 6-7-23 the governing body shall either approve or disapprove the final plat.

(Code of Iowa, Sec. 354.8)

1. In the event that said plat is disapproved by the Governing Body, such disapproval shall be expressed in writing and shall point out wherein said proposed plat is objectionable.
2. In the event that said plat is found to be acceptable and in accordance with this Ordinance, the governing body shall accept the same.
3. The passage of a resolution by the governing body accepting the plat shall constitute final approval of the platting of the area shown on the final plat, but the subdivider or owner shall cause such plat to be recorded in the office of the County Recorder of Mills, County, Iowa, and shall file satisfactory evidence of such recording before the City shall recognize the plat as being in full force and effect.

## OTHER PROVISIONS

6-7-28 VARIANCES. Where in the case of a particular proposed subdivision, it can be shown that strict compliance with the requirement of this Ordinance would result in extraordinary hardship to the subdivider, because of unusual topography or other conditions, the governing body may vary, modify or waive the requirements so that substantial justice may be done and the public interest

secure. Provided, however, that such variance, modification or waiver will not have the effect of nullifying the intent and purpose of this Ordinance. Such variances and waivers may be granted only by the affirmative vote of three-fourths (3/4) of the members of the Governing Body.

6-7-29 CHAIN SUBDIVIDING. No more than two building permits for each separate tract existing at the effective date of this Ordinance shall be issued unless the tract has been platted in accordance with this Ordinance; except that this provision shall not limit the number of building permits that may be issued for accessory buildings as defined by the (choose one)-(zoning or restricted residence district) Ordinance or additions or improvements to a main or accessory building already legally located upon said tract.

6-7-30 ENFORCEMENT.

1. No plat of any subdivision shall be recorded in the County Recorder's office or have any validity until it has been approved in the manner prescribed herein.
2. The Council shall not permit any public improvements over which it has control to be made from City funds or any City money expended for improvements or maintenance on any street in any area that has been subdivided after the date of adoption of these regulations unless such subdivision and streets have been approved in accordance with the provisions contained herein and accepted by the Council as a public street.

6-7-31 PENALTIES. Violation of the provisions of this chapter or failure to comply with any of its requirements shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than thirty (30) day or both and, in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. The owner or tenant of any building, structure, premises or part thereof and any architect, builder, contractor, agent or other person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

6-7-32 CHANGES AND AMENDMENTS. Any provision of these regulations may be changed and amend from time to time by the Council; provided, however, such changes and amendments shall not become effective until after a public hearing has been held, public notice of which shall be given in a newspaper of general circulation in the City at least fifteen (15) days prior to such hearing.

6-7-33 EXTRATERRITORIAL REVIEW AGREEMENT.

The City may negotiate an extraterritorial review agreement between the City of Malvern and Mills, County for the standards and conditions applied by the City for review and approval of a subdivision as provided in Section 354.9 of the Code of Iowa.

The City of Malvern shall apply the same standards and conditions for review and approval of a subdivision in the extraterritorial review area as established in Section 6-7-3 of the City of Malvern Municipal Code.

The City of Malvern may, by resolution, waive its right to review the subdivision or waive the requirements of any of its standards or conditions for approval of the subdivision in the extraterritorial area. Such resolution shall be certified and recorded with the plat.

Procedures for certifying approval of subdivisions in the extraterritorial area of the City shall be the same as those established for other subdivisions with the City unless waived by the Governing Body.  
(Code of Iowa, Sec. 354.8 and 354.9)

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 8 SIDEWALK REGULATIONS

6-8-1	Purpose	Remedies
6-8-2	Definitions	6-8-12 Inspection and Approval
6-8-3	Cleaning Snow, Ice, and Accumulations	6-8-13 Barricades and Warning Lights
6-8-4	Maintenance Responsibility	6-8-14 Interference with Sidewalk Improvements
6-8-5	Liability of Abutting Owner	6-8-15 Special Assessments for Construction and Repair
6-8-6	Ordering Sidewalk Improvements	6-8-16 Notice of Assessment for Repair or Cleaning Costs
6-8-7	Repairing Defective Sidewalks	6-8-17 Hearing and Assessment
6-8-8	Notice of Inability to Repair or Barricade	6-8-18 Billing and Certifying to County
6-8-9	Standard Sidewalk Specifications	6-8-19 ADAAG Compliance
6-8-10	Permits for Construction or Removal	6-8-20 Regulations
6-8-11	Failure to Obtain Permit;	

6-8-1 PURPOSE. The purpose of this chapter is to improve and maintain sidewalks in a safe condition, to require owners of abutting property to maintain, repair, replace, construct or reconstruct sidewalks.

6-8-2 DEFINITIONS. As used in this chapter, the following terms have these meanings:

1. Defective Sidewalk. Any public sidewalk exhibiting one or more of the following characteristics:
  - a. vertical separations equal to three-fourths (3/4) inch or more.
  - b. horizontal separations equal to three-fourths (3/4) inch or more.
  - c. holes or depressions equal to three-fourths (3/4) inch or more and at least four (4) inches in diameter.
  - d. spalling over fifty (50) percent of the surface of a single square of the sidewalk with one or more depressions equal to one-half (1/2) inch or more.
  - e. spalling over less than fifty (50) percent of a single square of the sidewalk with one or more depressions equal to three-fourths (3/4) inch or more.
  - f. a single square of sidewalk cracked in such a manner that no part thereof has a piece greater than one square foot.

- g. a sidewalk with any part thereof missing to the full depth.
  - h. a change from design or construction grade equal to or greater than three-fourths (3/4) inch per foot.
2. Sidewalk Improvements. The construction, reconstruction, repair, replacement, or removal of a public sidewalk or the excavating, filling, or depositing of material in the public right-of-way in connection therewith.
  3. Owner. The person owning the fee title or the contract purchaser for purposes of notification required herein. For all other purposes, "owner" shall include the lessee, or person in possession.

6-8-3 CLEANING SNOW, ICE, AND ACCUMULATIONS. It shall be the duty of the owner to keep sidewalks abutting the owner's property clear of the natural accumulations of snow or ice. If the owner fails to do so within twenty four (24) hours after deposit of accumulation, the Mayor may have the natural accumulations of snow or ice removed without notice to the property owner. The Mayor shall give the Council an itemized and verified statement of the removal costs and a legal description of the property at the next regular Council meeting. The costs shall be reviewed by the Council, and if found correct, shall be assessed against the property as taxes. The City Clerk shall be directed to certify the costs to the County Treasurer for collection as provided in Section 364.12 of the Code of Iowa.

(Code of Iowa, Sec. 364.12(2b) and (2e))

6-8-4 MAINTENANCE RESPONSIBILITY. The abutting property owner or owners shall be responsible for the repair, replacement or reconstruction of all broken or defective sidewalks to a safe condition and to maintain in a safe condition all sidewalks in the abutting street right-of-way.

(Code of Iowa, Sec. 364.12(2c))

6-8-5 LIABILITY OF ABUTTING OWNER. As provided in Section 364.14, Code of Iowa, in the event the owner of property abutting any public sidewalk fails or refuses to perform any act required of them by this Ordinance and in the event an action is brought against the City for personal injuries alleged to have been caused by a defect in or the condition of said sidewalk, the City may notify in writing the said abutting owner that it claims the injury was caused by their negligence and/or their failure to repair the defect or eliminate the condition complained of. The notice shall state the pendency of the action, the name of the plaintiff, the name and location of the court where the action is pending, a brief statement of the alleged facts from which the cause arose, that the City believes that the person notified is liable to it for any judgment rendered against the City, and asking the person to appear and defend.

A judgment obtained in the suit is conclusive in any action by the City against any person so notified, as to the existence of the defect or condition or other cause of the injury or damage, as to the liability of the City to the plaintiff in the first named action, and as to the amount of the damage or injury. The City may maintain an action against the person notified to recover the amount of the judgment together with all the expenses incurred by the City in the suit.

(Code of Iowa, Sec. 364.14)

6-8-6 ORDERING SIDEWALK IMPROVEMENTS. The City Council may order the construction, reconstruction, repair, or replacement of permanent sidewalks upon any street or court. Notice of this order shall be sent to the owner by certified mail. The notice shall include the fact that the owner may request a hearing by the Council within fifteen (15) days or receipt of the notice.

6-8-7 REPAIRING DEFECTIVE SIDEWALKS. It shall be the duty of the abutting property owner at any time, or upon receipt of thirty (30) days' notice from the City, to repair, replace, or reconstruct all broken or defective sidewalks in the abutting street right-of-way. If, after the expiration of the thirty (30) days as provided in the notice, the required work has not been done or is not in the process of completion, the Mayor shall order the work to proceed to repair, replace, or reconstruct the sidewalk. Upon completion of the work, the Mayor shall submit to the Council an itemized and verified statement of expenditures for material and labor, and the legal description of the property abutting the sidewalk on which work has been performed. These costs shall be assessed to the property as taxes. The City Clerk shall be directed to certify the costs to the County Treasurer for collection as provided in Section 364.12 of the Code of Iowa.

(Code of Iowa, Sec. 364.12(e))

6-8-8 NOTICE OF INABILITY TO REPAIR OR BARRICADE. It shall be the duty of the owner of the property abutting the sidewalk, or of the contractor or agent of the owner, to notify the City immediately in the event the owner is unable to make necessary sidewalk improvements or to install or erect warnings and barricades as required by this chapter.

6-8-9 STANDARD SIDEWALK SPECIFICATIONS. Sidewalks constructed, repaired, or replaced under the provisions of this chapter shall be of the following construction and meet the following standards:

1. Portland cement concrete shall be the only material used in the construction and repair of sidewalks unless otherwise authorized by the City Council.
2. Sidewalks shall be on one-course construction.
3. Concrete may be placed directly on compact and well-drained soil. Where soil is not well drained, a four (4) inch sub-base of compact, clean, coarse gravel, sand, or cinders shall be laid. The adequacy of the soil drainage is to be determined by the Superintendent of Public Works.
4. The sidewalk bed shall be graded to the established grade.
5. Residential sidewalks shall be at least four (4) feet wide, or match existing sidewalks, and four (4) inches thick, and each section shall be no more than four (4) feet in length. In the central business district, sidewalks shall extend from the property line to the curb unless the Council shall establish a different distance due to the circumstances. Each section shall be

four (4) inches thick and no more than six (6) feet in length and width. All driveway areas shall not be less than six (6) inches in thickness.

6. Residential sidewalks shall be located with the inner edge (edge nearest the abutting private property) on the property line, unless the Council shall establish a different distance due to the circumstances.
7. All elevations of sidewalks are to be established by the City Council with assistance from the Superintendent of Public Works on a case-by-case basis.
8. All sidewalks shall slope at least one-quarter (1/4) inch per foot toward the curb, but in no event more than one-half (1/2) inch per foot toward the curb.
9. All sidewalks shall have a steel trowel finish followed by a "broom" or a "wood float" finish.
10. Ramps for the disabled. There shall not be less than two (2) curb cuts or ramps per lineal block which shall be located on or near the cross-walks at intersections. Each curb cut or ramp shall be at least thirty (30) inches wide, shall be sloped at not greater than one inch of rise per twelve (12) inches lineal distance, except that a slope no greater than one inch of rise per eight (8) inches lineal distance may be used where necessary, shall have a nonskid surface, and shall otherwise be so constructed as to allow reasonable access to the crosswalk for physically disabled persons using the sidewalk.

(Code of Iowa, Sec. 216C.9)

11. All sidewalk improvements on public property, whether performed by the owner of the abutting property or by the City, shall be performed under the supervision and inspection of the City Superintendent of Public Works, and in accordance with the standard sidewalk specifications set forth in this chapter.

6-8-10 PERMITS FOR CONSTRUCTION OR REMOVAL. No person shall make any sidewalk improvements unless such person shall obtain a permit from the City Clerk. The permit shall state that the person will comply with the Ordinances of the City and with the specifications for sidewalks adopted by the City. The permit also shall state that the work will be done under the direction and approval of the City Superintendent of Public Works. All such permits shall be issued without charge and a copy thereof, with the application, shall be filed and preserved in the office of the City Clerk. The permit shall state when the work is to be commenced and when the work is to be completed. The time of completion for the sidewalk improvements may be extended by the City Council. All permits for sidewalk improvements not ordered by resolution of the City Council shall be issued in compliance with this chapter. The City Council may withhold the issuance of any permit for any sidewalk improvements for a sufficient period to determine the necessity for the proposed improvements or when weather conditions will adversely affect the sidewalk improvements.

6-8-11 FAILURE TO OBTAIN PERMIT; REMEDIES. Whenever any sidewalk improvements are made that do not conform to the provisions of this chapter and with the specifications, or when any sidewalk improvements are made without a permit, the Mayor shall serve notice to obtain a permit upon the property owner and upon the contractor doing the work. If the sidewalk is in the course of construction, the notice shall order the work to stop until a permit is obtained and the work is corrected to comply with the specifications. If the sidewalk work has been completed, the owner shall obtain a permit immediately and perform any needed corrections within five (5) days from receipt of the permit. If the owner fails to comply with this notice, the Mayor shall have the work completed and the costs assessed to the property owner as provided in this chapter.

6-8-12 INSPECTION AND APPROVAL. Upon final completion, the Superintendent of Public Works shall inspect the work and may order corrections if the work does not meet specifications. When the work does meet all requirements of this chapter, the specifications, and the permit, the Superintendent of Public Works shall indicate this on both copies of the permit.

6-8-13 BARRICADES AND WARNING LIGHTS. Proper warning lights and barricades shall be placed to protect persons from materials, equipment, and dangerous conditions. Placement and maintenance of adequate warnings is the responsibility of the constructor, the owner, and the lessee of the property. It is the duty of the owner of the property abutting the sidewalk, or the owner's contractor or agent, to notify the City immediately in the event of failure or inability to make necessary sidewalk improvements or to install or erect necessary barricades as required by this chapter.

6-8-14 INTERFERENCE WITH SIDEWALK IMPROVEMENTS. No person shall knowingly or willfully drive any vehicle upon any portion of any sidewalk or approach thereto while it is in the process of being improved, or upon any portion of any completed sidewalk or approach thereto, or shall remove or destroy any part or all of any sidewalk or approach thereto, or shall remove, destroy, mar, or deface any sidewalk at any time or destroy, mar, remove, or deface any notice or warning device provided by this chapter.

6-8-15 SPECIAL ASSESSMENTS FOR CONSTRUCTION AND REPAIR. The City Council may assess the cost of initial construction, improvements, and/or repair of sidewalks in the City according to the special assessment procedures established in Chapter 384, division IV, Code of Iowa.

(Code of Iowa, Sec. 384.38)

6-8-16 NOTICE OF ASSESSMENT FOR REPAIR OR CLEANING COSTS. When the Mayor submits a bill for sidewalk improvements or for removal of accumulations as provided in this chapter, the City Clerk shall send a notice of such facts to the owner of the abutting property. The notice may be given either by personal service or by certified mail to the last known address of the owner. The notice shall contain a statement of the work performed, the cost of the work that is being assessed, a description of the property affected, and the fact that the person may pay the amount assessed within thirty (30) days without interest or penalty. The notice also shall indicate that the person may object to such assessment and given the place and time at which Council will hear such

objections. The time set for hearing shall be at least fifteen (15) days after the service or mailing of the notice.

(Code of Iowa, Sec. 384.50)

6-8-17 HEARING AND ASSESSMENT. At the time and place designed in the Notice, the Council shall consider all objections to the assessment, correct all errors or omissions, and adopt a corrected list as the amounts to be assessed against the property.

(Code of Iowa, Sec. 384.51)

6-8-18 BILLING AND CERTIFYING TO COUNTY. Thirty (30) days after the Council's decision, the City Clerk shall certify any unpaid amounts to the County Treasurer. The unpaid assessments shall constitute a lien against the property and shall be collected by the County Treasurer in the same manner as other taxes. Any assessment that exceeds \$100 may be paid in installments as set by Council, not exceeding ten, in the same manner and at the same interest rates as for special assessments under Chapter 384, division IV, Code of Iowa. No interest shall be charged for assessments, or parts thereof, paid within thirty (30) days of the time the Council determined the final amounts.

(Code of Iowa, Sec. 384.60)

6-8-19 ADAAG COMPLIANCE. All construction, repair, and maintenance of sidewalks shall comply with Americans with Disabilities Guidelines (ADAAG).

6-8-20 REGULATIONS.

1. AWNINGS. It is unlawful for a person to erect or maintain any awning over any sidewalk unless all parts of the awning are elevated at least eight (8) feet above the surface of the sidewalk and the roof or covering is made of duck, canvas or other suitable material supported by iron frames or brackets securely fastened to the building, without any posts or other device that will obstruct the sidewalk or hinder or interfere with the free passage of pedestrians.
2. ENCROACHING STEPS. It is unlawful for a person to erect or maintain any stairs or steps to any building upon any part of any sidewalk without permission by resolution of the Council.
3. Construct or build a stairway or passageway to any cellar or basement by occupying any part of the sidewalk, or to enclose any portion of a sidewalk with a railing without permission by resolution of the Council.
4. Keep open any cellar door, grating or cover to any vault on any sidewalk except while in actual use with adequate guards to protect the public.
5. Neglect to properly protect or barricade all openings on or within six (6) feet of any sidewalk.

