

CHAPTER 1**MUNICIPAL CODE**

1.01 TITLE. This code of ordinances shall be known and may be cited as the "Windsor Heights Municipal Code" or "Code".

1.02 DEFINITIONS. Words and phrases shall be construed according to the context and the approved usage of the language. Technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed according to such meaning. Words or phrases defined in the Code of Iowa and not otherwise defined in this Code shall have the meaning ascribed to them in the Code of Iowa. Unless specifically defined otherwise in another section of this Code, the following words and phrases, when used in this Code, shall, for purposes of this Code, have the meanings ascribed to them in this section:

1. "Administrative agency": means an agency established by a city for any city purpose or for the administration of any city facility, as provided in Code of Iowa Chapter 392, except a board established to administer a municipal utility, a zoning commission and zoning board of adjustment, or any other agency which is controlled by state law. An administrative agency may be designated as a board, board of trustees, commission, or by another title. If an agency is advisory only, such a designation must be included in its title.

(Code of Iowa, 1995, Sec. 362.2 [1]).

2. "Alley": means a public way, other than a street, twenty (20) feet or less, affording secondary means of access to abutting property.

3. "Appointed Officer": means an officer appointed by the Mayor or Council pursuant to the provisions of this Code.

4. "Building Official": means the person appointed by the Council to administer and enforce the Building Code, the Mechanical Code, the Plumbing Code, the Electrical Code and any other provisions of this Code designated by the Council.

5. "City": means the City of Windsor Heights, Polk County, Iowa.

6. "City Code": means the City Code of Iowa, consisting of Code of Iowa, Chapters. 364, 368, 372, 376, 380, 384, 388, and 392.

(Code of Iowa, 1995, Sec. 362.2 [5])

7. "Clerk": means the City Clerk of the City.

(Code of Iowa, 1995, Sec. 362.2 [7])
8. "Code": means the Windsor Heights Municipal Code, 1997, as amended.
9. "Code of Iowa": means the latest edition of the Code of Iowa, as amended.
10. "Council": means the City Council of the City.

(Code of Iowa, 1995, Sec. 362.2 [8])
11. "County": means Polk County, Iowa.
12. "Elected Officer": means the Mayor or a member of the Council.
13. "Employee": means all persons employed by the City except elected officers and appointed officers.
14. "Fire Chief": means the Fire Chief of the City.
15. "Mayor": means the Mayor of the City.
16. "Measure": means an ordinance, amendment, resolution or motion.

(Code of Iowa, 1995, Sec. 362.2 [13])
17. "Month": means a calendar month.

(Code of Iowa, 1995, Sec. 4.1 [16])
18. "Oath": means affirmation in all cases where an affirmation may be substituted for an oath and in like cases "swear" includes "affirm".

(Code of Iowa, 1991, Sec. 4.1 [19])
19. "Occupant": means, when applied to a building or land, a person who occupies the whole or a part of such building or land, whether alone or with others.
20. "Officer": means elected officers and appointed officers.

21. "Ordinance": means a City law of a general and permanent nature.

(Code of Iowa, 1995, 362.2 [16])

22. "Person": means an individual, firm, partnership, domestic or foreign corporation, company, association or joint stock association, trust or other legal entity, and includes a trustee, receiver, assignee or similar representative thereof, but does not include a governmental body.

(Code of Iowa, 1995, Sec.362.2 [17])

23. "Personal Property": means and includes money, goods, chattels, evidences of debt and things in action.

(Code of Iowa, 1995, Sec. 4.1 [21])

24. "Police Chief": means the Chief of Police of the City.

25. "Preceding" and "following": means next before and next after, respectively.

(Code of Iowa, 1995, Sec. 4.1 [23])

26. "Private Property": means all property except public property.

27. "Property": includes personal property and real property.

(Code of Iowa, 1995, Sec. 4.1 [24])

28. "Property owner": means a person owning private property located within the City as shown on the plats in the office of the County Auditor.

29. "Public Place": means any property owned by the City and open to the public.

30. "Public Property": means any property owned by the City or used by the City for City purposes.

31. "Public Way": means and includes any street, alley, boulevard, parkway, highway, sidewalk or other public thoroughfare.

32. "Real Estate" or "Land": means and includes all lands, tenements, hereditaments, and all rights thereto and interests therein equitable as well as legal.

(Code of Iowa, 1995, Sec. 4.1 [13])

33. "Recorded Vote": means a record, roll call vote.

34. "Resolution" or "Motion": means a Council statement of policy or a Council order for action to be taken, but a "motion" does not require a recorded vote.

