

City of Stewart – Codification of Ordinances

TITLE IX: GENERAL REGULATIONS

Chapter

- 90. ABANDONED PROPERTY
- 91. ANIMALS
- 92. HEALTH AND SAFETY; NUISANCES
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CHAPTER 90: ABANDONED PROPERTY

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§ 90.01 PURPOSE.

(A) Abandoned vehicles, abandoned appliances and discarded furniture constitute:

- (1) A hazard to the health and welfare of the peoples of the city in that they can harbor noxious diseases, furnish shelter and breeding places for vermin and present physical dangers to the safety and well-being of children and other citizens;
- (2) A blight on the landscape of the city and are, therefore, detrimental to the environment; and
- (3) A waste of a valuable source of useful metal, in the case of abandoned motor vehicles and appliances.

(B) It is, therefore, in the public interest that the present accumulation of abandoned motor vehicles, abandoned appliances and discarded furniture within the city be eliminated and that the future abandonment thereof be prevented.

§ 90.02 DEFINITIONS.

(A) A vehicle shall not be an “abandoned motor vehicle” and an appliance shall not be and “abandoned appliance”, as defined in this section:

- (1) In an enclosed garage or storage building;
- (2) On the premises of a junkyard or a motor vehicle or appliance repair business when the junkyard or business is maintained and/or licensed in accordance with state statutes or with local ordinances and zoning regulations and, in the case of a repair business, each motor vehicle or appliance is being actively and consistently worked on and is being maintained or stored in an area screened from public view by an appropriate fence; or
- (3) In an appropriate storage place or depository maintained in a lawful place and manner by the city or authorized by the city.

(B) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED APPLIANCE. A household appliance lacking vital component parts or in an inoperable condition.

ABANDONED MOTOR VEHICLE.

- (a) An unlicensed motor vehicle;
- (b) A motor vehicle lacking vital component parts, including motor vehicles with pioneer, classic car, collector or street rod license;

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- (c) A motor vehicle which is in an inoperable condition, including motor vehicles with pioneer, classic car, collector or street rod license;
- (d) A motor vehicle which has remained for a period of more than 48 hours on public property without the consent of the person in control of the property; or
- (e) A motor vehicle voluntarily surrendered by its owner and accepted by the city.

CITY. The City of Stewart, Minnesota.

DISCARDED FURNITURE. An item of furniture originally intended for use within the interior of a building, but left or stored out-of-doors.

VITAL COMPONENT PARTS. Those parts of a motor vehicle or appliance that are essential to its mechanical functioning.

PERSON. Any natural person, firm, partnership, association, corporation, company or organization of any kind.

PRIVATE PROPERTY. Any real property within the city which is privately owned and which is not public property, as defined in this section.

PUBLIC PROPERTY. Any street, alley or highway which shall include the entire width between the boundaries lines of every way publicly maintained for the purposes of vehicular travel, and also means any other publicly owned property or facility.

§ 90.03 NUISANCE.

The presence of any abandoned motor vehicle, abandoned appliance, discarded furniture or parts thereof on private or public property is a public nuisance which may be abated as such in accordance with provisions of this chapter.

§ 90.04 PUBLIC PROPERTY.

No person shall park, store, leave or permit the parking, storing or leaving of any abandoned motor vehicle or parts thereof, abandoned appliance or discarded furniture of any kind, whether attended or not, upon any public property within the city.

(A) Whenever any law enforcement officer finds an abandoned motor vehicle, abandoned appliance or discarded furniture of any kind, whether attended or not, upon any public property with the city.

(B) Any abandoned motor vehicle, abandoned appliance or discarded furniture which causes an obstruction and hazard to traffic may be removed at any time under the direction of the Law Enforcement Department.

§ 90.05 PRIVATE PROPERTY.

No person owning, in charge of or in control of any real property within the city, whether as owner, tenant, occupant, lessee or otherwise shall allow any abandoned motor vehicle, abandoned appliance or discarded furniture of any kind to remain on the property longer than 96 hours.

(A) *Notice to remove.* Whenever it comes to the attention of the Law Enforcement Department that any person has any abandoned motor vehicle, abandoned appliance or discarded furniture on his or her property, a notice in writing shall be served upon the person requesting the removal thereof in the time specified in this chapter.

(B) *Responsibility for removal.* Upon proper notice, an owner of the abandoned motor vehicle, abandoned appliance or discarded furniture, the owner or occupant of the private property on which the same is located, shall be responsible for its removal, jointly and severally.