6. It is unlawful for a person to make a fire of any kind on any sidewalk or to place or allow any fuel to remain upon any sidewalk.
7. It is unlawful for a person to scatter or place any paste, paint or writing on any sidewalk.  
(Code of Iowa, Sec. 716.1)
8. It is unlawful for a person to throw or deposit on any sidewalk any glass, nails, glass bottle, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris, or any substance likely to injure any person, animal or vehicle.  
(Code of Iowa, Sec. 364.12 [2])
9. It is unlawful for a person to place upon or above any sidewalk, any goods or merchandise for sale or for display in such a manner as to interfere with the free and uninterrupted passage of pedestrians on the sidewalk; in no case shall more than three (3) feet of the sidewalk next to the building be occupied for such purposes.
- 10.** It is unlawful for a person to erect or keep any vending machine or stand for the sale of fruit, vegetables or other substances or commodities on any sidewalk without first obtaining a written permit from the Council.

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 9 SNOW REMOVAL

6-9-1	Statement of Purpose	6-9-6	Snow Removal Routes
6-9-2	Use of Chemicals and Abrasives, Sand and Salt	6-9-7	Driveways and Snow Removal from Private Property
6-9-3	Snow Declaration	6-9-8	Removal of Snow and Ice Accumulations from Sidewalks
6-9-4	Parking During Winter Months	6-9-9	Summary of Policy
6-9-5	Dumping of Snow		

6-9-1 STATEMENT OF PURPOSE. Due to the location of the City of Malvern, snow, ice, or freezing rain can be expected between mid-November to mid-March each year. Snow and ice control is basically emergency work in which City streets must be cleared at any time of the day or night. Since snow and ice removal is an emergency, the work must be accomplished as promptly as possible and consequently all planning and equipment preparations should be completed prior to the arrival of the snow season.

Maintenance Personnel will endeavor to maintain adequate traction for vehicles properly equipped for winter driving conditions. This does not mean bare dry pavement should be expected after each snowfall. Furthermore, this does not mean the streets will be free of ice and snow. However, if possible, this will be the City's goal. During the winter months the public is encouraged to exercise extreme caution in order to make travel within the City as safe as possible under the usually difficult circumstances accompanying Iowa winters.

6-9-2 USE OF CHEMICALS AND ABRASIVES, SAND AND SALT. When appropriate, the City of Malvern shall use a sand and salt mixture for melting ice and hard packed snow. The mixture is to be used sparingly and only when it can be effectively applied and produce a positive result. As a general rule, it will not be applied when temperatures are below 20 degrees Fahrenheit and falling. A mixture of approximately three parts sand and one part salt/calcium is the normal mixture rate. More concentrated salt mixes will be used when conditions dictate.

6-9-3 SNOW DECLARATION. A snow declaration is defined as a special condition of a snowfall event **requiring** residents to move their vehicles, **including, but not limited to, campers, trailers, boats, etc.** off the streets to accommodate snow removal. A snow declaration is normally declared after a measurable snowfall of 2 inches or more; however, any amount of snow combined with ice, rain, and/or wind can also require a snow declaration. The Mayor may declare a snow declaration in advance of an anticipated storm time; or may be declared anytime during or after a storm. A snow declaration will normally not last more than 72 hours past the end of the snowfall.

6-9-4 PROHIBITED PARKING.

1. **No person shall park, abandon or leave unattended any vehicle, including, but not limited to, campers, trailers, boats, etc. on any public street or alley during a**

**plowable snow unless the snow has been removed or plowed from said street or alley and the snow has ceased to fall. A snow declaration parking ban shall continue from its initiation through the duration of the snow or ice storm and the forty-eight (48) hour period after cessation of such, except as above provided upon streets and alleys which have been fully plowed.**

**(Code of Iowa, Sec. 321.236)**

- 2. Such a ban shall be of uniform application and the Clerk is to publicize the requirements widely, using all available news media. Where predictions or occurrences indicate the need, the Mayor shall proclaim a snow declaration and the Clerk shall inform the news media to publicize the proclamation. Such declaration may be extended or shortened when conditions warrant.**
  
- 3. The parking prohibition provided above shall be modified as follows:**
  - a. On streets where parking is permitted on both sides, all vehicles, including, but not limited to, campers, trailers, boats, etc. must be removed from the street or parked on the side of the street with even buildings numbers. After one-half of the street has been cleaned to the curb, but no later than twelve (12) hours after the declaration of the snow emergency, all motor vehicles shall be moved to the side of the street with odd building numbers until the full width of the street has been cleaned.**
  
  - b. On streets where parking is permitted on one side, all vehicles, including, but not limited to, campers, trailers, boats, etc. must be removed from the street or parked on the permitted side until one half of the street has been cleaned. After the first half of the street has been cleaned, but not more than twelve (12) hours after the deceleration of the snow emergency, all vehicles shall be removed from the street or parked on the “prohibited” side of the street until the full width of the street has been cleaned.**
  
  - c. Parking of vehicles is not permitted on streets where no parking on both sides of the street exists at all times or during specified hours.**
  
  - d. A vehicle left parked in violation of a ban on parking during a snow declaration may be impounded for violations and pay the reasonable cost of towing charges and storage.**

**6-9-5 DUMPING OF SNOW. It is unlawful for any person to throw, push, or place or cause to be thrown, pushed or placed, any ice or snow from private property, sidewalks, or driveways onto the traveled way of a street or alley so as to obstruct gutters, or impeded the passage of vehicles upon the street or alley or to create a hazardous condition.**

The public is encouraged to assist the City by reporting hazardous conditions or downed traffic signs or wires. Citizens can also assist snowplowing operation by not parking cars on the streets during snowplowing operations and by not shoveling snow from driveways and sidewalks into streets.

**6-9-7 DRIVEWAYS AND SNOW REMOVAL FROM PRIVATE PROPERTY.**

1. City snowplows will not clear private driveways.
2. Snow placed in driveways by City plows is a natural result of clearing the streets and is the responsibility of the property owner to remove.
3. Snow from a private driveway, private sidewalk, business driveway, or parking lot shall not be placed on a City street or on designated street parking.
4. Snow from a private driveway or business shall be piled in such a way as to avoid a safety hazard, obstruction of view, or hindrance of a traveling path of the public.
5. City equipment will not be used to remove piled snow or push snow away from private property or businesses. Snow shall be cleared by the City from City facilities. Use of City equipment to clear snow from private property is a violation of this chapter unless snow removal is required in order to allow emergency vehicle access to the private property for ambulance, fire, or police calls.

**6-9-8 REMOVAL OF SNOW AND ICE ACCUMULATIONS FROM SIDEWALKS.** It is the responsibility of the abutting property owner to remove snow and ice accumulations promptly from sidewalks. If a property owner does not remove snow and ice accumulations from public sidewalks on their property within 24 hours of the end of the last snowfall, the city may do so without notice to the property owner, and assess the costs of snow and ice accumulations against the property owners to be collected in the same manner as a property tax.

**6-9-9 SUMMARY.** In order to achieve the best possible service from the City's snow and ice removal operation in the most efficient and safe manner possible, all citizens of Malvern are requested to cooperate fully with the City. During snow emergencies and winter storm conditions, all residents are asked to remove their parked vehicles from all City streets. If a resident has a driveway or is aware of an area in which they can park during snow removal operations, the City asks that those areas be utilized.

Even though a route has been plowed, it may remain dangerous due to additional fallen snow or patches of ice or snow that may not have been removed by the plows. Drivers and pedestrians should exercise extreme caution when driving or walking during or after a snowstorm, and driving should be avoided, if possible.

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 10 FENCE AND HEDGE REGULATIONS

6-10-1	Definition	6-10-5	Shared Fences
6-10-2	General Requirement	6-10-6	Barbed Wire and Electrical Fences
6-10-3	Permit Required	6-10-7	Temporary Fencing
6-10-4	Fences Required		

6-10-1 **DEFINITION.** A free-standing structure of metal, masonry, glass, or wood or any combination thereof resting on or partially buried in the ground and rising above ground level, and used for confinement, screening, or partition purposes.

6-10-2 **GENERAL REQUIREMENT.** Fences and hedges when located within a front, side or rear yard, or within five (5) feet of a lot line shall be subject to the following location and height restrictions:

1. Fences shall be constructed of material commonly used for landscape fencing, such as masonry block, lumber, chain link or natural plantings, but shall not include corrugated sheet metal, barbed wire, salvage material or be electrified unless otherwise allowed.
2. The frame of a fence, including posts and supports, shall be placed on the inside of the fence. Fencing shall be constructed with the finished side facing outward.
3. No portion of a fence shall exceed six (6) feet in height.
4. Fence and hedges shall be located so no part thereof is within three (3) feet of an alley or three (3) feet of a street right-of-way.
5. In residential districts, fences within the front yard shall not exceed four (4) feet in height.
6. **Visibility at Intersection.** On a corner lot in any agricultural or residential district, no fence, wall hedge or other planting, signs or structure that will obstruct vision between a height of two and one-half (2 ½) feet and ten (10) feet above the centerline grades of the intersecting street shall be erected, placed or maintained within the triangular area formed, the right-of-way lines at such corner and a straight line joining said right-of-way lines at points which are twenty-five (25) feet distant from the intersection of the right-of-way lines, and measured along the right-of-way lines.

6-10-3 **PERMIT REQUIRED.** A building permit shall be required for all fences constructed within the City limits. A building permit shall be acquired as stated in section 6-12 of this Code of Ordinances.

6-10-4 FENCES REQUIRED. Fenced enclosures shall be provided for outdoor swimming pools with a depth of eighteen (18) inches or more, and shall be subject to the following requirements:

1. Fences must be at least four (4) feet in height from ground level but not to exceed seven (7) feet from the top rim of the pool, and have no spaces that would allow a four (4) inch diameter sphere to pass through.
2. Fences must have a self-closing and self-latching device on the gate.
3. Fences must be located so not part thereof is within five (5) feet of an alley or five (5) feet of a street right-of-way.

6-10-5 SHARED FENCES

1. The owners of the properties that share the lot-line on which the proposed fence will be located must sign a written agreement that outlines the material the fence will be constructed from, the location of the fence, the height of the fence, and the agreement of both property owners to all of the above conditions.
2. The agreement must then be filed with the County Recorder.
3. A copy of the agreement and proof of its filing with the County Recorder must be presented to the City Official responsible for the issuing of fence permits before the permit will be issued.
4. If agreement cannot be reached between the property owners on a shared lot-line fence, any fence constructed on either property must be a minimum of three (3) feet from said shared lot-line.

6-10-6 BARBEDWIRE AND ELECTRICAL FENCES.

1. Barbed wire and electric fences shall not be allowed in residential or commercial zones.
2. Barbed wire and electric fences shall be prohibited within five (5) feet of a public sidewalk or within four (4) feet of a street right-of-way where a public sidewalk does not exist.
3. Electric fences shall not be permitted in any district except for the enclosure of livestock operations in Agricultural zones.
4. No electric fence shall carry a charge greater than twenty-five (25) milliamperes nor a pulsating current longer than one-tenth (1/10) per second in a one-second cycle. All electric fence chargers shall carry the seal of an approved testing laboratory.

6-10-7 TEMPORARY FENCING. Any temporary fencing on, in or around a construction site shall be installed as per approved construction drawings.

1. The Public Works Superintendent is authorized to approve and require temporary fencing, such as plastic silt fence, safety fencing, and other devices at active construction projects which do not have construction drawings.

Temporary fencing shall not remain in place longer than is necessary to perform its function.

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 11 BUILDING PERMITS

6-11-1	Purpose	6-11-10	Rear Yard Requirements
6-11-2	Structure Defined	6-11-11	Special Requirements for Residences
6-11-3	Permit Required	6-11-12	Variances
6-11-4	Application	6-11-13	Fences
6-11-5	Fees	6-11-14	Curb Cuts
6-11-6	Plans Required	6-11-15	Authority of City Council
6-11-7	Location of Structure	6-11-16	Permit Issued
6-11-8	Front Yard Requirements	6-11-17	Limitations on Permit
6-11-9	Side Yard Requirements		

6-11-1 **PURPOSE.** The purpose of this Chapter is to provide the City Council notice of the type of structure, the kind of construction, the location of any structure to be erected or added within the corporation, the location of any structure on any specific lot within the corporation and to provide reasonable rules for the erection, reconstruction, altering and repair of all kinds of structures.

6-11-2 **STRUCTURE DEFINED.** Anything constructed or erected with a fixed location on the ground that protrudes above the ground or surface level of a parcel of property. Structures include, but are not limited to, buildings, walls, fences, billboards, aboveground storage tanks, and similar uses.

6-11-3 **PERMIT REQUIRED.** No structure shall be erected, reconstructed, altered or added to without first securing a permit from the City Council.

6-11-4 **APPLICATION.** All requests for a building permit shall be submitted to the City Clerk on forms supplied by the City and accompanied with the appropriate fee for such permit.

6-11-5 **FEES.** Fees for building permits shall be as follows:

New Structure; Home or Commercial Building	\$.40/sq. ft.
Add Basement, Addition	\$.40/sq. ft. – min \$75
Unattached Garage, Covered Deck, Covered Patio, Porch, Carport, Utility Shed, Commercial Storage Units--500 sq.ft. and above	\$.30/sq. ft. – min \$75
Deck, Driveway (2-D), gravel/surfaced pad	\$.25/sq. ft. – min \$75
Add cover to deck/patio or add enclosure	\$.25/sq. ft. – min \$75
Fences, Retaining Walls, Stand-Alone Signage	\$.40/linear foot – min. \$50

Sidewalks, Fences/Retaining Walls Under 3', Etc.	For fence/retaining wall over 3' high \$50.00
Minimum Building-Permit Fee	\$50.00
Time Extensions	\$50.00/month

6-11-6 PLANS REQUIRED. Plans and specifications of any proposed structure shall be filed with the application for the permit.

6-13-7 LOCATION OF STRUCTURE. A complete showing and description of the real estate involved and the location of the structure on the real estate shall be filed with the application. The perimeter of the structure shall be staked prior to submitting an application.

6-11-8 FRONT YARD REQUIREMENTS. There shall be a front yard of not less than twenty (20) feet, except as follows:

1. Where a structure is to be erected on a parcel of land that is within one hundred (100) feet of existing structures on both sides, the minimum front yard shall be a line drawn between the closest front corners of the adjacent structures on the two sides, or
2. Where a structure is to be erected on a parcel of land that is one hundred (100) feet of an existing structure on one side only within the same block, such structure may be erected as close to the street as a line drawn from the closest front corner of that structure to a point twenty (20) feet back from the front lot line measured at the center of the lot on which the proposed structure is to be erected.
3. Where lots have a double frontage, the front yard as required herein shall be provided on both streets.

6-11-9 SIDE YARD REQUIREMENTS. No building shall be erected closer than five (5) feet to either side lot line, except in the business district where no side yard is required.

6-11-10 REAR YARD REQUIREMENTS. There shall be a rear yard provided for each structure of not less than thirty (30) feet or twenty percent (20%) of the depth of the lot, whichever amount is smaller, except in the business district where no rear yard is required.

6-11-11 SPECIAL REQUIREMENTS FOR RESIDENCES. Any structure which is to be a residence for living shall meet the following special requirements.

1. A residence shall have a minimum of 1,000 square feet of livable space on the main floor.

2. All residences shall have a permanent perimeter foundation constructed of cement, concrete blocks with mortar or other permanent material approved by the City Council. All foundations shall have footings that extend below the frost line.

6-11-12 VARIANCES. The city council may grant a variance to sections 6-12-8, 6-12-9, and 6-12-10 where the setback requirements would cause a hardship on the property owner.

6-11-13 FENCES. No setback requirements shall be applicable to the construction of a fence.

6-11-14 CURB CUTS. No curb cut shall be constructed or permitted without first obtaining a building permit.

6-11-15 AUTHORITY OF CITY COUNCIL. The City Council shall have full authority to accept or reject any plans and specifications submitted.

6-11-16 PERMIT ISSUED. Permits shall be issued by the City Clerk in duplicate, one copy for the applicant and one copy to be retained in the City records.

6-11-17 LIMITATIONS ON PERMIT. In the event that construction covered by a permit is not initiated and underway within one year from the date of issuance of a permit, such permit shall be deemed void and of no effect. All permits shall expire and be void twelve (12) months after issuance by the City Clerk. If construction is not completed a new application and fee must be submitted.

**TITLE VI PHYSICAL ENVIRONMENT**

**CHAPTER 12 NUMBERING OF BUILDINGS**

- |        |                          |        |                        |
|--------|--------------------------|--------|------------------------|
| 6-12-1 | Buildings to be Numbered | 6-12-4 | Type of Numbers, Size  |
| 6-12-2 | Numbering System         | 6-12-5 | Enforcement            |
| 6-12-3 | Mandatory Numbering      | 6-12-6 | Building Numbering Map |

6-12-1 **BUILDINGS TO BE NUMBERED.** All buildings now or hereafter erected within the City limits shall be assigned numbers and the owners notified of the assigned number. The owners shall cause the numbers to be placed and maintained on their property.

6-12-2 **NUMBERING SYSTEM.** Numbers shall be assigned in accordance with the system developed by the City Council. The system consists of three-digit numbering. The odd numbers shall be on the west and north sides of all streets and the even numbers shall be on the east and south sides of all streets.

6-12-3 **MANDATORY NUMBERING.** The placing of numbers is mandatory.

6-12-4 **TYPE OF NUMBERS, SIZE.** The numbers shall be conspicuously displayed on the portion of the building or premise which faces the street. All numbers shall be of durable substance, clearly legible and the numerals shall be not less than five inches in height.