(Code of Iowa, 1995, Sec 362.2 [21])

35. "Sidewalk": means that surfaced portion of a street between either the curb lines or the lateral lines of the roadway and the adjacent property lines intended for the use of pedestrians.

(Code of Iowa, 1995, Sec. 321.1 [72])

36. "State": means the State of Iowa.

37. "Street": includes "highway" and "public highway" and means the entire width between property lines of every public way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(Code of Iowa, 1995, Sec. 321.1 [78])

38. "Superintendent": means the Superintendent of Public Works of the City.

39. "Vehicle": means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. "Vehicle" does not include:

A. Any device moved by human power.

B. Any device used exclusively upon stationary rails or tracks.

C. Any integral part of a truck tractor or road tractor which is mounted on the frame of the truck tractor or road tractor immediately behind the cab and which may be used to transport persons and property but which cannot be drawn upon the highway by the truck tractor or another motor vehicle.

D. Any steering axle, dolly, auxiliary axle or other integral part of another vehicle which is incapable of commercially transporting any person or property but is used primarily to support another vehicle.

(Code of Iowa, 1995, Sec. 321.1 [90])

40. "Week": means seven (7) consecutive days.

(Code of Iowa, 1995, Sec. 4.1 [36])

41. "Written" or "in writing": means any mode of representing words or letters in general use.

(Code of Iowa, 1995, Sec. 4.1 [39])

42. "Year": means twelve (12) consecutive months.

(Code of Iowa, 1995, Sec. 4.1 [40])

43. "Zoning Administrator": means the person appointed by the Council to administer and enforce the Zoning Code.

In computing time, the first day shall be excluded and the last day excluded unless the last day falls on a Saturday, Sunday or legal holiday, in which case the time shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.

Time of day shall be determined in accordance with Central Standard time or Central Daylight time, whichever is legally in effect in the State at the time in question.

1.03 CITY POWERS. The City shall, except as expressly limited by the Iowa Constitution, and if not inconsistent with the laws of the Iowa General Assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges and property of the City and of its residents, and to preserve and improve the peace, safety, health, welfare, comfort and convenience of its residents and each and every provision of this Code shall be deemed to be in the exercise of the foregoing powers and the performance of the foregoing functions.

(Code of Iowa, 1995, Sec. 364.1)

1.04 INDEMNITY. The applicant for any permit or license under this Code, 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 or the terms and conditions of such permit or license and such applicant, by making such application, forever indemnifies 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 expenses incident thereto, by reason of the

foregoing. This section shall apply even though acts or omissions of the City, or its officers, agents and employees, may have caused or contributed to such loss, damage, injury or death. This section shall apply even though the City, or its officers, agents and employees, may have knowledge of any act, omission or condition which caused or contributed to such loss, damage, injury or death. The provisions of this section shall be deemed to be a part of any permit or license issued under this Code whether expressly recited therein or not.

1.05 RULES OF CONSTRUCTION. In the construction of this Code, and all ordinances enacted subsequent hereto, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Council, or repugnant to the context of the Code or ordinance:

1. The word "shall" imposes a duty.

(Code of Iowa, 1995, Sec. 4.1 [30])

2. The word "must" states a requirement.

(Code of Iowa, 1995, Sec. 4.1 [30])

3. The word "may" confers a power.

(Code of Iowa, 1995, Sec. 4.1 [30])

4. Words imparting the present tense may be extended to the future tense or the past tense.

(Code of Iowa, 1995, Sec. 4.1 [33])

5. Words imparting the singular number may be extended to several persons or things and words imparting the plural number may be applied to one person or thing.

6. Words imparting the masculine gender may be extended to the feminine and neuter genders.

7. The provisions of the Code and all proceedings under it shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice.

(Code of Iowa, 1995, Sec. 4.2)

8. In enacting the provisions of this Code, it is presumed that:

- A. Compliance with the Constitution of the United States, the

Constitution of the State of Iowa and the Code of Iowa is intended.

- B. The entire Code is intended to be effective.
- C. A just and reasonable result is intended.
- D. A result feasible of execution is intended.
- E. Public interest is favored over private interest.

(Code of Iowa, 1995, Sec. 4.4)

9. If a provision of this Code is ambiguous, a court, in determining the intention of the Council, may consider among other things:

- A. The object sought to be obtained.
- B. The circumstances under which the provision was enacted.
- C. The legislative history.
- D. The common law or former provisions, including provisions upon the same or similar subjects.
- E. The consequences of a particular construction.
- F. The administrative construction of the provisions.
- G. The preamble or statement of policy or purpose.