(C) *Notice procedure.* The City Clerk-Treasurer shall give notice of removal to the owner or occupant of the private property where it is located. It shall constitute sufficient notice when a copy of same is sent by certified mail and return receipt requested to the owner or occupant of the private property at his or her last known address.

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(D) *Content of notice.* The notice shall contain the request for removal within ten days after service of the notice upon him or her. The notice shall advise that failure to comply with notice to remove shall be a violation of this chapter.

§ 90.06 CHARGES.

The cost of the certified mail and return receipt requested mailing shall be assessed as a miscellaneous utility charge in the amount of postage at the time on the property involved.

§ 90.99 PENALTY.

A person who violates the provisions of this chapter shall be guilty of a misdemeanor. Each day shall constitute a separate and distinct violation.

(Ord. 107, passed 6-14-2004) Penalty, see §90.99

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CHAPTER 91: ANIMALS

Section

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§ 91.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANIMAL. Any mammal, reptile, amphibian, fish, bird (including all fowl and poultry) or other member commonly accepted as a part of the animal kingdom. **ANIMALS** shall be classified as follows:

- (1) **DOMESTIC ANIMALS.** Those animals commonly accepted as domesticated household pets. Unless otherwise defined, **DOMESTIC ANIMALS** shall include dogs, cats, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-constricting reptiles or amphibians and other similar animals.
- (2) **FARM ANIMALS.** Those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, **FARM ANIMALS** shall include members of the equine family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens, turkeys), fowl (ducks, geese), swine (including Vietnamese pot-bellied pigs), goats, bees, ratitae (ostriches and emus), farm raised cervidae (caribous and mule deer), llamas and alpacas and other animals associated with a farm, ranch or stable.
- (3) **NON-DOMESTIC ANIMALS.** Those animals commonly considered to be naturally wild and not naturally trained or domesticated or which are commonly considered to be inherently dangerous to the health, safety and welfare of people. Unless otherwise defined, **NON-DOMESTIC ANIMALS** shall include:
 - (a) Any member of the large cat family (family felidae) including lions, tigers, cougars,

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- bobcats, leopards and jaguars, but excluding commonly accepted domesticated house cats;
- (b) Any naturally wild member of the canine family (family canidae) including wolves, foxes, coyotes, dingoes and jackals, but excluding commonly accepted domesticated dogs;
 - (c) Any crossbreeds such as the crossbreed between a wolf and a dog, unless the crossbreed is commonly accepted as a domesticated house pet;
 - (d) Any member or relative of the rodent family including any skunk (whether or not descended), raccoon, squirrel or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets;
 - (e) Any poisonous, venomous, constricting or inherently dangerous member of the reptile or amphibian families including rattlesnakes, boa constrictors, pit vipers, crocodiles and alligators; and
 - (f) Any other animal which is not explicitly listed above but which can be reasonably defined by the terms of this section, including but not limited to bears, deer, monkeys and game fish.

AT LARGE. Off the premises of the owner and not under the custody and control of the owner or other person, either by leash, cord, chain or otherwise restrained or confined.

CAT. Both the male and female of the felidae species commonly accepted as domesticated household pets.

DOG. Both the male and female of the canine species, commonly accepted as domesticated household pets and other domesticated animals of a dog kind.

OWNER. Any person or persons, firm, association or corporation owning, keeping or harboring an animal.

RELEASE PERMIT. A permit issued by the Animal Control Officer or other person in charge of the pound for the release of any animal that has been taken to the pound. A release permit may be obtained upon payment of a fee to the City Clerk-Treasurer in accordance with the regular license requirement if the animal is unlicensed, payment of a release fee and any maintenance costs incurred in capturing and impounding the animal. The release fee shall be as established by the city.

§ 91.02 DOGS AND CATS GENERALLY.

(A) *License required.*

- (1) Every person owning, keeping or harboring a dog or cat over the age of three months within the corporate limits of the city shall, on or before January 1 of each and every year, cause the dog or cat to be registered, licensed and numbered.
- (2) The registration, licensing and numbering shall be valid for a period of one year from and after January 1 of the coming year; provided, however, that, if the dog or cat to be licensed shall have come into the person's possession or ownership or shall have attained the age of three months after January 1 of the current year, the owner thereof or the person entitled to its possession shall cause the dog or cat to be registered and licensed at the time as the dog or cat shall come into the person's possession or shall have attained the age of three months and a license shall be issued which shall be valid until January 1 next following the issuance of the license.
- (3) All persons making application for a license herein shall show proof of vaccination of the animal.
- (4) Proof of vaccination shall be a signed certificate by a licensed veterinarian that the dog

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or cat to be registered and licensed has received a current vaccination for rabies immunization.