6-12-5 **ENFORCEMENT.** If numbers meeting the requirements of this ordinance have not been placed on each building, the City shall cause individual notice to be given to the owner of buildings not numbered, requiring compliance within a reasonable time set in the notice, and if not completed by such time, the City shall cause proper numbers to be installed and the reasonable cost of the installation billed to such owner.

6-12-6 **BUILDING NUMBERING MAP.** The Clerk shall be responsible for preparing and maintaining a building numbering map.

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 13 DANGEROUS BUILDINGS

6-13-1	Enforcement Officer	6-13-5	Conduct of Hearing
6-13-2	General Definition of Unsafe	6-13-6	Posting of Signs
6-13-3	Unsafe Building	6-13-7	Right to Demolish
6-13-4	Notice to Owner	6-13-8	Costs

6-13-1 ENFORCEMENT OFFICER. The Mayor is responsible for the enforcement of this chapter.

6-13-2 GENERAL DEFINITION OF UNSAFE. All buildings or structures which are structurally unsafe or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety or health, or public welfare, by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, are, for the purpose of this chapter, unsafe buildings. All such unsafe buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedure specified in this chapter.  
*(Code of Iowa, Sec. 657A.1 & 364.12[3a])*

6-13-3 UNSAFE BUILDING. "Unsafe building" means any structure or mobile home meeting any or all of the following criteria:

1. Various Inadequacies. Whenever the building or structure, or any portion thereof, because of (a) dilapidation, deterioration, or decay; (b) faulty construction; (c) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (d) the deterioration, decay or inadequacy of its foundation; or (e) any other cause, is likely to partially or completely collapse.
2. Manifestly Unsafe. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
3. Inadequate Maintenance. Whenever a building or structure, used or intended to be used for dwelling purposes, because of dilapidation, decay, damage, faulty construction, or otherwise, is determined by any health officer to be unsanitary, unfit for human habitation or in such condition that it is likely to cause sickness or disease.
4. Fire Hazard. Whenever any building or structure, because of dilapidated condition, deterioration, damage, or other causes determined by the Fire Marshal or Fire Chief to be a fire hazard.
5. Abandoned. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or

structure is abandoned for a period in excess of six ( 6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

6-13-4 NOTICE TO OWNER. The enforcement officer shall examine or cause to be examined every building or structure or portion thereof reported as dangerous or damaged and, if such is found to be an unsafe building as defined in this chapter, the enforcement officer shall give to the owner of such building or structure written notice stating the defects thereof. This notice may require the owner or person in charge of the building or premises, within forty-eight ( 48) hours or such reasonable time as the circumstances require, to commence either the required repairs or improvements or demolition and removal of the building or structure or portions thereof, and all such work shall be completed within ninety (90) days from date of notice, unless otherwise stipulated by the enforcement officer. If necessary, such notice shall also require the building, structure, or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected and approved by the enforcement officer.

*(Code of Iowa) Sec. 364.12 [3h]*

1. Notice Served. Such notice shall be served by sending by certified mail to the owner of record, according to Section 364.12[3h] of the Code of Iowa, if the owner is found within the City limits. If the owner is not found within the City limits, such service may be made upon the owner by registered mail or certified mail, postage prepaid, return receipt requested, to such person at the address as it appears in the last equalized assessment roll of the County or as known to the enforcement officer. If no address of any such person so appears or is known to the enforcement officer, then a copy of the notice and order shall be published once in a paper of local distribution, then sent by regular mail, addressed to such person at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail or publication in the manner herein provided shall be effective on the date of mailing or publication. Additionally, the notice may be served on the property owner's attorney, if the property owner is represented by such, or on the property owner if not represented by an attorney. Service may be made in one of the following ways:
  - a. By mail or facsimile to the last known address of the property owner or attorney; or
  - b. By hand delivery to the property owner or office of the attorney of the property owner, unless such office is closed; or
  - c. By leaving the notice at the property owner's dwelling house or usual place of abode, or the property owner's attorney's dwelling house, and leaving the notice with a person of suitable age and discretion therein residing. The designated period within which said owner or person in charge is required to comply with the order of the enforcement officer shall begin as of the date the owner receives such notice.

2. Hearing. Such notice shall also advise the owner that he or she may request a hearing before the Council on the notice by filing a written request for hearing within the time provided in the notice.

6-13-5 CONDUCT OF HEARING. If requested, the Council shall conduct a hearing in accordance with the following:

1. Notice. The owner shall be served with written notice specifying the date, time and place of hearing.
2. Owner's Rights. At the hearing, the owner may appear and show cause why the alleged nuisance shall not be abated.
3. Determination. The Council shall make and record findings of fact and may issue such order as it deems appropriate.

6-13-6 POSTING OF SIGNS. The enforcement officer shall cause to be posted at each entrance to such building a notice to read: "DO NOT ENTER. UNSAFE TO OCCUPY. CITY OF MALVERN, IOWA." Such notice shall remain posted until the required repairs, demolition, or removal are completed. Such notice shall not be removed without written permission of the enforcement officer and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building.

6-13-7 RIGHT TO DEMOLISH. In case the owner fails, neglects, or refuses to comply with the notice to repair, rehabilitate, or to demolish and remove the building or structure or portion thereof, the Council may order the owner of the building prosecuted as a violator of the provisions of this chapter and may order the enforcement officer to proceed with the work specified in such notice. A statement of the cost of such work shall be transmitted to the Council.

*(Code of Iowa, Sec. 364.12[3h])*

6-13-8 COSTS. Costs incurred under Section 6-13 shall be paid out of the City treasury. Such costs shall be charged to the owner of the premises involved and levied as a special assessment against the land on which the building or structure is located, and shall be certified to the County Treasurer for collection in the manner provided for other taxes.

*(Code of Iowa, Sec. 364.12[3h])*

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 14 FLOOD PLAIN REGULATIONS

6-14-1 Definitions	6-14-5 Floodplain Management Standards
6-14-2 Statutory Authority, Findings of Fact and Purpose	6-14-6 Variance Procedures
6-14-3 General Provisions	6-14-7 Non-Conforming Uses
6-14-4 Administration	6-14-8 Penalties for Violations
	6-14-9 Amendments

6-14-1 – Definitions. Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application.

**APPURTENANT STRUCTURE** – A structure which is on the same parcel of the property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

**BASE FLOOD** - The flood having one (1) percent chance of being equaled or exceeded in any given year (Also commonly referred to as the “100-year flood”).

**BASE FLOOD ELEVATION (BFE)** – The elevation floodwaters would reach at a particular site during the occurrence of a base flood event.

**BASEMENT** - Any enclosed area of a building which has its floor or lowest level below ground level (subgrade) on all sides. Also see "lowest floor."

**DEVELOPMENT** - Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials. “Development” does not include “minor projects” or “routine maintenance of existing buildings and facilities” as defined in this section. It also does not include gardening, plowing, and similar practices that do not involve filling or grading.

**ENCLOSED AREA BELOW LOWEST FLOOR** – The floor of the lowest enclosed area in a building when all the following criteria are met:

- a. The enclosed area is designed to flood to equalize hydrostatic pressure during flood events with walls or openings that satisfy the provisions of (6-16-5(1)d.i) of this Ordinance, and
- b. The enclosed area is unfinished (not carpeted, drywalled, etc.) and used solely for low damage potential uses such as building access, parking or storage, and
- c. Machinery and service facilities (e.g., hot water heater, furnace, electrical service) contained in the enclosed area are located at least one (1) foot above the base flood elevation, and

d. The enclosed area is not a "basement" as defined in this section.

**EXISTING CONSTRUCTION** - Any structure for which the "start of construction" commenced before the effective date of the first floodplain management regulations adopted by the community.

**EXISTING FACTORY-BUILT HOME PARK OR SUBDIVISION** - A factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management regulations adopted by the community.

**EXPANSION OF EXISTING FACTORY-BUILT HOME PARK OR SUBDIVISION** - The preparation of additional sites by the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FACTORY-BUILT HOME** - Any structure, designed for residential use which is wholly or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation, on a building site. For the purpose of this Ordinance factory-built homes include mobile homes, manufactured homes, and modular homes; and also include "recreational vehicles" which are placed on a site for greater than 180 consecutive days and not fully licensed for and ready for highway use.

**FACTORY-BUILT HOME PARK** - A parcel or contiguous parcels of land divided into two or more factory-built home lots for sale or lease.

**FIVE HUNDRED (500) YEAR FLOOD** – A flood, the magnitude of which has a two-tenths (0.2) percent chance of being equaled or exceeded in any given year or which, on average, will be equaled or exceeded at least once every five hundred (500) years.

**FLOOD** - A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid runoff of surface waters from any source.

**FLOOD INSURANCE RATE MAP (FIRM)** - The official map prepared as part of (but published separately from) the Flood Insurance Study which delineates both the flood hazard areas and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY (FIS)** – A report published by FEMA for a community issued along with the community's Flood Insurance Rate Map(s). The study contains such background data as the base flood discharge and water surface elevations that were used to prepare the FIRM.

**FLOODPLAIN** - Any land area susceptible to being inundated by water as a result of a flood.

**FLOODPLAIN MANAGEMENT** - An overall program of corrective and preventive measures for reducing flood damages and promoting the wise use of floodplains, including but not limited to emergency preparedness plans, flood control works, floodproofing and floodplain management regulations.

**FLOODPROOFING** - Any combination of structural and nonstructural additions, changes, or adjustments to structures, including utility and sanitary facilities, which will reduce or eliminate flood damage to such structures.

**FLOODWAY** - The channel of a river or stream and those portions of the floodplains adjoining the channel, which are reasonably required to carry and discharge flood waters or flood flows so that confinement of flood flows to the floodway area will not cumulatively increase the water surface elevation of the base flood by more than one (1) foot.

**FLOODWAY FRINGE** - Those portions of the Special Flood Hazard Area outside the floodway.

**HIGHEST ADJACENT GRADE** – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure

**HISTORIC STRUCTURE** - Any structure that is:

- a. Listed individually in the National Register of Historic Places, maintained by the Department of Interior, or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing of the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by either i) an approved state program as determined by the Secretary of the Interior or ii) directly by the Secretary of the Interior in states without approved programs.

**LOWEST FLOOR** - The floor of the lowest enclosed area in a building including a basement except when the criteria listed in the definition of Enclosed Area below Lowest Floor are met.

**MAXIMUM DAMAGE POTENTIAL USES** - Hospitals and like institutions; buildings or building complexes containing documents, data, or instruments of great public value; buildings or building complexes containing materials dangerous to the public or fuel storage facilities; power installations needed in emergency or other buildings or building complexes similar in nature or use.

MINOR PROJECTS - Small development activities (except for filling, grading and excavating) valued at less than \$500.

NEW CONSTRUCTION - (new buildings, factory-built home parks) - Those structures or development for which the start of construction commenced on or after the effective date of the first floodplain management regulations adopted by the community.

NEW FACTORY-BUILT HOME PARK OR SUBDIVISION - A factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the effective date of the first floodplain management regulations adopted by the community.

RECREATIONAL VEHICLE - A vehicle which is:

- a. Built on a single chassis;
- b. Four hundred (400) square feet or less when measured at the largest horizontal projection;
- c. Designed to be self-propelled or permanently towable by a light duty truck; and
- d. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

ROUTINE MAINTENANCE OF EXISTING BUILDINGS AND FACILITIES – Repairs necessary to keep a structure in a safe and habitable condition that do not trigger a building permit, provided they are not associated with a general improvement of the structure or repair of a damaged structure. Such repairs include:

- a. Normal maintenance of structures such as re-roofing, replacing roofing tiles and replacing siding;
- b. Exterior and interior painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work;
- c. Basement sealing;
- d. Repairing or replacing damaged or broken window panes;
- e. Repairing plumbing systems, electrical systems, heating or air conditioning systems and repairing wells or septic systems.

SPECIAL FLOOD HAZARD AREA (SFHA)- The land within a community subject to the "base flood". This land is identified on the community's Flood Insurance Rate Map as Zone A, A1-30, AE, AH, AO, AR, and/or A99.

START OF CONSTRUCTION - Includes substantial improvement, and means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement, was within 180 days of the permit date.

The actual start means either the first placement or permanent construction of a structure on a site, such as pouring of a slab or footings, the installation of pile, the construction of columns, or any work beyond the stage of excavation; or the placement of a factory-built home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE** - Anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, cabins, factor-built homes, storage tanks, grain storage facilities and/or other similar uses.

**SUBSTANTIAL DAMAGE** - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. Volunteer labor and donated materials shall be included in the estimated cost of repair.

**SUBSTANTIAL IMPROVEMENT** - Any improvement to a structure which satisfies either of the following criteria:

1. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either (i) before the "start of construction" of the improvement , or (ii) if the structure has been "substantially damaged" and is being restored, before the damage occurred.

The term does not, however, include any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions. The term also does not include any alteration of an "historic structure", provided the alteration will not preclude the structure's designation as an "historic structure".

2. Any addition which increases the original floor area of a building by 25 percent or more. All additions constructed after the effective date of the first floodplain management regulations adopted by the community shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.

**VARIANCE** - A grant of relief by a community from the terms of the floodplain management regulations.

VIOLATION - The failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

#### 6-14-2 - Statutory Authority, Findings of Fact and Purpose

1. The Legislature of the State of Iowa has in Chapter 364, Code of Iowa, as amended, delegated the power to cities to exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort and convenience of its residents.
2. Findings of Fact
  - a. The flood hazard areas of the city of Malvern are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare of the community.
  - b. These flood losses, hazards, and related adverse effects are caused by: (i) The occupancy of flood hazard areas by uses vulnerable to flood damages which create hazardous conditions as a result of being inadequately elevated or otherwise protected from flooding and (ii) the cumulative effect of obstructions on the flood plain causing increases in flood heights and velocities.
3. Statement of Purpose

It is the purpose of this ordinance to protect and preserve the rights, privileges and property of the city of Malvern and its residents and to preserve and improve the peace, safety, health, welfare, and comfort and convenience of its residents by minimizing those flood losses described in (6-16-2(1)a) with provisions designed to:

1. Restrict or prohibit uses which are dangerous to health, safety or property in times of flood or which cause excessive increases in flood heights or velocities.
2. Require that uses vulnerable to floods, including public facilities which serve such uses, be protected against flood damage at the time of initial construction or substantial improvement.
3. Protect individuals from buying lands which may not be suited for intended purposes because of flood hazard.
4. Assure that eligibility is maintained for property owners in the community to purchase flood insurance through the National Flood Insurance Program.

### 6-14-3 - General Provisions

1. **Lands to Which Ordinance Apply.** The provisions of this ordinance shall apply to all lands and uses which have significant flood hazards. The Flood Insurance Rate Map (FIRM) for Mills County and Incorporated Areas, City of Malvern, Panel 19129C0213D, 214D, 301D and 302D, dated April 17, 2020, which were prepared as part of the Mills County Flood Insurance Study, shall be used to identify such flood hazard areas and all areas shown thereon to be within the boundaries of the 100-year flood shall be considered as having significant flood hazards. The Mills County Flood Insurance Study is hereby adopted by reference and is made a part of this ordinance for the purpose of administering floodplain management regulations.
2. **Rules for Interpretation of Flood Hazard Boundaries.** The boundaries of the Special Flood Hazard areas shall be determined by scaling distances on the official Flood Insurance Rate Map. When an interpretation is needed as to the exact location of a boundary, the Mayor shall make the necessary interpretation. The City Council shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Malvern in the enforcement or administration of this Ordinance.
3. **Compliance.** No structure or land shall hereafter be used and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations which apply to uses within the jurisdiction of this ordinance.
4. **Abrogation and Greater Restrictions.** It is not intended by this ordinance to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provision of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
5. **Interpretation.** In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State statutes.
6. **Warning and Disclaimer of Liability.** The standards required by this ordinance are considered reasonable for regulatory purposes. This ordinance does not imply that areas outside the designated special flood hazard areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the city of Malvern or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made there under.

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

#### 6-14-4 - Administration

1. Appointment, Duties and Responsibilities of Local Official

- a. The Mayor is hereby appointed to implement and administer the provisions of this Ordinance and will herein be referred to as the Administrator.
- b. Duties and responsibilities of the Administrator shall include, but not necessarily be limited to the following:
  - i. Review all floodplain development permit applications to assure that the provisions of this Ordinance will be satisfied.
  - ii. Review floodplain development applications to assure that all necessary permits have been obtained from federal, state and local governmental agencies including approval when required from the Department of Natural Resources for floodplain construction.
  - iii. Record and maintain a record of (i) the elevation (in relation to North American Vertical Datum 1988) of the lowest floor (including basement) of all new or substantially improved structures or (ii) the elevation to which new or substantially improved structures have been floodproofed.
  - iv. Notify adjacent communities/counties and the Department of Natural Resources prior to any proposed alteration or relocation of a watercourse and submit evidence of such notifications to the Federal Emergency Management Agency.
  - v. Keep a record of all permits, appeals and such other transactions and correspondence pertaining to the administration of this Ordinance.
  - vi. Submit to the Federal Insurance Administrator an annual report concerning the community's participation, utilizing the annual report form supplied by the Federal Insurance Administrator.
  - vii. Notify the Federal Insurance Administration of any annexations or modifications to the community's boundaries.
  - viii. maintain the accuracy of the community's Flood Insurance Rate Maps when;
    - (1) Development placed within the Floodway (Overlay) District results in any of the following:

- a) An increase in the Base Flood Elevations, or
- b) Alteration to the floodway boundary
- c) Development placed in Zones A, AE, AH, and A1-30 that does not include a designated floodway that will cause a rise of more than one foot in the base elevation; or
- d) Development relocates or alters the channel.