(Code of Iowa, 1995, Sec. 4.6)

10. A provision which adopts by reference or refers to a provision of the Code of Iowa or another provision of the Code shall be construed to include subsequent amendments thereof or the portion thereof so adopted by reference unless a contrary intent is expressed.

(Code of Iowa, 1995, Sec. 4.3)

11. An amendment to this Code is presumed to be prospective in its operation unless expressly made retrospective.

(Code of Iowa, 1995, Sec. 4.5)

12. If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision.

(Code of Iowa, 1995, Sec. 4.7)

13. If there are conflicts between the Code of Iowa and this Code, the provisions of the Code of Iowa shall govern.

14. If there are conflicts between any of the provisions of this Code, the most restrictive provision shall govern.

15. A provision of this Code which is re-enacted, revised or amended is intended to be a continuation of the prior provision and not a new enactment, so far as it is the same as the prior provisions.

(Code of Iowa, 1995, Sec. 4.10)

16. The re-enactment, revision, amendment or repeal of a provision of this Code does not affect:

A. The prior operation of the provision or any prior action thereunder;

B. Any validation, cure, right, privilege, obligation or liability previously acquired, accrued, accorded or incurred thereunder;

C. Any violation thereof or penalty, forfeiture or punishment incurred in respect thereto, prior to the amendment or repeal; or

D. Any investigation, proceeding or remedy in respect of any privilege, obligation, liability, penalty, forfeiture or punishment; and the investigation, proceeding or remedy may be instituted, continued or enforced, and the penalty, forfeiture or punishment imposed, as if the provision had not been repealed or amended.

(Code of Iowa, 1995, Sec. 4.13 [4])

17. When any ordinance which repealed or former ordinance, or any part thereof, is itself repealed, such last repeal shall not be construed to revive the former ordinance which was repealed.

1.06 AMENDMENTS. An amendment to an ordinance or to a code of ordinances must specifically

repeal the ordinance or code, or the section or subsection to be amended, and must set forth in full the ordinance, code, section or subsection as amended.

(Code of Iowa, 1995, Sec. 380.2)

1.07 CATCHLINES AND NOTES. The catchlines of the several sections of this Code, titles, headings, editor's notes, cross references and state law references, unless set out in the body of the section itself, contained in this Code, do not constitute any part of the law, and are intended merely to indicate, explain, supplement or clarify the contents of a section.

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

(Code of Iowa, 1995, Sec. 718.5)

1.09 STANDARD PENALTY. Unless another penalty is expressly provided by this Code for any particular provision, section or Chapter, any person failing to perform a duty, or obtain a permit or license required by, or violating any provision of this Code, or any rule or regulation adopted herein by reference shall be guilty of a misdemeanor and, upon conviction, be subject to a fine of not more than five hundred dollars (\$500.00) or imprisonment not to exceed thirty (30) days.

(Code of Iowa, 1995, Sec. 364.3 [2])

1.10 SEVERABILITY. If any section, provision or part of this Code or any amendment, is adjudged invalid or unconstitutional, such adjudication will not affect the validity of this Code as a whole, or any section, provision or part thereof, or any amendment thereto, not adjudged invalid or unconstitutional.

1.11 CODE OF ORDINANCES PUBLISHED. At least once every five years, the City shall compile a code of ordinances containing all of the city ordinances in effect, except grade ordinances, bond ordinances, zoning ordinances, and ordinances vacating streets and alleys.

1. If a proposed code of ordinances contains only existing ordinances edited and compiled without change in substance, the City Council may adopt the code by ordinance.
2. If a proposed code of ordinances contains a proposed new ordinance or amendment, the Council shall hold a public hearing on the proposed code before adoption. The City Administrator shall publish notice of the hearing as provided in section 362.3, Code of Iowa. Copies of the proposed code of ordinances must be available at the City Administrator's office and the notice must so state. Within 30 days after the hearing, the Council may adopt the proposed code of ordinances which

becomes law upon publication of the ordinance adopting it. If the Council substantially amends the proposed code of ordinances after a hearing, notice and hearing must be repeated.

3. Ordinances and amendments which become effective after adoption of a code of ordinances may be compiled as supplements to the code, and upon adoption of the supplement by resolution, become part of the code of ordinances.

4. An adopted code of ordinances is presumptive evidence of the passage, publication, and content of the ordinances therein as of the date of the City Administrator's certificate of the ordinance adopting the code or supplement.