- (B) *License fee.* Every person who shall apply for a license in accordance with division (A) above shall pay to the City Clerk-Treasurer an annual fee as set by the city for each animal so registered.
- (C) *Registration procedure.*
- (1) Application for a dog or cat license shall be made to the City Clerk-Treasurer upon a standard form to be provided by the Clerk-Treasurer.
 - (2) The application form shall include the date of application, the owner's name and address, the name, breed, sex and age of the cat or dog being registered.
 - (3) The form shall also provide the number of the license tag being issued to the animal and shall require the signature of the animal's owner.
 - (4) Upon compliance with the requirements of the foregoing sections, it shall be the duty of the City Clerk-Treasurer to issue to the owner a written license for each dog or cat so registered together with a tag bearing the following:
 - (a) Registration number of the dog or cat;
 - (b) The word "Stewart";
 - (c) The year of issuance; and
 - (d) Vaccination information.
 - (5) The tags shall be secured to the collar about the dog or cats neck by the owner and shall be worn by the animal at all times.
- (D) *Removal of license prohibited.* It shall be unlawful for any person to remove a current and valid license tag from any dog or cat licensed or tagged as herein provided.
- (E) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
- OWNER, KEEPER or PERSON.** Any individual, firm or corporation who harbors or keeps or allows to be harbored or kept a dog or cat on or about his, her or their premises shall be deemed the **OWNER, KEEPER or PERSON**, as those terms are used in this section.
- (F) *Animals running at large and barking dogs.*
- (1) It shall be unlawful to permit any dog or cat to run at large in the city.
 - (2) At all times, dogs and cats shall be under the control of their owner or keeper.
 - (3) It shall be the responsibility of the owner or keeper or person in charge or control of any dog or cat in the city to remove and dispose in a sanitary manner any dog or cat waste deposited at any public place, park, street, boulevard, thoroughfare or property other than that property owned by the owner of the dog or cat.
 - (4) In no case shall the owner of any premises permit the accumulation of dog or cat waste, which could constitute a health hazard or create offensive odors.
 - (5) No person shall permit any dogs owned, possessed, harbored or kept by that person to repeatedly bark.
 - (6) If the dogs are identified, the law enforcement officer shall give the person owning, possessing, harboring or keeping the dogs a written or verbal warning concerning the prohibited barking.
 - (7) After the warning, if the person fails to prevent unlawful barking the law enforcement officer shall issue a citation of the person is in violation of this section, subject to the penalties herein contained.
 - (8) The owner or keeper of a dog or cat shall provide to the animal adequate food, water

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and shelter.

(G) *Dangerous animals.*

- (1) If the law enforcement officer reasonably determines that a dog or cat within the city has exhibited behavior indicating that the animal is a danger to the health or safety of other persons or property, then the law enforcement officer shall cause to be sent to the owner of the animal written notice that the animal is considered dangerous and that the owner shall immediately restrict the dog or cat to the locations which are not generally accessible. The permissible locations shall be limited to the following:
 - (a) Within the owner's dwelling;
 - (b) Within a securely enclosed and locked pen or animal run located upon the property of the owner. A pen or run must have sides six feet high or a secure top. If the pen or structure has no bottom secured to the sides, then the sides must be imbedded into the ground no less than one foot;
 - (c) With a securely fenced in yard having fence sides at least six feet high and with the fence imbedded into the ground a least one foot;
 - (d) Upon a suitable chain or leash held by a person able to control the animal; and
 - (e) The animal shall not be allowed to run within the owner's yard which is not securely fenced or to be chained or leashed within an area of the yard accessible to children or other members of the public.
- (2) It shall be unlawful for any person harboring or owning any dog or cat for which a notice has been sent pursuant to this section to allow the dog or cat to be in a location other than that permitted by this section.

(H) *Public nuisance.* Any dog or cat found in the city which is not properly licensed or is running at large is hereby declared to be a nuisance and shall be impounded by the any law enforcement officer or other person or persons designated by the City Council to enforce the provisions of this section.

(I) *Establishment of confinement area.* The City Council, from time to time, shall have the authority to designate a fine, corporation or business for the establishment of a confinement area of all animals impounded under this section.