Within 6 months of the completion of the development, the applicant shall submit to FEMA all scientific and technical data necessary for a Letter of Map Revision.

- ix. Perform site inspections to ensure compliance with the standards of this Ordinance.

## 2. Floodplain Development Permit

- a. Permit Required - A Floodplain Development Permit issued by the Administrator shall be secured prior to any floodplain development (any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, filling, grading, paving, excavation or drilling operations), including the placement of factory-built homes.
- b. Application for Permit - Application shall be made on forms furnished by the Administrator and shall include the following:
  - i. Description of the work to be covered by the permit for which application is to be made.
  - ii. Description of the land on which the proposed work is to be done (i.e., lot, block, track, street address or similar description) that will readily identify and locate the work to be done.
  - iii. Location and dimensions of all buildings and building additions
  - iv. Indication of the use or occupancy for which the proposed work is intended.
  - v. Elevation of the base flood.
  - vi. Elevation (in relation to North American Vertical Datum 1988) of the lowest floor (including basement) of buildings or of the level to which a building is to be floodproofed.
  - vii. For buildings being improved or rebuilt, the estimated cost of improvements and market value of the building prior to the improvements.
  - viii. Such other information as the Administrator deems reasonably necessary (e.g., drawings or a site plan) for the purpose of this Ordinance.

- c. Action on Permit Application - The Administrator shall, within a reasonable time, make a determination as to whether the proposed floodplain development meets the applicable standards of this Ordinance and shall approve or disapprove the application. For disapprovals, the applicant shall be informed, in writing, of the specific reasons therefore. The Administrator shall not issue permits for variances except as directed by the City Council.
- d. Construction and Use to be as Provided in Application and Plans - Floodplain Development Permits based on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance. The applicant shall be required to submit certification by a professional engineer or land surveyor, as appropriate, registered in the State of Iowa, that the finished fill, building floor elevations, floodproofing, or other flood protection measures were accomplished in compliance with the provisions of this Ordinance, prior to the use or occupancy of any structure.

#### 6-14-5 - Flood Plain Management Standards

##### 1. General Flood Plain Standards

All uses must be consistent with the need to minimize flood damage and meet the following applicable performance standards. Where base flood elevations have not been provided in the Flood Insurance Study, the Iowa Department of Natural Resources shall be contacted to determine (i) whether the land involved is either wholly or partly within the floodway or floodway fringe and (ii) the 100 year flood level. The applicant will be responsible for providing the Department of Natural Resources with sufficient technical information to make such determination. Review by the Iowa Department of Natural Resources is not required for the proposed construction of new or replacement bridges or culverts where (i) the bridge or culvert is located on a stream that drains less than one hundred (100) square miles, and (ii) the bridge or culvert is not associated with a channel modification that constitutes a channel change as specified in 567-71.2(1)b, Iowa Administrative Code.

- a. All development within the areas of significant flood hazard shall:
  - i. Be consistent with the need to minimize flood damage.
  - ii. Use construction methods and practices that will minimize flood damage.
  - iii. Use construction materials and utility equipment that are resistant to flood damage.

- iv. Obtain all other necessary permits from federal, state and local governmental agencies including approval when required from the Iowa Department of Natural Resources.
  
- b. Residential structures - All new or substantially improved residential structures shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation. Construction shall be upon compacted fill which shall, at all points, be no lower than 1.0 ft. above the base flood elevation and extend at such elevation at least 18 feet beyond the limits of any structure erected thereon. Alternate methods of elevating (such as piers or extended foundations) may be allowed subject to favorable consideration by the City Council, where existing topography, street grades, or other factors preclude elevating by fill. In such cases, the methods used must be adequate to support the structure as well as withstand the various forces and hazards associated with flooding.

All new residential structures located in areas that would become isolated due to flooding of surrounding ground shall be provided with a means of access that will be passable by wheeled vehicles during the base flood. However, this criterion shall not apply where the Administrator determines there is sufficient flood warning time for the protection of life and property. When estimating flood warning time, consideration shall be given to the criteria listed in 567-75.2(3), Iowa Administrative Code.

- c. Non-residential structures - All new or substantially improved non-residential structures shall have the lowest floor (including basement) elevated a minimum of one (1) foot above the base flood elevation, or together with attendant utility and sanitary systems, be floodproofed to such a level. When floodproofing is utilized, a professional engineer registered in the State of Iowa shall certify that the floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood; and that the structure, below the 100-year flood level is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to North American Vertical Datum 1988) to which any structures are floodproofed shall be maintained by the Administrator.
  
- d. All new and substantially improved structures:
  - i. Fully enclosed areas below the "lowest floor" (not including basements) that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:

- (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- (2) The bottom of all openings shall be no higher than one foot above grade.
- (3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

Such areas shall be used solely for parking of vehicles, building access and low damage potential storage.

- ii. New and substantially improved structures must be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
  - iii. New and substantially improved structures must be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- e. Factory-built homes:
- i. All new and substantially improved factory-built homes, including those placed in existing factory-built home parks or subdivisions, shall be elevated on a permanent foundation such that the lowest floor of the structure is a minimum of one (1) foot above the 100-year flood level.
  - ii. All new and substantially improved factory-built homes, including those placed in existing factory-built home parks or subdivisions, shall be anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. Anchorage systems may include, but are not limited to, use of over-the-top or frame ties to ground anchors as required by the State Building Code.
- f. Utility and Sanitary Systems:
- i. On-site waste disposal and water supply systems shall be located or designed to avoid impairment to the system or contamination from the system during flooding.
  - ii. All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system as well as the discharge of effluent into flood waters. Wastewater treatment facilities (other than on-site

systems) shall be provided with a level of flood protection equal to or greater than one (1) foot above the 100-year flood elevation.

- iii. New or replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system. Water supply treatment facilities (other than on-site systems) shall be provided with a level of protection equal to or greater than one (1) foot above the 100-year flood elevation.
- iv. Utilities such as gas or electrical systems shall be located and constructed to minimize or eliminate flood damage to the system and the risk associated with such flood damaged or impaired systems.
- g. Storage of materials and equipment that are flammable, explosive or injurious to human, animal or plant life is prohibited unless elevated a minimum of one (1) foot above the base flood elevation. Other material and equipment must either be similarly elevated or (i) not be subject to major flood damage and be anchored to prevent movement due to flood waters or (ii) be readily removable from the area within the time available after flood warning.
- h. Flood control structural works such as levees, flood walls, etc. shall provide, at a minimum, protection from the base flood with a minimum of 3 ft. of design freeboard and shall provide for adequate interior drainage. In addition, the Department of Natural Resources shall approve structural flood control works.
- i. Watercourse alterations or relocations must be designed to maintain the flood carrying capacity within the altered or relocated portion. In addition, the Department of Natural Resources must approve such alterations or relocations.
- j. Subdivisions (including factory-built home parks and subdivisions) shall be consistent with the need to minimize flood damages and shall have adequate drainage provided to reduce exposure to flood damage. Development associated with subdivision proposals (including the installation of public utilities) shall meet the applicable performance standards of this Ordinance. Subdivision proposals intended for residential use shall provide all lots with a means of access which will be passable by wheeled vehicles during the 100-year flood. Proposals for subdivisions greater than five (5) acres or fifty (50) lots (whichever is less) shall include 100-year flood elevation data for those areas located within the area of significant flood hazard.
- k. Accessory Structures to Residential Uses
  - i. Detached garages, sheds, and similar structures that are incidental to a residential use are exempt from the base flood elevation requirements where the following criteria are satisfied.

- ii. The structure shall be designed to have low flood damage potential. Its size shall not exceed 600 sq. ft. in size. Those portions of the structure located less than 1 foot above the BFE must be constructed of flood-resistant materials.
- iii. The structure shall be used solely for low flood damage potential purposes such as vehicle parking and limited storage. The structure shall not be used for human habitation.
- iv. The structure shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters.
- v. The structure shall be firmly anchored to resist flotation, collapse and lateral movement.
- vi. The structure's service facilities such as electrical and heating equipment shall be elevated or floodproofed to at least one foot above the base flood elevation.
- vii. The structure's walls shall include openings that satisfy the provisions of (6-16-5(1)d.i) of this Ordinance.

l. Recreational Vehicles

- i. Recreational vehicles are exempt from the requirements of (6-16-5(1)e) of this Ordinance regarding anchoring and elevation of factory-built homes when the following criteria are satisfied.
  - (1) The recreational vehicle shall be located on the site for less than 180 consecutive days, and,
  - (2) The recreational vehicle must be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system and is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.
- ii. Recreational vehicles that are located on the site for more than 180 consecutive days or are not ready for highway use must satisfy requirements of (6-16-5(1)e) of this Ordinance regarding anchoring and elevation of factory-built homes.
- m. Pipeline river and stream crossings shall be buried in the streambed and banks, or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering.
- n. Maximum Damage Potential Uses – All new or substantially improved maximum damage potential uses shall have the lowest floor (including basement) elevated a minimum of one (1) foot above the elevation of the 500-year flood, or together with attendant utility and sanitary systems, be floodproofed to such a level. When floodproofing is utilized, a professional engineer registered in the State of Iowa shall

certify that the floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the 0.2% annual chance flood; and that the structure, below the 0.2% annual chance flood elevation is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to North American Vertical Datum 1988) to which any structures are floodproofed shall be maintained by the Administrator. Where 0.2% chance flood elevation data has not been provided in the Flood Insurance Study, the Iowa Department of Natural Resources shall be contacted to compute such data. The applicant will be responsible for providing the Department of Natural Resources with sufficient technical information to make such determinations.

- o. Until a floodway has been designated, no development or substantial improvement shall be permitted within the special flood hazard area unless the applicant has demonstrated that the cumulative effects of the proposed development, when combined with all other existing and anticipated development, will not increase the 100-year flood elevation more than one (1) foot at any location.

## 2. Special Floodway Provisions

In addition to the General Flood Plain Standards, uses within the floodway must meet the following applicable standards. The floodway is that portion of the flood plain which must be protected from developmental encroachment to allow the free flow of flood waters. Where floodway data has been provided in the Flood Insurance Study, such data shall be used to define the floodway. Where no floodway data has been provided, the Department of Natural Resources shall be contacted to provide a floodway delineation. The applicant will be responsible for providing the Department of Natural Resources with sufficient technical information to make such determination.

- a. No use shall be permitted in the floodway that would result in any increase in the 100-year flood level. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
- b. All uses within the floodway shall:
  - i. Be consistent with the need to minimize flood damage.
  - ii. Use construction methods and practices that will minimize flood damage.
  - iii. Use construction materials and utility equipment that are resistant to flood damage.
- c. No use shall affect the capacity or conveyance of the channel or floodway of any tributary to the main stream, drainage ditch or any other drainage facility or system.

- d. Structures, buildings and sanitary and utility systems, if permitted, shall meet the applicable General Flood Plain standards and shall be constructed or aligned to present the minimum possible resistance to flood flows.
- e. Buildings, if permitted, shall have a low flood damage potential and shall not be for human habitation.
- f. Storage of materials or equipment that are buoyant, flammable, explosive or injurious to human, animal or plant life is prohibited, Storage of other material may be allowed if readily removable from the floodway within the time available after flood warning.
- g. Watercourse alterations or relocations (channel changes and modifications) must be designed to maintain the flood carrying capacity within the altered or relocated portion. In addition, the Department of Natural Resources must approve such alterations or relocations.
- h. Any fill allowed in the floodway must be shown to have some beneficial purpose and shall be limited to the minimum amount necessary.
- i. Pipeline river or stream crossings shall be buried in the streambed and banks or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering or due to the action of flood flows.

#### 6-14-6 – Variance Procedures

1. The City Council may authorize upon request in specific cases such variances from the terms of this Ordinance that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship. Variances granted must meet the following applicable standards.
  - a. Variances shall only be granted upon: (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local codes or ordinances.
  - b. Variances shall not be issued within any designated floodway if any increase in flood levels during the 100-year flood would result. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
  - c. Variances shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- d. In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this Ordinance, the applicant shall be notified in writing over the signature of the Administrator that: (i) the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction increases risks to life and property.
  - e. All variances granted shall have the concurrence or approval of the Department of Natural Resources.
2. Factors Upon Which the Decision of the Council Shall be Based - In passing upon applications for Variances, the Council shall consider all relevant factors specified in other sections of this Ordinance and:
- a. The danger to life and property due to increased flood heights or velocities caused by encroachments.
  - b. The danger that materials may be swept on to other land or downstream to the injury of others.
  - c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
  - d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - e. The importance of the services provided by the proposed facility to the City.
  - f. The requirements of the facility for a floodplain location.
  - g. The availability of alternative locations not subject to flooding for the proposed use.
  - h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
  - i. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
  - j. The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - k. The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.

1. The cost of providing governmental services during and after flood conditions, including maintenance and repair of public utilities (sewer, gas, electrical and water systems), facilities, streets and bridges.
- m. Such other factors which are relevant to the purpose of this Ordinance.
3. Conditions Attached to Variances - Upon consideration of the factors listed above, the Council may attach such conditions to the granting of variances as it deems necessary to further the purpose of this Ordinance. Such conditions may include, but not necessarily be limited to:
  - a. Modification of waste disposal and water supply facilities.
  - b. Limitation of periods of use and operation.
  - c. Imposition of operational controls, sureties, and deed restrictions.
  - d. Requirements for construction of channel modifications, dikes, levees, and other protective measures, provided such are approved by the Department of Natural Resources and are deemed the only practical alternative to achieving the purpose of this Ordinance.
  - e. Floodproofing measures shall be designed consistent with the flood protection elevation for the particular area, flood velocities, duration, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The Council shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

#### 6-14-7 - Nonconforming Uses

1. A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance, but which is not in conformity with the provisions of this Ordinance, may be continued subject to the following conditions:
  - a. If such use is discontinued for six (6) consecutive months, any future use of the building premises shall conform to this Ordinance.
  - b. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.
2. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the market value of the structure before the damage occurred, unless it is reconstructed in conformity with the provisions of

this Ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, provided that the alteration shall not preclude its continued designation.

#### 6-14-8 - Penalties for Violation

Violations of the provisions of this ordinance or failure to comply with any of the requirements shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$(500.00 (FIVE HUNDRED)) or imprisoned for not more than (30 (THIRTY)) days. Nothing herein contained prevent the City of Malvern from taking such other lawful action as is necessary to prevent or remedy violation.

#### 6-14-9 - Amendments

The regulations and standards set forth in this ordinance may from time to time be amended, supplemented, changed, or repealed. No amendment, supplement, change, or modification shall be undertaken without prior approval of the Department of Natural Resources.

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 15 TREES

6-15-1	Definitions	6-15-8	Tree Topping
6-15-2	Street Tree Species to be Planted	6-15-9	Pruning: Corner Clearance
6-15-3	Spacing	6-15-10	Dead or Diseased Tree Removal on Private Property
6-15-4	Distance from Curb and Sidewalk	6-15-11	Removal of Stumps
6-15-5	Distance from Street Corners and Fireplugs	6-15-12	Interference with City
6-15-6	Utilities	6-15-13	Approves Trees
6-15-7	Public Tree Care		

6-15-1 DEFINITIONS. For use in this chapter, the following terms are defined:

1. "Park trees" are trees, shrubs, bushes and all other woody vegetation in public parks having individual names and all area owned by the City or to which the public has free access as a park.
2. "Street trees" are trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the City.

6-15-2 STREET TREE SPECIES TO BE PLANTED. The official street tree species list for the City includes dwarf trees, ornamental trees or hard wood trees, not fruit, short-lived or dirty trees. A no-charge tree permit should be filed with the Clerk before planting a street or park tree. No species other than those included in these types of trees may be planted as street trees without written permission of the City Council.

6-15-3 SPACING. The spacing of street trees will be in accordance with the three species size classes listed on the street tree species list referred to in Section 6-15-13, and no trees may be planted closer together than the following: small trees - thirty (30) feet; medium trees - forty (40) feet; and large trees- fifty (50) feet, except in special plantings designed or approved by a landscape architect.

6-15-4 DISTANCE FROM CURB AND SIDEWALK. The distance trees may be planted from the curb lines and sidewalk will be in accordance with the three species size classes on the street tree species list and no trees may be planted closer to any curb or sidewalk than the following: small trees two (2) feet; medium trees - three (3) feet; and large trees - four (4) feet.

6-15-5 DISTANCE FROM STREET CORNERS AND FIREPLUGS. No street tree shall be planted closer than thirty-five (35) feet from any street corner, measured from the point of the nearest intersecting curbs or curb lines. No street tree shall be planted closer than ten (10) feet from any fireplug .

6-15-6 UTILITIES. No street trees other than those species listed as small trees on the street tree species list may be planted under or within ten (10) lateral feet of any overhead utility wire, or over or within five (5) lateral feet of any underground water line, sewer line, transmission line or other utility.

6-15-7 PUBLIC TREE CARE. The City has the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The City may remove or cause or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines or other public improvements, or is affected with any injurious fungus, insect or other pest. This section does not prohibit the planting of street trees by adjacent property owners providing that the selection and location of said trees are in accordance with all sections of this ordinance.

6-15-8 TREE TOPPING. It is unlawful as a normal practice for any person or City department to top any street tree, park tree or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this section, as determined by the City.

6-15-9 PRUNING; CORNER CLEARANCE. Every owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there is a clear space of eight (8) feet above the surface of the sidewalk and fifteen (15) feet above the surface of the street. Said owners shall remove all dead, diseased or dangerous trees or broken or decayed limbs which constitute a menace to the safety of the public. The City has the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign.

6-15-10 DEAD OR DISEASED TREE REMOVAL ON PRIVATE PROPERTY. The City has the right to cause the removal of any dead or diseased trees on private property within the City, when such trees constitute a hazard to life and property, or harbor insects or diseases which constitute a potential threat to other trees within the City. The City will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within sixty (60) days after the date of service of notice. In the event of failure of owners to comply with such provisions, the City shall have the authority to remove such trees and charge the cost of removal on the owners' property tax notice.

6-15-11 REMOVAL OF STUMPS. All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

6-15-12 INTERFERENCE WITH CITY. It is unlawful for any person to prevent, delay or interfere with the City or any of its agents while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any street trees, park trees or trees on private grounds, as authorized by this chapter.

6-15-13 APPROVED TREES. A list of trees approved to be planted within the City of Malvern shall be kept on file at the office of the City Clerk.

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 16 STORAGE CONTAINERS

6-16-1 Purpose

6-16-4 Permit Required

6-16-2 Definitions

6-16-5 Conflicts

6-16-3 Restrictions

6-16-6 Penalties

6-16-1 PURPOSE. The purpose of this chapter is to protect the public health, safety, and welfare, and promote positive aesthetic in the City of Malvern by regulating the placement within the City of Malvern of certain On-Site Storage Containers that are designed, and more suitable, for use as commercial storage, or for the transportation of goods or other cargo.

6-16-2 DEFINITIONS. For purposes of this chapter, the term “On-Site Storage Container” shall mean:

1. Any container or vessel originally designed for, or used in, the packing, storage, shipping, movement or transportation of cargo, freight, goods, equipment or commodities; and/or
2. Any container or vessel designed to be, or capable of being, mounted or moved by rail, truck, or ship by means of being mounted on a chassis or other transport device, including portable on-site storage containers, or units having similar characteristics;
3. Any railroad cars, truck vans, converted mobile homes, trailers, recreational vehicles, bus bodies, vehicles, and similar pre-fabricated items originally built for purposes other than the storage of goods and materials;

6-16-3 RESTRICTIONS.

1. No On-Site Storage Container shall be permitted in any property within the City.
2. An On-Site Storage Container shall not be considered to be an “Accessory Use or Structure” under Article II of the Malvern Zoning Ordinance.
3. Notwithstanding the provisions set forth in subsection (a) of this section, the temporary placement of portable On-Site Storage Containers for the limited purpose of temporary storage to accommodate a move, a remodeling project, or the clean-up of a casualty loss, shall be permitted for a period of time not exceeding thirty (30) days in any one calendar year unless approved by council in emergency situations.
4. Notwithstanding the provisions set forth in subsection (a) of this section, licensed and bonded contractors may use On-Site Storage Containers for the temporary location of an office, or the temporary storage of equipment, and/or materials during construction which

is taking place on the property where the Container is located, if the use of the Container is authorized pursuant to a city building permit under Section 6-16-4 below.

6-16-4 PERMIT REQUIRED. Any pre-existing On-Site Storage Containers in place in commercial or industrial zones prior to said effective date shall conform to the following:

1. A building permit is required prior to placement of an On-Site Storage Container larger than 32 square feet in area that is otherwise allowed under this Ordinance. The proposed On-Site Storage Container must be accessory to the permitted use of the property, and shall meet the setback requirements of the underlying zone.
2. On-site Storage Containers shall not be stacked above the height of a single container, except within the light industrial zone, and only in the rear yard of the property.
3. On-Site Storage Containers shall not be used for any advertising purpose and shall be kept free of all alpha-numeric signage and writing. All containers shall be one solid color.
4. As a condition of placement, On-Site Storage Containers may be required to be fenced or screened from abutting properties and/or rights-of-way pursuant to the provisions of the underlying zoning regulations.
5. On-Site Storage Containers shall be in an approved designated area and on the same property as the principal use and be included in the calculation of overall lot usage.
6. On-Site Storage Containers shall not occupy required off-street parking, loading or landscaping areas.
7. Materials stored within Storage Containers are subject to inspection and approval by local and state fire officials.
8. On-Site Storage containers must be set and level.

6-16-5 CONFLICTS. In the event any conflict exists between the provisions of this chapter and other currently existing provisions of the Malvern City Code or other ordinances of the city, the terms and provisions of this chapter shall take precedence and to the extent of any such conflict, the terms and conditions of any existing provisions of the Malvern City Code or other ordinances of the city shall be and hereby are amended insofar as necessary to conform to the provisions of this chapter.

6-16-6 PENALTIES. A violation of the provisions of this Chapter shall be deemed to be a municipal infraction pursuant to Iowa Code §364.22, and subject to enforcement and remedial action as permitted thereunder.

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 17 NAMING OF STREETS

6-17-1	Naming New Streets	6-17-4	Official Street name Map
6-17-2	Changing Name of Streets	6-17-5	Revision of Street Name Map
6-17-3	Recording Street names		

6-17-1 NAMING NEW STREETS. New streets shall be assigned names in accordance with the following:

1. Extension of Existing Street. Streets added to the City that are natural extensions of existing streets shall be assigned the name of the existing street.
2. Resolution. All street names, except streets named as a part of a subdivision or platting procedure, shall be named by resolution.
3. Planning and Zoning Commission. Proposed street names shall be referred to the Planning and Zoning Commission for review and recommendation.

6-17-2 CHANGING NAME OF STREET. The Council may, by resolution, change the name of a street.

6-17-3 RECORDING STREET NAMES. Following official action naming or changing the name of a street, the Clerk shall file a copy thereof with the County Recorder, County Auditor and County Assessor.

*(Code of Iowa, Sec. 354.26)*

6-17-4 OFFICIAL STREET NAME MAP. Streets within the City are named as shown on the Official Street Name Map which is hereby adopted by reference and declared to be a part of this chapter. The Official Street Name Map shall be identified by the signature of the Mayor, and bearing the seal of the City under the following words: "This is to certify that this is the Official Street Name Map referred to in Chapter 6-17 of the Code of Ordinances of Malvern, Iowa."

6-17-5 REVISION OF STREET NAME MAP. If in accordance with the provisions of this chapter, changes are made in street names, such changes shall be entered on the Official Street Name Map promptly after the change has been approved by the Council with an entry on the Official Street Name Map as follows: "On (date), by official action of the City Council, the following changes were made in the Official Street Name Map: (brief description)," which entry shall be signed by the Mayor and attested by the Clerk.

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 18 VACATION AND DISPOSAL OF STREETS

6-18-1	Power to Vacate	6-18-5	Disposal of Vacated Streets or
6-18-2	Planning and Zoning Commission		Alleys
6-18-3	Notice of Vacation Hearing	6-18-6	Disposal by Gift Limited
6-18-4	Findings Required		

6-18-1 **POWER TO VACATE.** When, in the judgment of the Council, it would be in the best interest of the City to vacate a street, alley, portion thereof or any public grounds, the Council may do so by ordinance in accordance with the provisions of this chapter.

*(Code of Iowa, Sec. 364.12 [2a])*

6-18-2 **PLANNING AND ZONING COMMISSION.** Any proposal to vacate a street, alley, portion thereof or any public grounds shall be referred by the Council to the Planning and Zoning Commission for its study and recommendation prior to further consideration by the Council. The Commission shall submit a written report including recommendations to the Council within thirty (30) days after the date the proposed vacation is referred to the Commission.

*(Code of Iowa, Sec. 392.1)*

6-18-3 **NOTICE OF VACATION HEARING.** The Council shall cause to be published a notice of public hearing of the time at which the proposal to vacate shall be considered.

6-18-4 **FINDINGS REQUIRED.** No street, alley, portion thereof or any public grounds shall be vacated unless the Council finds that:

1. **Public Use.** The street, alley, portion thereof or any public ground proposed to be vacated is not needed for the use of the public, and therefore, its maintenance at public expense is no longer justified.
2. **Abutting Property.** The proposed vacation will not deny owners of property abutting on the street or alley reasonable access to their property.

6-18-5 **DISPOSAL OF VACATED STREETS OR ALLEYS.** When in the judgment of the Council it would be in the best interest of the City to dispose of a vacated street or alley, portion thereof or public ground, the Council may do so in accordance with the provisions of Section 364.7, Code of Iowa.

*(Code of Iowa, Sec. 364. 7)*

6-18-6 **DISPOSAL BY GIFT LIMITED.** The City may not dispose of real property by gift except to a governmental body for a public purpose.

*(Code of Iowa, Sec. 364.7[3])*

EDITOR'S NOTE

The following ordinances, not codified herein and specifically saved from repeal, have been adopted vacating certain streets, alleys and/or public grounds and remain in full force and effect.

ORDINANCE NO.	ADOPTED	ORDINANCE NO.	ADOPTED
20	March 4, 1902		
21	March 4, 1902		
27	March 18, 1902		
28	March 18, 1902		
33	March 18, 1902		
34	March 18, 1902		
40	March 25, 1902		
44	July 6, 1903		
55	July 6, 1903		
66	April 7, 1913		
121	March 4, 1946		
122	July 1, 1946		
125	November 3, 1947		
131	July 3, 1950		
136	March 5, 1951		
137	November 6, 1951		
172	October 29, 1974		
173	November 7, 1974		
175	June 17, 1975		
179	July 22, 1975		
181	May 11, 1976		
246	September 28, 1998		
259	April 15, 2002		
262	September 13, 2004		
272	March 12, 2007		

**TITLE VI PHYSICAL ENVIRONMENT**

**CHAPTER 19 STREET GRADES**

6-19-1 Established Grades

6-19-2 Record Maintained

6-19-1 ESTABLISHED GRADES. The grades of all streets, alleys and sidewalks, which have been heretofore established by ordinance are hereby confirmed, ratified and established as official grades.

6-19-2 RECORD MAINTAINED. The Clerk shall maintain a record of all established grades and furnish information concerning such grades upon request.

EDITOR'S NOTE			
The following ordinances not codified herein, and specifically saved from repeal, have been adopted establishing street and/or sidewalk grades and remain in full force and effect.			
ORDINANCE NO.	ADOPTED	ORDINANCE NO.	ADOPTED
15	March 11, 1902		
22	March 4, 1902		
23	March 4, 1902		
25	March 4, 1902		
32-45	March 18, 1902- August 7, 1903		
46-52	March 4, 1902 – August 10, 1903		
53	February 3, 1908		
54	September 8, 1909		
62	October 7, 1912		
63	October 7, 1912		
126	March 4, 1948		

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 20 HOUSE MOVERS

6-20-1	House Mover Defined	6-20-7	Permit Issued
6-20-2	Permit Required	6-20-8	Public Safety
6-20-3	Application	6-20-9	Time Limit
6-20-4	Bond Required	6-20-10	Removal by City
6-20-5	Insurance Required	6-20-11	Protect Pavement
6-20-6	Permit Fee	6-20-12	Overhead Wires

6-20-1 HOUSE MOVER DEFINED. A "house mover" means any person who undertakes to move a building or similar structure upon, over or across public streets or property when the building or structure is of such size that it requires the use of skids, jacks, dollies or any other specialized moving equipment.

6-20-2 PERMIT REQUIRED. It is unlawful for any person to engage in the activity of house mover as herein defined without a valid permit from the City for each house, building or similar structure to be moved. Buildings of less than one hundred (100) square feet are exempt from the provisions of this chapter.

6-20-3 APPLICATION. Application for a house mover's permit shall be made in writing to the Clerk. The application shall include:

1. Name and Address. The applicant's full name and address and if a corporation the names and addresses of its principal officers.
2. Building Location. An accurate description of the present location and future site of the building or similar structure to be moved.
3. Routing Plan. A routing plan approved by the Mayor, street superintendent, and public utility officials. The route approved shall be the shortest route compatible with the greatest public convenience and safety.

6-20-4 BOND REQUIRED. The applicant shall post with the Clerk a penal bond in the minimum sum of five thousand dollars (\$5,000.00) issued by a surety company authorized to issue such bonds in the State. The bond shall guarantee the permittee's payment for any damage done to the City or to public property, and payment of all costs incurred by the City in the course of moving the building or structure.

6-20-5 INSURANCE REQUIRED. Each applicant shall also file a certificate of insurance indicating that the applicant is carrying public liability insurance in effect for the duration of the permit covering the applicant and all agents and employees for the following minimum amounts:

1. Bodily Injury - \$50,000 per person; \$100,000 per accident.

2. Property Damage - \$50,000 per accident.

6-20-6 PERMIT FEE. A permit fee of one hundred dollars (\$100.00) shall be payable at the time of filing the application with the Clerk. A separate permit shall be required for each house, building or similar structure to be moved.

6-20-7 PERMIT ISSUED. Upon approval of the application, filing of bond and insurance certificate, and payment of the required fee, the Clerk shall issue a permit.

6-20-8 PUBLIC SAFETY. At all times when a building or similar structure is in motion upon any street, alley, sidewalk or public property, the permittee shall maintain flagmen at the closest intersections or other possible channels of traffic to the sides, behind and ahead of the building or structure. At all times when the building or structure is at rest upon any street, alley, sidewalk or public property the permittee shall maintain adequate warning signs or lights at the intersections or channels of traffic to the sides, behind and ahead of the building or structure.

6-20-9 TIME LIMIT. No house mover shall permit or allow a building or similar structure to remain upon any street or other public way for a period of more than twelve (12) hours without having first secured the written approval of the City.

6-20-10 REMOVAL BY CITY. In the event any building or similar structure is found to be in violation of Section 123.09 the City is authorized to remove such building or structure and assess the costs thereof against the permit holder and the surety on the permit holder's bond.

6-20-11 PROTECT PAVEMENT. It is unlawful to move any house or building of any kind over any pavement, unless the wheels or rollers upon which the house or building is moved are at least one (1) inch in width for each one thousand (1,000) pounds of weight of such building. If there is any question as to the weight of a house or building, the estimate of the City as to such weight shall be final.

6-20-12 OVERHEAD WIRES. The holder of any permit to move a building shall see that all telephone, cable television and electric wires and poles are removed when necessary and replaced in good order, and shall be liable for the costs of the same.

## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 21 LICENSING OF JUNK YARDS

6-21-1 License Required

6-21-3 Expiration

6-21-2 Application

6-21-4 Council Consideration

6-21-1 LICENSE REQUIRED. It is unlawful for any person to operate a junk yard in the City without having a license as provided herein. Each license shall be issued for a specific location.

6-21-2 APPLICATION. Any applicant for a license shall supply the Council with a copy of the following information:

1. The applicant must supply in writing the location, anticipated size of the facility, specifications for the fencing requirements to comply with the Iowa Administrative Code. Additionally, the applicant shall supply a simple diagram of the proposed junk yard.
2. The application shall pay a license fee of **five-hundred dollars (\$500.00)**.

6-21-3 EXPIRATION. The license shall expire three (3) years from the date of issue. At expiration, the licensee shall apply to renew the license by appearing before the council and paying a license fee of **\$500.00**.

6-21-4 COUNCIL CONSIDERATION. The Council shall consider each new license application and renewal thereof by considering the proposed location of said facility, the impact of the facility upon the neighborhood in which it is located and any applicable zoning ordinance and the State requirements.



## TITLE VI PHYSICAL ENVIRONMENT

### CHAPTER 23 INTERNATIONAL PROPERTY MAINTENANCE CODE

6-23-1 Purpose

6-23-3 Authority for Enforcement

6-23-2 International Property Maintenance  
Code Adopted

6-23-4 Amendments to the Property  
Maintenance Code

6-23-1 Purpose. The purpose of this ordinance is to designate the responsibilities of persons for maintenance of structures, equipment, and exterior property within the City, to define health and safety hazards as a result of the failure to perform such maintenance and to provide for the abatement of such hazards in order to provide for the safety and preserve the health and welfare of the citizens of the City.

6-23-2 International Property Maintenance Code. Except as hereinafter added to, deleted, modified or amended, there is hereby adopted as the Property Maintenance Code of the City of MALVERN that certain Code known as the *International Property Maintenance Code, 2015 Edition*, as published by the International Code Council, and the provisions of said Property Maintenance Code shall be controlling in maintaining minimum requirements and standards of structures and properties within the corporate limits of the City and shall be known as the MALVERN Property Maintenance Code.

6-23-3 Authority for Enforcement. The Mayor, as the Code Enforcement Officer, shall be responsible for the enforcement of this chapter and shall have all the necessary authority to carry out such enforcement. The Code Enforcement Officer may designate an inspector and/or such persons as necessary to carry to the provisions of this ordinance.

6-23-4 Amendments to the Property Maintenance Code. The following sections are hereby revised:

**Title.** Section 101.1. Insert: “The City of MALVERN” as name of jurisdiction

**Fees.** Section 103.5 shall be deleted and replaced as follows:

**103.5 Fees.**

The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be adopted by resolution of the City Council.

**Permits.** New sections 103.6 through 103.12, shall be added to read as follows:

**103.6 Permit Required.**

1. No owner or operator shall rent, or offer for rent, any dwelling unit for use in whole or in part for human habitation, unless
  - a. A valid Residential Rental Permit has been issued, or is pending, subject to inspection approval
2. For purposes of this Code, a rental unit is defined as any arrangement that would be afforded rights and protections under Iowa Code Section 562A, such as a structure or part of a structure used as a home, residence, or sleeping unit by a single person or household unit, or any grounds, or other facilities or area promised for the use of a residential tenant and includes, but without limitation, apartment units, boarding houses, rooming houses, mobile home spaces, and single and multi-family dwellings.
3. All existing rental properties as of the date of adoption of this ordinance must apply for a permit to the City within 90 days of the adoption of this ordinance. Failure to do so shall result in penalties which may include but are not limited to issuance of tenant notice to vacate and/or issuance of municipal infraction citations. Any new or converted properties thereafter must have a valid permit prior to occupancy.

### **103.7 Permit Application.**

1. Permit application shall be made by the owner or owner's representative on forms provided by the City and submitted to the Code Enforcement Officer. Applications will not be approved without submittal of all required information, payment of required fees, and compliance with the requirements of this chapter.
2. Applicant shall provide the following information:
  - a. Address of property
  - b. Number and type of dwelling units in the dwelling structure
  - c. Zoning district in which the property is located
  - d. Owner's name and contact information:
    - i. Mailing address
    - ii. Contact telephone number during normal business hours
    - iii. Alternate telephone number
    - iv. Email address, if applicable
  - e. If management responsibility has been delegated by the owner to a different party:
    - i. Name of property manager
    - ii. Mailing address
    - iii. Contact telephone number during normal business hours
    - iv. Alternate telephone number
    - v. Email address, if applicable
3. The owner or property manager is responsible to inform the Code Enforcement Officer of any subsequent changes to any permit information, at the time of such

changes, and at any such time that changes occur after initial permit application submission or permit approval.

### **103.8 Duration of Permit.**

Residential Rental Permits shall be issued for terms of three years, shall expire at the end of that term, and shall not be renewed without inspection. Notice of expiration shall be issued by the City to the owner or property manager.

### **103.9 Permit Fees.**

Fees shall be due at the time of application. Failure to pay require fees shall constitute a violation of this Code and may result in penalties in the form of revocation of the Residential Rental Permit; issuance of tenant notice to vacate; and/or issuance of municipal infraction citations. Fees shall be authorized by resolution.

### **103.10 Transfer of Permit.**

Residential Rental Permits may not be transferred from one owner to another in the event of property sale. It is the responsibility of the current owner to inform the Code Enforcement Officer of the buyer's name and contact information. It is the responsibility of the property buyer to register the property in his/her name or company name and furnish appropriate contact information to the Code Enforcement Officer.

### **103.11 Sale of Property.**

It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the Inspector and shall furnish to the Code Enforcement Officer a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

### **103.12 Denial and/or Revocation of Permit.**

1. If a dwelling unit is found in violation of any requirements of this chapter, the Inspector shall notify the owner, and if applicable property manager, of the

deficiencies in writing. All cited deficiencies must be corrected within the time limits specified in the Inspector's notice. The Residential Rental permit shall be denied or revoked if the dwelling is not in compliance at the end of the period specified by the Inspector.

2. Upon denial or revocation of the Residential Rental Permit the City shall notify the owner and the occupants in writing. The notice shall state the reason for revocation, statement of required corrective actions, that the dwelling must be vacated within 30 days of the date of notice unless compliance is achieved prior to that date and that the owner may appeal to decision as outlined in Section 111.

**Residential Rental Inspections.** Add Sections 104.7 through 104.15.

**104.7 Residential Rental Inspection Required.**

Inspection of residential rental property is required to secure compliance with all relevant codes and standards.

**104.8 Initial Inspections.**

1. The initial inspections following the adoption of this ordinance shall occur in accordance with a phased-in systematic inspection program to be prepared by the City. A minimum thirty (30) days written notice shall be given for all initial inspections. Inspections for residential rental units may also be scheduled upon a transfer of ownership, upon receipt of written complaints, alterations, modifications, or for any other reasonable cause.
2. The initial, or "first" inspection shall be scheduled by the City with the owner or property manager. The owner or property manager is responsible to provide a minimum 24-hour advance notice to tenants prior to the scheduled inspection. The owner, property manager, or his/her designated representative shall be present at the inspection. The inspector shall not perform the inspection if it is discovered the tenants have not received the required advance notice or if the owner, property manager, or his/her designated representative is not present. Additionally, a re-inspection will be scheduled, and the owner will be charged a re-inspection fee in accordance with a fee schedule set by resolution of the City Council.

**104.9 Re-inspections.**

Re-inspections are required to verify correction of code deficiencies identified at a prior inspection. If Code deficiencies are found on a first inspection, each succeeding re-inspection shall be charged a fee in accordance with a fee schedule set by resolution of the City Council.

**104.10 Regular Periodic Inspection.**

Regular periodic inspection is required prior to expiration of a current Rental

Permit. Registered owners or property managers shall receive advance notice of required periodic inspection appointments from the City. An owner's or property manager's or his/her designated representative's failure to appear at a scheduled periodic inspection is a violation of this Code subject to penalties as provided herein. Penalties include but may not be limited to fees in accordance with a fee schedule set by resolution of the City Council.

**104.11 Noted and cited code violations.**

1. Noted code violations are not considered life safety issues and are not of a severity to cause structural deterioration. Noted items shall not prevent the issuance of a Residential Rental Permit.
2. Cited code violations must be repaired prior to the issuance of a Residential Rental Permit. Cited items may lead to further enforcement actions by the City of MALVERN.

**104.12 Reasonable time limits for compliance.**

General compliance time limits for cited items shall be as follows:

1. Imminent life safety – requires immediate corrective action;
2. Routine/normal maintenance – must be completed within 30 days;
3. Seriously deferred maintenance/medium-large project – 90 days;
4. Weather/seasonal dependent item – 180 days or as negotiated with the Inspector.

**104.13 Time Extensions for Compliance**

Applications for time extensions may be submitted to the Code Enforcement Officer with a progress report and estimated schedule for completion. Such applications will be reviewed and approved or denied in writing on an individual case basis by the Code Enforcement Officer. Appeals of the determination of the Code Enforcement Officer may be made in accordance with Section 111.

**104.14 Right to Access by Inspector.**

The Building Inspector and his/her authorized representative may enter any premises on proof of authority for the purpose of inspecting any building, at such times as may be reasonably necessary to protect the public health, safety, and welfare.

**104.15 Emergency Orders.**

1. Whenever the inspector, in the enforcement of the housing code, finds that a condition exists which requires immediate action to protect the health or safety of the occupants and/or the general public, the inspector may, without notice or hearing, issue an order reciting the existence of such a condition and requiring

that action be taken such as the inspector deems necessary to abate the condition. If necessary, the Code Enforcement Officer may order that the premises be vacated forthwith, and said premises shall not be reoccupied until the order to make repairs has been complied with. Notwithstanding other provisions of the code, such order shall be effective immediately or in the time and manner prescribed by the order itself.

2. No dwelling, dwelling unit, rooming unit or portion thereof which has been determined to be unfit for human habitation shall be used for human habitation again until written approval is secured from the Inspector and the Code Enforcement Officer.

**Stop Work Order.** Section 112.4. Replace with the following:

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be guilty of a municipal infraction under Title I, Chapter 3 of the Malvern City Code of Ordinances.

**Weeds.** Section 302.4 Replace with the following:

All premises and exterior property shall be maintained free from weeds or plant growth in excess of eight inches (8"). All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.

**Insect Screens.** Section 304.14. Delete the following:

During the period from [DATE] to [DATE], every door, window and other outside opening required for *ventilation* of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with *approved* tightly fitting screens of minimum 16 mesh per inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition.

**Exception:** Screens shall not be required where other *approved* means, such as air curtains or insect repellent fans, are employed.

**Interior Surfaces.** Section 305.3 Replace with the following:

**305.3 Interior Surfaces**

All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. (The presence of lead-based paint shall constitute a noted deficiency.) Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected.

**Heat Supply.** Section 602.3. Delete the following:

Every *owner* and *operator* of any building who rents, leases or lets one or more *dwelling units* or *sleeping units* on terms, either expressed or implied, to furnish heat to the *occupants* thereof shall supply heat during the period from [DATE] to [DATE] to maintain a minimum temperature of 68°F (20°C) in all habitable rooms, *bathrooms* and *toilet rooms*.

**Exceptions:**

1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the *International Plumbing Code*.
2. In areas where the average monthly temperature is above 30°F (-1°C) a minimum temperature of 65°F (18°C) shall be maintained.

**Occupiable Work Spaces.** Section 602.4. Delete the following:

Indoor occupiable work spaces shall be supplied with heat during the period from [DATE] to [DATE] to maintain a minimum temperature of 65°F (18°C) during the period the spaces are occupied.

**Exceptions:**

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

**TITLE VII SPECIAL ORDINANCES**

**CHAPTER 1 NATURAL GAS FRANCHISE**

7-1-1	Grant of Franchise	7-1-5	Restoration of Property
7-1-2	State Code Restrictions and Limitations	7-1-6	Indemnification
7-1-3	Excavations	7-1-7	Extension of System
7-1-4	Relocation of Property	7-1-8	Standards of Operation
		7-1-9	Police Regulations

7-1-1 GRANT OF FRANCHISE. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called "Company," and to its successors and assigns the right and franchise to acquire, construct, erect, maintain and operate in the City a gas distribution system, to furnish natural gas along, under and upon the streets, avenues, alleys and public places to serve customers within and without the City and to furnish and sell natural gas to the City and its inhabitants. The term of this franchise grant is twenty-five (25) years, provided however, that there may be a reevaluation after ten (10) years with the opportunity for both parties to request amendments. If neither party requests such reevaluation by July 1, 2009, then this franchise will continue without change for the remaining fifteen (15) years through 2024.\*

7-1-2 STATE CODE RESTRICTIONS AND LIMITATIONS. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa.

7-1-3 EXCAVATIONS. The Company shall have the right to excavate in any public street for the purpose of laying, re-laying, repairing or extending gas pipes, mains, conduits, and other facilities provided that the same shall be so placed as not to interfere with the construction of any water pipes, drain or sewer or the flow of water therefrom, which have been or may hereafter be located by authority of the City.

7-1-4 RELOCATION OF PROPERTY. The Company shall, at its cost and expense, locate and relocate its installations in, on, over or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City has a reasonable alternative route for the street, alley or public improvements, which alternative route would not cause the relocation of the Company installations, the City shall select said alternative route. If relocation of the Company facilities could be avoided by relocating other franchisee's or facility user's equipment and facilities, and said other franchisee's or user's cost of relocation is less than the Company's cost of relocation, the City will select the route that requires the other franchisees or users to relocate. if project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall use its best efforts to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

7-1-5 RESTORATION OF PROPERTY. In making excavations in any streets, avenues, alleys and public places for the installation of gas pipes, conduits or apparatus, Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring the original condition as nearly as practicable.

7-1-6 INDEMNIFICATION. Company shall indemnify and save harmless City from any and all claims, suits, losses, damages, costs or expenses on account of injury or damage to any person or property, caused or occasioned, or allegedly caused or occasioned, in whole or in part, by Company's negligence in construction, reconstruction, excavation, operation or maintenance of the gas utilities authorized by the franchise, provided, however, that the Company shall not be obligated to defend, indemnify and save harmless the City for any costs or damages arising from the negligence of the City, its officers, employees or agents.

7-1-7 EXTENSION OF SYSTEM. The Company shall extend its mains and pipes and operate, and maintain the system in accordance with the applicable regulations of the Iowa Utilities Board or its successors.

7-1-8 STANDARDS OF OPERATION. During the term of this franchise, the Company shall furnish natural gas in the quantity and quality consistent with applicable Iowa laws and regulations.

7-1-9 POLICE REGULATIONS. All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Company.

\*EDITOR'S NOTE: Ordinance No. 249, adopting a natural gas franchise for the City, was passed and adopted on July 12, 1999.

**TITLE VII SPECIAL ORDINANCES**

**CHAPTER 2 ELECTRIC FRANCHISE**

- |  |                               |
|--|-------------------------------|
| 7-2-1 Grant of Franchise                         | 7-2-5 Restoration of Property |
| 7-2-2 State Code Restrictions and<br>Limitations | 7-2-6 Indemnification         |
| 7-2-3 Excavations; Trimming of Trees             | 7-2-7 Standards of Operation  |
| 7-2-4 Relocation of Property                     | 7-2-8 Police Regulations      |

7-2-1 GRANT OF FRANCHISE. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called "Company," and to its successors and assigns the right and franchise to acquire, construct, erect, maintain and operate in the City a system for the transmission and distribution of electric energy and communications signals along, under, over and upon the streets, avenues, alleys and public places to serve customers within and without the City and to furnish and sell electric energy to the City and its inhabitants. The term of this franchise grant is twenty-five (25) years, provided however, that there may be a reevaluation after ten (10) years with the opportunity for both parties to request amendments. If either party requests such reevaluation by July 1, 2009, then this franchise will continue without change for the remaining fifteen (15) years through 2024.

7-2-2 STATE CODE RESTRICTIONS AND LIMITATIONS. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa.

7-2-3 EXCAVATIONS; TRIMMING OF TREES. The Company shall have the right to erect all necessary poles and to place thereon the necessary wires, fixtures and accessories, as well as to excavate and bury conductors for the distribution of electric energy and communications signals to support only the monitoring and usage of energy service usage in and through the City, but all said conduits and poles shall be placed as not to interfere with the construction of any water pipes, drain or sewer, or the flow of water therefrom, which have been or may hereafter be located by authority of the City. The Company is authorized and empowered to cut and trim at its expense any trees extending into any street, alley or public ground so as to prevent limbs or branches from interfering with the wires and facilities of the Company.

7-2-4 RELOCATION OF PROPERTY. The Company shall, at its cost and expense, locate and relocate its installations in, on, over or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City has a reasonable alternative route for the street, alley or public improvements, which alternative route would not cause the relocation of the Company installations, the City shall select said alternative route. If relocation of the Company facilities could be avoided by relocating other franchisee's or facility user's equipment and facilities, and said other franchisee's or user's cost of relocation is less than the Company's cost of relocation, the City will select the route that requires the other franchisees or users to relocate.

If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall use its best efforts to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

7-2-5 RESTORATION OF PROPERTY. In making excavations in any streets, avenues, alleys and public places for the excavation of conduits or the erection of poles and wires or other appliances, the Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring the original condition as nearly as practicable.

7-2-6 INDEMNIFICATION. The Company shall indemnify and save harmless City from any and all claims, suits, losses, damages, costs or expenses on account of injury or damage to any person or property, caused or occasioned, or allegedly caused or occasioned, in whole or in part, by Company's negligence in construction, reconstruction, excavation, operation or maintenance of the electric facilities authorized by the franchise, provided, however, that the Company shall not be obligated to defend, indemnify and save harmless the City for any costs or damages arising from the negligence of the City, its officers, employees or agents.

7-2-7 STANDARDS OF OPERATION. The Company shall construct, operate and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successor. During the term of the franchise the Company shall furnish electric energy in the quantity and quality consistent with applicable Iowa laws and regulations.

7-2-8 POLICE REGULATIONS. All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Company.

EDITOR'S NOTE: Ordinance No. 248, adopting an electric franchise for the City, was passed and adopted on July 12, 1999.

## TITLE VII SPECIAL ORDINANCES

### CHAPTER 3 CABLE TELEVISION FRANCHISE

7-3-1	Short Title	7-3-15	Limitations of Rights Granted
7-3-2	Definitions	7-3-16	Removal of Facilities Upon Request
7-3-3	Qualifications of Grantee and Grant of Non-Exclusive Authority	7-3-17	Transfer of Franchise
7-3-4	Duration and Acceptance of Franchise	7-3-18	Election, Removal, and Common Use of Poles
7-3-5	Compliance with Applicable Laws, Regulations, Ordinances and Codes	7-3-19	Rates
7-3-6	Territorial Area Involved	7-3-20	Records
7-3-7	Liability and Indemnification	7-3-21	Complaint Procedures
7-3-8	Operation and Maintenance of System	7-3-22	Compliance with FCC Standards
7-3-9	Monitoring Tests	7-3-23	Construction Schedules and Standards
7-3-10	Service to School and City	7-3-24	Grantee Rules
7-3-11	Emergency Use of Facilities	7-3-25	Termination of Franchise
7-3-12	Safety Requirements	7-3-26	Unauthorized Cable Tapping
7-3-13	Other Business Activities	7-3-27	Severability
7-3-14	New Developments	7-3-28	Publication
		7-3-29	Franchise Fee
		7-3-30	Disposition of Facilities

7-3-1 SHORT TITLE. This Ordinance shall be known and may be cited as the “Cable Television System Franchise Ordinance.”

7-3-2 DEFINITIONS. For the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. “City” shall mean the City of Malvern, Iowa.
2. “City Council” shall mean the City Council of Malvern, Iowa.
3. “Cable Television System”, “Cable System” or “CATV” shall mean a system utilizing coaxial cable and certain electronic and other components, which deliver to subscribing members of the public various communications services.
4. “FCC” shall mean Federal Communications Commission.

5. "Person" shall mean any person, firm; partnership, association, corporation or organization of any kind and any other legally recognized entity.
6. "Grantee" shall mean Rockport Cablevision/Midwest Data, an affiliate or successor in accordance with the provision of this Franchise by Grantee.
7. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Franchise by Grantee.
8. "Cable Television Reception Service" shall mean the simultaneous delivery by the Grantee to television receivers or any other suitable type of audio-video communication receivers.
9. "Affiliated" or "affiliated company" means a corporation, partnership or other business entity, which is wholly owned by the same person or persons who own Rockport Cablevision/Midwest Data or its parent company.
10. "Gross Subscriber Revenues" shall mean only those revenues derived from the monthly service charges paid by subscribers located within the City for regular cable television reception service, which service includes only the transmission of broadcast signals and to programming presented on the required access and originations channels, if any. Gross subscriber revenues shall not include any revenues received (a) as reimbursement of expenses in the operation of any access channels; (b) as advertising payments; (c) from the leasing of cable channels; (d) from programs for which a per channel or per program charge is made; and (e) from furnishing other communications and non-broadcast services either directly or as a carrier for another party or any other income derived from the system. Gross Subscriber Revenues shall also not include revenues received as installation charges and fees for re-connection, inspection, repairs or modifications of any installation.
11. "Consumer Price Index" or "CPI-U" shall mean that all items unadjusted expenditure category as published monthly by the U.S. Department of Labor.

7-3-3 QUALIFICATIONS OF GRANTEE AND GRANT OF NON-EXCLUSIVE AUTHORITY. WHEREAS, the City has approved of the legal, character, financial, technical and other qualifications of the Grantee and the adequacy and feasibility of the Grantee's construction arrangements as part of a full public proceeding affording due process, including notice to all interested persons and members of the public, there is hereby granted by the City to the Grantee a nonexclusive franchise, right and privilege to construct, erect, operate, modify and maintain upon, along, across, above and over and under the highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and other televisions conductors and fixtures necessary for the maintenance and operation in the City of a Cable Television System for the purpose of distributing television and radio signals, and other

electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways, and public places and all manner of easements for the purposes here set forth.

7-3-4 DURATION AND ACCEPTANCE OF FRANCHISE. The franchise granted the Grantee herein shall terminate fifteen (15) years from the date of grant, subject to renewal for periods of reasonable duration on the same terms and conditions as contained herein, or on such different or additional terms and conditions as may be lawfully specified by the City and as are consistent with the requirements of Rule 76.3 or other applicable rules of the Federal Communications Commission. No renewal hereof shall be granted unless authorized by the City following a public hearing. Grantee shall be awarded a franchise renewal provided its applications shows that its CATV service during the preceding franchise period has reflected material compliance with the terms of this Franchise Ordinance and a good-faith effort to serve the needs and interests of the service area.

7-3-5 COMPLIANCE WITH APPLICABLE LAWS REGULATIONS, ORDINANCES AND CODES

1. The Grantee shall at all times operate and maintain its Cable Television System in full compliance with the rules, regulations and standards of the FCC and any applicable rules, regulations and standards of the State of Iowa.
2. The Grantee shall at all times during the life of this Franchise be subject to all lawful exercise of the police power by the City and to any such reasonable regulations as the City shall hereafter provide.

7-3-6 TERRITORIAL AREA INVOLVED. This Franchise related\ to the present territorial limits of the City and to any area henceforth added thereto during the term of this Franchise. During the term of this Franchise Ordinance, Grantee shall offer CATV service upon request at its then established normal installation and monthly rates to any permanent dwelling or other building within the then territorial limits of the City, subject to application of established credit and other business policies of Grantee.

7-3-7 LIABILITY AND INDEMNIFICATION. Grantee shall at all times keep in effect the following types of insurance coverage:

1. Workers Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Malvern.
2. Property Damage Liability insurance to the extent of Three Hundred Thousand Dollars (\$300,000.00) as to any person and Five Hundred Thousand Dollars (\$500,000.00) as to any one accident. and personal injury liability insurance to the extent of Three Hundred Thousand Dollars (\$300,000.00) as to any person and Five Hundred Thousand Dollars

(\$500,000.00) as to any one accident, naming the City as an additional insured, as its interest may appear, for the protection of itself and the City in the political subdivisions.

3. Grantee shall indemnify, protect and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Workers Compensation law which may be caused by the erection, maintenance, use or removal of any of their attachments, poles or other undertakings, within the City, or by any action of Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from any against all claims, demands, actions, suits, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Workers Compensation laws in effect that may be applicable to Grantee. The City shall give the Grantee prompt written notice of any such claims, demands, actions, suits, judgments, costs, expenses or liabilities. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder.

#### 7-3-8 OPERATION AND MAINTENANCE OF SYSTEM.

1. The Grantee shall provide for regular billing of accounts, and be so operated that complaints and requests for repairs or adjustments may be received at any time.
2. The Grantee shall render safe and efficient services, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.
3. The Grantee shall provide for safe, adequate and prompt service for its facilities.

7-3-9 MONITORING TESTS. Grantee's cable television system shall meet technical standards of the rules and regulations of the Federal Communications Commission, and the Grantee shall perform the periodic tests and make the measurements specified in such rules. The system shall be so designed, engineered; and maintained by the Grantee so as not to interfere with the television and radio reception of residents of the City who are not subscribers to its services.

7-3-10 SERVICE TO SCHOOL AND CITY. The Grantee shall provide service to any school location within the City (one terminal junction each) for educational purposes upon request by the City or the school system at no cost to the City or to the school system. This shall mean only an energized cable to such building(s). The cost of any internal wiring shall be borne by the institution.

The Grantee shall also provide the City, for connections to a building to be selected by the City Council of the City, without charge, and one junction terminal to said building at a location therein to be selected by the City.

Improvements shall be made as technology permits to serve properly the school and municipal buildings.

7-3-11 EMERGENCY USE OF FACILITIES. In the case of any emergency or disaster, the Grantee shall upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster.

7-3-12 SAFETY REQUIREMENTS. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries or nuisances to the public.

7-3-13 OTHER BUSINESS ACTIVITIES. The Grantee hereunder shall not engage in the business of selling, repairing or installing extension services, radio receivers or accessories for such receiver within the City of Malvern during the term of the Franchise.

7-3-14 NEW DEVELOPMENTS. It shall be the policy of the City liberally to amend this Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any development in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently or economically to serve its customers. Provided, however, that this section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

#### 7-3-15 LIMITATIONS OF RIGHTS GRANTED

1. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum, interference with the rights and reasonable convenience of the property owners who join any of the said streets, alleys, or other public ways and places, and said poles or fixtures shall be removed by Grantee whenever, in the opinion of the City Council the same restrict or obstruct the operation or location of any future streets or public places in the City.
2. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with any installations of the City or of a public utility serving the City or to interfere with new improvements the City may deem proper to make.

3. In the maintenance and operation of its television transmission and distribution system in the streets, alleys, and other public places, and in the course of any new construction or addition to its facilities, Grantee shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public places made by Grantee in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which during periods of dusk and darkness shall be clearly designated by warning lights. Grantee shall, whenever it is deemed necessary by the City Engineer, install such steel plates as may be necessary to allow public roadway to remain open while Grantee is excavating in the course of the construction, operation or removal of cable television.
4. In the case of disturbance of any street, sidewalk, alley, public way or paved area, the Grantee shall at its own cost and expense and in a manner approved by the City Council, replace and restore such street, sidewalk, alley, public way or paved area in as good a condition as before the work involved such disturbance was done.
5. If at any time during the period of this Franchise the City shall lawfully elect or alter or change the grade of any street, sidewalk, alley or other public way, the Grantee upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
6. All installations of equipment shall be of permanent nature, durable and installed in accordance with good engineering practices, and of sufficient height to comply with all existing City regulations, ordinances and state laws so as not to interfere in any manner with the right of the public or individual property owner, and any equipment installed in a public way or place shall not interfere with the usual travel on such public way or usual use of such public place by the public and during the construction, repair or removal thereof, shall not obstruct or impede traffic.
7. The Grantee shall, on the request of any person, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for the temporary wire changes.
8. The Grantee shall have the authority to trim trees overhanging upon the streets, alleys, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that as an option of the City, such trimming may be done by it or under supervision and direction at the expense of the Grantee.
9. In all sections of the City where the cables, wires or other facilities of public utilities are placed underground, the Grantee shall in the future place its wires, cables or other like

facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.

10. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, any property of Grantee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishments of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, that Grantee shall in all such cases have the privileges to abandon any property of Grantee in place as hereinafter provided.
11. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property have been installed in any street or public place without complying with the requirements of this ordinance, or the rights granted hereunder have been terminated, canceled or have expired, Grantee shall promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly remove from the streets, or public places all such property and poles of such system that than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.
12. Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City transferring to the City the ownership of such property.
13. Grantee shall file with the Clerk's office a copy, true and accurate, of maps and/or plats of all existing or proposed installations upon the streets. These maps and plats shall conform to the requirements of the City Engineer and shall be kept continuously up to date.

7-3-16 REMOVAL OF FACILITIES UPON REQUEST. Upon termination of services to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

7-3-17 TRANSFER OF FRANCHISE. The Grantee shall not assign or transfer any rights granted under this Ordinance to any person, company or corporation without the prior approval of the City Council, which approval shall not be unreasonably withheld; provided the Grantee shall have the right to assign its rights under this Ordinance to an affiliated company without further approval of the City Council.

### 7-3-18 ELECTION, REMOVAL AND COMMON USE OF POLES

1. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City Engineer with regard to locations, height, type or any other pertinent aspect. However, no locations of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council determines that the public convenience would be enhanced thereby.
2. There is hereby granted to the extent that the City is authorized to so do, the right and authority to Grantee to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises within the corporate limits of the City, including telephone and electric service franchises, to use such towers, poles, lines, cables and other equipment and facilities, subject to all existing and future ordinances and regulations of the City. It is the stated intention of the City that all other holders of public licenses and franchises within the corporate limits of the City shall cooperate with Grantee to allow Grantee joint usage of its poles and pole-line facilities whenever possible or whenever such usage does not interfere with the normal operation of said poles and pole lines so that the number of new or additional poles constructed by Grantee within the City may be minimized.
3. Grantee shall grant to the City, free of expense, joint use of any and all poles owned by it for any property municipal purpose acceptable to Grantee, insofar as it may be done without interfering with the free use and enjoyment of Grantee's own wires and fixtures, and the City shall hold Grantee harmless from any and all claims, actions, causes of action or damages caused by the placing of the City's wires or appurtenances upon the poles of Grantee. Proper regard shall be given to all existing safety rules covering construction and maintenance in effect at the time of construction. If, in accommodating the City's joint use of their poles, Grantee is required to change or replace poles or install new poles, the City shall compensate Grantee for such additional expense.

### 7-3-19 RATES

1. Grantee shall at all times maintain on file with the Municipal Finance Officer or the City Clerk schedule of identification and description of the channels of service which are available and all rates and charges to be made to subscribers for CATV service, including installation charges.
2. The rates and charges for services to subscribers shall be initially set by Grantee, subject to any applicable rules and regulations of federal and state agencies. Before putting into effect any changes in basic channels or the rates and charges to subscribers for basic CATV service, Grantee shall file in writing with the Municipal Finance Officer or City Clerk of the City of Malvern the new proposed channels or rate change at least thirty (30) days in advance of the proposed effective date for such channel change or rate change.

Said proposed rate charges that do not exceed increases of the Consumer Price Index (CPI-U) as computed since the least effective rates may become effective upon the expiration of the thirty (30) day notice.

3. Should the proposed rate charge exceed the Consumer Price Index changes as defined and if the City Council takes no action to set the rate charge for hearing and proposed rate charges may become effective upon the expiration of the thirty (30) day notice.
4. If the City Council sets the rate change for hearing, said proposed rate changes or channel changes will not become effective until the City Council has taken action by means of a resolution.
5. This provision does not limit the right of Grantee to pass along to the subscriber's state and local sales tax or any specific copyright fees.

7-3-20 RECORDS. The Grantee shall keep complete records of accounts showing dates and payments received and shall furnish an annual accounting by certified public accountant to the City and other payment data as above provided. Council shall have the right, power and authority to inspect the monthly service charge records of the Grantee at the premises of the Grantee during the business hours of any work day, or any other reasonable time and place provided Grantee is given no less than seven (7) days notice.

7-3-21 COMPLAINT PROCEDURES. Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to the Grantee's office. Should Grantee fail to satisfy a complaint, it may then be directed to the Municipal Finance Officer or City Clerk for investigation. Upon receipt by it of any service complaint, the Municipal Finance Officer or City Clerk will forward a copy to Grantee or may take the question up by correspondence with the grantee. Within such time as may be prescribed by the City, Grantee will be called upon to satisfy the complaint or advise the City of its refusal or inability to do so. If the Grantee satisfies the complaint, it shall so notify the City, giving particulars of the action taken. The City will forward a copy of Grantee's notice of satisfaction to the complainant. If Grantee refuses or is unable to satisfy the complaint, it shall so notify the City, and the City will forward a copy of such notice to the Complainant, with a statement of the procedure to be followed to further pursue the complaint. When a complaint has not been satisfied, the complainant may file a formal complaint with the Council in the formal manner to be specified thereby. The complaint to the Council must be filed within 30 days from the date of the Grantee's notice or refusal or inability to satisfy complaint. Municipal Finance Officer or City Clerk shall attempt to resolve the complaints, but if this cannot be achieved he or she shall submit a recommendation to the City Council recommending that (a) the complaint be dismissed; or (b) corrective action be taken by Grantee. The Council, or its designated agent, shall have the power to enforce its decision, if against the Grantee, by all actions hereunder, including the revocation of the franchise. Appeal from the City Council's action maybe made to the appropriate judicial or administrative forum.

7-3-22 COMPLIANCE WITH FCC FRANCHISE STANDARDS. Pursuant to applicable FCC standards, the following recitations and provisions are set forth:

1. Grantee's legal, character, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, have been approved by the City Council for the City after consideration in a full public proceeding, affording due process to all interested parties.
2. The initial franchise period shall be fifteen (15) years in duration, and renewal franchise periods shall also be fifteen (15) years in duration.
3. The City Council has specified guidelines in charging rates. No changes in rates charged to subscribers shall be made except as they shall be deemed approved by the City Council as provided herein.

7-3-23 CONSTRUCTION SCHEDULES AND STANDARDS.

1. Within sixty (60) days after the effective date of this Ordinance, the Grantee shall file with the appropriate governmental authorities all initial papers, applications, contracts and other documents necessary to obtain any and all necessary waivers, consents, and licenses and to permit the commencement of construction and operation of the Cable Television system and shall thereafter make diligent efforts to obtain the proper execution, delivery of such documents and any amendments thereto. In the event that all necessary waivers, consents, and licenses @not obtained within one year after the effective date of this Ordinance, the Franchise Ordinance may be repealed at the option of the City by the adoption of an appropriate repealer ordinance.
2. Within (60) days after all necessary waivers, consents and licenses have been obtained, the Grantee shall commence the construction of the Cable Television System and pursue such with diligence.
3. The Grantee shall commence operation or this Franchise shall be subject to repeal as prescribed in subparagraph (1) above herein.
4. Delays in the performance of Grantee's obligations under this Ordinance which are caused by strikes, equipment shortages, state of war, acts of God or other circumstances beyond the control of Grantee, shall not be construed to be violations of the provisions of the Ordinance, and the reasonable extensions of the time shall be granted therefore.
5. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and all amendments thereto as well as all applicable state and local codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with all applicable codes, including the provisions of the electrical code. All of the Grantee's plant and equipment

shall be installed, constructed, repaired, maintained and operated in accordance with good engineering practices. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

6. Grantee's plant and equipment, including the antenna site, headend, distribution system, towers, structures, poles, wires, underground cable and appurtenances shall be installed in accordance with good engineering practices, and shall be located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated so as not to endanger or interfere with the lives of persons or to interfere with the improvements the City may deem proper to make or to unnecessarily hinder or obstruct pedestrian or vehicular traffic to public ways, places and structures. Erection, installation, construction, replacement, removal, repair, maintenance, and operation of the system shall be in accordance with the provisions of the Nation Electrical Code (outside work) and such applicable laws of the State and applicable ordinance of the City which may now be in effect or enacted in the future. All installations shall be of permanent nature, durable, and maintained in a safe, suitable, and substantial condition, in good order and repair.
7. The Grantee shall, during the period of its franchise, furnish reasonable, adequate and efficient cable television reception service to the residents of the City whenever possible, and the Grantee shall maintain its system in reasonable repair and working order and provide adequate facilities for such maintenance. These requirements shall be temporarily suspended in the event of a natural disaster or emergency conditions or other circumstances beyond the reasonable control of the Grantee.

#### 7-3-24 GRANTEE RULES.

1. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions covering the conduct of this business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Ordinance.
2. All such rules. regulations. terms and conditions promulgated under the subsection (1) above shall not be in conflict with the provisions hereof, or applicable federal or state law or rules promulgated by the City in the exercise of its regulatory authority granted hereunder.
3. One copy of all such rules, regulations, terms and conditions promulgated under subsection ( 1) above, together with any amendments, additions or deletion thereof, shall be kept current on file with the Municipal Finance Officer or City Clerk, and another copy thereof shall be maintained for public inspection during normal business hours at Grantee's office in the City. No such rules, regulations, terms, conditions, amendments, additions or deletions thereto shall take effect unless and until so filed and maintained.

7-3-25 TERMINATION OF FRANCHISE. The City reserves the right to terminate any franchise granted hereunder and rescind all rights and privileges associated therewith in the event of:

1. Noncompliance by the Grantee with any provision of this Ordinance, Amendment hereto, or of any supplemental written agreement entered into by and between the City and the Grantee.
2. The Grantee becomes insolvent, enters into receivership or liquidation, files and application for bankruptcy or for composition of creditors, is unable to pay its debts as they mature or is in financial difficulty of sufficient consequence so as to jeopardize the continued operation of the network.
3. Violation by the Grantee of any FCC or applicable state order or ruling, or the order or ruling of any other governmental body having jurisdiction over the Grantee, unless the Grantee is lawfully contesting the legality or applicability of such rule or order.

Upon the occurrences of any of the above-listed events, the City Council may, after hearing, upon thirty (30) days written notice to the Grantee citing the reasons alleged to constitute cause for revocation, set a reasonable time in which the Grantee must remedy the cause. If, during the thirty (30) day period, the cause shall be cured to the satisfaction of the City Council, the City Council may declare the notice to be null and void. If the Grantee fails to remedy the cause within the time specified after hearing, the City Council may revoke the franchise. In any event, before a franchise may be terminated, the Grantee shall be provided with an opportunity to be heard before the City Council.

7-3-26 UNAUTHORIZED CABLE TAPPING. It shall be unlawful for any person or persons to obtain any Cable Television services from any cable television company or any firm or private person by installing, rearranging or tampering with any facilities or equipment of said Cable Television Company unless the same is done with the knowledge of and with the permission of the Cable Television Company. Any person or persons found guilty of a violation of any of the provisions of this Section shall be deemed guilty of a misdemeanor.

7-3-27 SEVERABILITY

1. If any subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.
2. Should any provision of this Ordinance be inconsistent or at variance with any rule, regulation or policy, in whole or in part, of the Federal Communications Commission or any other agency having jurisdiction, such provision shall be invalid; but the remaining provisions hereof shall not be affected thereby.

7-3-28 PUBLICATION. Grantee shall pay to the City a sum of money sufficient to reimburse it for all expenses incurred by it in connection with the publication and passage of this Ordinance and the rights granted to Grantee hereunder. Such payment shall be made by Grantee to City within thirty (30) days after City shall furnish Grantee with a written statement of such expense.

7-3-29 FRANCHISE FEE. Grantee shall pay to the City an annual fee in the amount equal to three percent (3%) of the total annual gross subscriber charges or fees owed to the City by the franchisee and shall not be construed as payment in lieu of personal or teal property taxes levied by the state, county or local authority. Sales taxes or other taxes levied directly on a per subscription basis and collected by the franchisee to be remitted by the franchisee to a governmental agency shall be deducted from the gross subscriber revenue prior to the computation of the annual franchise payment The payment due the City under the provisions of the ordinance shall be computed and due not later than ninety (90) days after the end of the City's fiscal year and payable at the office of the City Clerk during its regular business hours.

7-3-30 DISPOSITION OF FACILITIES. Should the Grantee decide to dispose of the system as authorized under this ordinance the City of Malvern shall have the first opportunity to purchase the system, its rights and privileges, at its then appraised value.

Appraised values are to be arrived at by an "Appraisal Board" comprised of one (1) outside knowledgeable representative appointed by the City, one (1) outside knowledgeable representative appointed by the Grantee and one ( 1) outside knowledgeable representative chosen by the two (2) outside appointed representatives and mutually agreed to by both the City and the Grantee.

**TITLE VII SPECIAL ORDINANCES**

**CHAPTER 4 RESERVED (Internet)**

## TITLE VII SPECIAL ORDINANCES

### CHAPTER 5 WIND ENERGY CONVERSION SYSTEMS

7-5-1	Purpose	7-5-6	Location
7-5-2	Definitions	7-5-7	Design and Technical Standards
7-5-3	Commercial Wind Energy Conversion Systems Prohibited	7-5-8	Application and Approval Requirements
7-5-4	General Regulations	7-5-9	Appeals
7-5-5	Bulk Regulations		

7-5-1 Purpose. In order to protect the public health, safety and welfare of the community, these regulations are necessary to ensure that all Wind Energy Conversion Systems are appropriately designed, sited and installed.

7-5-2 Definitions. For the purpose of this title certain words and terms used herein shall be defined and interpreted as follows:

1. "Commercial Wind Energy Conversion System" means a wind energy conversion system which has a rated capacity of more than 100 kW and/or which is intended to produce electricity primarily for sale to a rate-regulated or nonregulated utility for use off-site.
2. "Fall Zone" means the area, defined as the furthest distance from the tower base, in which a guyed or tubular tower will collapse in the event of a structural failure.
3. "Height, Total System" means the height above grade of the facility, including the generating unit and the highest vertical extend of any blades or rotors.
4. "Height, Tower" means the height above grade of the fixed portion of the tower, excluding the generation unit and attached blades or rotors.
5. "Small Wind Energy System" (SWES) means a wind energy conversion system which has a rated capacity of not more than 1 00 kW and which is incidental and subordinate to a permitted use on the same parcel. A system is considered a small wind energy system only if it supplies electrical power solely for on-site use, except that when a parcel on which the system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company in accordance with Section 199, Chapter 15.11 (5) of the Iowa Administrative Code.
6. "Tower" means the vertical component of a wind energy conversion system that elevates the wind turbine generator and attached blades above the ground.

7. "Wind Energy Conversion System" (WECS) means an aggregation of parts including the base, tower, generator, rotor, blades, supports, guy wires and accessory equipment such as utility interconnect and battery banks, etc. in such configuration as necessary to convert the power of wind into mechanical or electrical energy, i.e., wind charger, windmill or wind turbine.
8. "Wind Turbine Generator" means the component of a wind energy conversion system that transforms mechanical energy from the wind into electrical energy.

7-5-3 Commercial wind energy conversion systems prohibited. It shall be unlawful to erect or maintain a commercial wind energy conversion system within the City of Malvern.

7-5-4 General regulations.

1. A small wind energy system, meeting the requirements of this chapter, may be allowed only in the following districts: C-1 (Commercial) - C-2 (Downtown Commercial), M-1 (Light Industrial) and A (Agricultural).
2. No more than one small wind energy system shall be allowed per zoning lot.
3. A small wind energy system shall be allowed only as a conditional accessory use to a permitted principal or approved conditional principal use.
4. A wind energy conversion system which exceeds the capacity or definition of a small wind energy system shall not be permitted within the City of Malvern.
5. Permit required. It shall be unlawful to construct, erect, install, alter or locate any small wind energy system within the City of Malvern, unless a conditional use permit has been obtained from the zoning Board of Adjustment. The conditional use permit may be revoked any time it does not comply with the rules set forth in the Code and the conditions imposed by the zoning Board of Adjustment. the owner/operator of the small wind energy system must also obtain any other permits required by other federal, state and local agencies or departments prior to erecting the system and as a condition of obtaining any permit from the Zoning Board of Adjustment.

7-5-5 Bulk regulations.

1. Minimum lot size: No small wind energy system shall be erected on a zoning lot smaller than 0.5 acres.
2. Setbacks: The minimum distance between a small wind energy system, including guy wires and their anchors, and any property line shall be no less than ten (10) feet, subject to limitations of a fall zone.

3. Fall Zone: The fall zone should be the equivalent to the total system height plus six (6) feet from any structure or building on surrounding properties.
4. Maximum tower height: For zoning lots smaller than one acre, the height of the tower shall not exceed one and one-half times the maximum allowable height for a building in that particular zoning district. In no event may the total system height of the tower exceed 112.5 feet if the tower is located within 200 feet of a residence or business district. The height of the tower must comply with all restrictions which may be imposed by virtue of aircraft approach and turning zone height restrictions.

7-5-6 Location.

1. No part of a small wind energy system shall be located within or over drainage, utility or other established easements, or on or over property lines.
2. The small wind energy system shall be located entirely in the rear yard. No portion of the total extended height shall be in front of the front of the principal structure or into the front or street side yard setback with the zoning district in which it is situated. A reduction may be granted to a specific setback distance if the Board finds that such a reduction shall not adversely affect the surrounding property and does not interfere with public utility lines, public road and rail right-of-ways.
3. The small wind energy system shall not be located in any required setback.
4. The small wind energy system shall be located in compliance with the guidelines of the Federal Aviation Regulations with regard to airport approach and clearance around VOR (VHF omni range beacon) and DVOR (Doppler VHF omni range beacon) stations.
5. The minimum distance between the entire support basis of any two small wind energy system under different ownership shall be five times the diameter of the largest rotor. A reduction may be granted in this requirement if it finds that such a requirement does not adversely affect the operation of either small wind energy system.

7-5-7 Design and technical standards. The following standards are required of all small wind energy systems and shall be deemed to be conditions of approval of every small wind energy system.

1. Color: The colors used in the construction materials or finished surface shall be muted (matte or non-reflective) and visually compatible with surrounding development.
2. Lighting: No lights shall be installed on the tower, unless required to meet FAA regulations. All required lights shall be shielded from adjacent properties.

3. Signs: One sign, limited to 18 inches in length and 1 foot in height, shall be posted at the base of the tower. The sign shall include a notice of no trespassing, a warning of high voltage, and the phone number of the property owner/operator to call in case of emergency.
4. Climbing apparatus: All climbing apparatus shall be located at least 12 feet above the ground, and the tower must be designed to prevent climbing within the first 12 feet.
5. Fence: To limit access to the tower, an opaque fence 6 feet high with smooth side to the outside, no more than 1 inch gaps and a locking portal shall be placed around the small wind energy system, unless the system is mounted on a rooftop.
6. Installation: Installation shall comply with the National Electrical Code and shall be completed by a qualified professional, certified by the manufacturer to install the system according to the manufacturer's recommendations. All communications and connector lines associated with the project distribution system shall be buried.
7. Maintenance: Facilities shall be well maintained in an operational condition that poses no potential safety hazard. Outdoor storage is not permitted.
8. Displacement of parking prohibited: The location of the small wind energy system shall not result in the net displacement of required parking as specified in Article XIII of the Malvern Zoning Ordinance.
9. Restriction on use of electricity generated by a small wind energy system: A small wind energy system shall be used exclusively to supply electrical power for onsite consumption, except that when a parcel on which a small wind energy system is installed also receives electrical power supplied by a utility company, excess electrical power generated by the small wind energy system and not presently needed for on-site use may be used by the utility company in accordance with Section 199, Chapter 15.11 (5) of the Iowa Administrative Code.
10. Clearance of Blade Above Ground: No portion of the small wind energy system blade shall extend within 20 feet of the ground. No blades may extend over parking areas, driveways or sidewalks.
11. Automatic Overspeed Controls: All small wind energy systems shall be equipped with manual and automatic overspeed controls to limit the blade rotation speed to within the design limits of the small wind energy system.
12. Noise: Except during short-term events including utility outages and severe wind events, a small wind energy system shall be designed, installed and operated so that the noise generated does not exceed 50 dB at 50 feet from the small wind energy system.

13. Electromagnetic Interference: All blades shall be constructed of a nonmetallic substance. The small wind energy system shall be operated such that no interference to microwave communications, telephone or radio and television reception in the area is caused. If it is determined that the small wind energy system is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, subject to the approval of the zoning Board of Adjustment. The zoning Board of Adjustment may revoke a conditional use permit granting a small wind energy system if electromagnetic interference from the small wind energy system becomes evident.
14. Interconnection: The small wind energy system, if interconnected to a utility system, shall meet the requirements for interconnection and operation as set forth by the utility and the Iowa Utilities Board. It is required that the utility company has been informed and has approved the customer's intent to install an interconnection customer-owned generator, prior to issuance of any construction permit. Owner shall also inform the electric utility of their intent to install off-grid systems prior to issuance of any instruction permit.
15. Wind Access Easements: The enactment of this chapter does not constitute the granting of an easement by the City. The owner/operator shall provide covenants, easements, or similar documentation to assure sufficient wind to operate the small wind energy system unless adequate accessibility to the wind is provided by the site.
16. Insurance: The owner/operator of a small wind energy system must demonstrate adequate liability insurance as a condition of obtaining a conditional use permit.
17. Removal: If a small wind energy system remains non-functional, inoperative or nonenergy-producing for a continuous period of six months (180 days), the system shall be deemed to be abandoned, without regard for ownership or condition of any other structure on the property, and shall constitute a public nuisance. The owner/operator shall remove the abandoned system and accessory facilities at their expense. Removal of the system includes the entire structure including foundations, transmission equipment and fencing from the property. Non-function or lack of operation may be proven by reports from interconnected utility. The owner/operator and successors shall make available to the zoning Board of Adjustment and/or the City Administrator all reports to and from the user(s) of energy from the small wind energy system if requested. If removal of towers and appurtenant facilities is required, such removal shall be completed within 180 days of the discontinuation of use. The 180-day limit may be extended if proof of weather delay is provided. If the City removes a tower and appurtenant facilities, it may sell the salvage to defray the cost of removal. Further, the City may collect any remaining costs of removal pursuant to City Code Section 50.11.

18. Right of entrance: By the acceptance of a conditional use permit, the owner/operator grants permission to the City of Malvern to enter the property to remove the tower pursuant to the terms of the condition use permit and to assure compliance with the other conditions set forth in the permit.
19. Rooftop turbines, not to exceed three (3) feet in total extended height, also known as architecturally integrated or vertical access wind turbines, are exempt from these requirements, if the total extended height does not exceed the maximum height permitted for the structure upon which it is placed.

7-5-8 Application and approval requirements. Approval or denial of an application for a conditional use permit to allow construction of a small wind energy system shall be made by the zoning Board of Adjustment. An application for a small wind energy system must include the following information:

1. A site plan, preferably based on a U.S.G.S. 1:24,000 scale topographic map, showing the following:
  - A. Complete property dimensions.
  - B. Location and full dimensions of all buildings existing on property including exterior dimensions, height of buildings and all uses on property. Location and full dimensions of all buildings within 200 feet of the property including exterior dimensions, height and uses on property.
  - C. Location and dimensions of any other natural or manmade features within 200 feet of the property such as trees, ridges, highways, streets, bridges and underpasses.
  - D. Proposed location of tower including height and setbacks.
2. Drawings, to scale, of the structure, including the tower, base, footings and guy wires, if any. Drawings and any necessary calculations shall be certified by a licensed engineer as meeting the requirements of all applicable building codes.
3. Line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation will meet all applicable electrical codes.
4. Certification from a licensed engineer or qualified person that the rotor and overspeed control have been designed for the proposed use on the proposed site.
5. Evidence that the proposed small wind energy system model has an operational history of at least one-year.

6. Evidence that the proposed small wind energy system has at least 5 years remaining on its manufacturer's warranty.
7. Evidence that the applicant has notified the utility that the customer intends to install an interconnected customer-owned generator, and that the generator meets the minimum requirements established by the utility and the Iowa Utilities Board. Off-grid systems shall be exempt from this requirement.
8. Evidence that the small wind energy system does not violate any covenants of record.
9. Evidence from a qualified individual that the site is feasible for a small wind energy system, or that covenants, easements and other assurances to document sufficient wind to operate the small wind energy system have been obtained.
10. Evidence that the proposed small wind energy system will comply with applicable Federal Aviation Regulations, including any necessary approvals from the Federal Aviation Administration.
11. Evidence that the applicant can obtain and maintain adequate liability insurance for the facility.
12. Any other evidence or information as required by the zoning Board of Adjustment.

7-5-9 Appeals. A landowner or applicant affected by any decision, interpretation, or order made by the zoning Board of Adjustment regarding enforcement of this chapter may appeal to the Council within ten (10) days from the date of the issuance of the decision by filing with the Clerk a notice of appeal specifying the grounds for the appeal. The Clerk shall advise the zoning Board of Adjustment who shall transmit to the Council all papers constituting the record upon which the action appealed from is taken. An appeal shall stay all proceedings in furtherance of the action appealed from except for unsafe conditions which constitute a public nuisance and present an immediate danger to the public and the provisions elsewhere provided for in this Code of Ordinances shall be applicable. The Council shall, upon the filing of an appeal, fix a reasonable time for a hearing on same, giving public notice thereof as well as due notice to the parties in interest. All interested persons may offer oral or written testimony at the public hearing on the appeal and every variation and exception granted or denied by the Council shall be written testimony or evidence submitted in connection therewith. The Council may vote by majority to affirm, modify or reverse the order, requirement, decision or determination of the zoning Board of Adjustment. Any landowner or applicant jointly or severally aggrieved by any decision of the Council may within thirty (30) days from date of the filing of the decision by the Council, appeal therefrom to the district court for Mills County.

## CHAPTER 6 URBAN RENEWAL

EDITOR'S NOTE		
The following ordinances not codified herein, and specifically saved from repeal, have been adopted establishing Urban Renewal Areas in the City and remain in full force and effect.		
ORDINANCE NO.	ADOPTED	NAME OF AREA
	February 4, 1985	Malvern Redevelopment and Revitalization Area
230	December 22, 1994	Malvern Urban Renewal Areas No. 1 & No. 2
240	April 14, 1997	1997 Addition to Malvern Urban Renewal Area No. 1
268	September 11, 2006	Malvern Housing Urban Renewal Area
273	April 9, 2007	Malvern Downtown Urban Renewal Area
2016-39	November 14, 2016	2016 Addition to Malvern Urban Renewal Area No. 1
2019-06	February 11, 2019	2017 Fairview Hills Urban Renewal Area