(J) *Impounding.*

- (1) The law enforcement officer or other person so designated by the City Council may impound any dog or cat found within the city whose actions, condition, location or lack of licensing violates this section.
- (2) If any dog or cat is impounded as herein provided, the official who so impounds the dog or cat shall forthwith report the same to the City Clerk-Treasurer stating the place, date and time the dog or cat was caught, the description of the dog or cat, the name of the owner, if known, the information contained on the licensing tag, if any, and the reason for the impoundment of the animal.
- (3) Each dog or cat so impounded shall be kept in a humane facility as designated by the City Council.
- (4) Upon receipt of notice by the City Clerk-Treasurer that a dog or cat was impounded, the City Clerk-Treasurer shall give written notice by U.S. mail to the owner, if known, that the dog or cat has been impounded. If the owner is unknown, the City Clerk-Treasurer shall post in his or her office, in a conspicuous location, a notice stating the place, date and time the dog or cat was caught and the general description of the animal.

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- (5) Any person whose dog or cat has been impounded may obtain the release of the animal by paying the City Clerk-Treasurer all the licensing fees and costs herein provided.
- (6) The owner of any dog or cat caught and impounded pursuant to this section shall be responsible for all costs of boarding the dog or cat at a rate per day as the City Council shall from time to time establish.
- (7) Five days following the notification or posting of the notice herein provided concerning any dog or cat impounded, unless the same be a Sunday or holiday, then the next day following and, if no person has claimed the dog or cat and paid the required fees and costs, the any law enforcement officer shall cause the dog or cat to be put to death in a humane manner.

(K) *Animals which have bitten an individual.*

- (1) Notwithstanding any provision herein, the any law enforcement officer shall impound any dog or cat which has bitten any individual other than the owner of the dog or cat or the owner's immediate family.
- (2) Otherwise, any law enforcement officer shall report the same to the City Clerk-Treasurer as provided herein for impoundment of dogs and cats and the City Clerk-Treasurer shall give notice as provided herein for the impoundment of the animals.
- (3) Any law enforcement officer shall cause the dog or cat to be examined and held by a licensed veterinarian for a reasonable period of time to determine if the animal is infected with rabies.
- (4) The period of examination shall be reasonably determined by any law enforcement officer and the veterinarian holding the animal.
- (5) Any dog or cat infected with rabies found in the city shall be put to death forthwith.
- (6) The owner of any dog or cat examined for rabies as herein provided shall be responsible for all costs of examination and boarding.

(L) *Interference with authorized persons prohibited.* No person shall interfere with the law enforcement officer or any other person authorized by the City Council to perform the duties and requirements provided in this section.

§ 91.03 NON-DOMESTIC ANIMALS.

Except as provided in M.S. §346.155, as it may be amended from time to time, it shall be illegal for any person to own, possess, harbor or offer for sale, any non-domestic animal within the city. Any owner of a non-domestic animal at the time of adoption of this code shall have 30 days in which to remove the animal from the city after which time the city may impound the animal as provided for in this section. An exception shall be made to this prohibition for animals specifically trained for and actually providing assistance to the handicapped or disabled and for those animals brought into the city as part of an operating zoo, veterinarian clinic, scientific research laboratory or a licensed show or exhibition.

§ 91.04 FARM ANIMALS.

Farm animals shall only be kept in an agricultural district of the city or on a residential lot of at least ten acres in size provided that no animal shelter shall be within 300 feet of an adjoining piece of property. An exception shall be made to this section for those animals brought into the city as part of an operating zoo, veterinarian clinic, scientific research laboratory or a licensed show or exhibition.

- A. Certain poultry and fowl allowed by permit. Up to 5 female turkeys, 5 female ducks, 5 female geese, 12 female pigeons or 12 female chickens not to exceed 12 animals total are

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permitted to be kept on parcels that are less than five acres in size, provided that the owner obtains a poultry and fowl keeping permit from the city. Poultry and fowl must not be raised or kept for the purposes of fighting. No permit will be granted by the city to keep any poultry and fowl within a dwelling, nor on a property which contains two or more dwelling units. No outdoor butchering of poultry and fowl is permitted.

- (1) Any person desiring to obtain a poultry and fowl keeping permit must make a written application to the city clerk on a form provided by the city and pay an application fee. The amount of the application fee will be set by the city council per the fee schedule ordinance. The application must accompany a Zoning Permit application which must include a scaled diagram that shows the location of the poultry and fowl pen including the distance of the pen from adjoining structures and property lines and the pen's dimensions.
- (2) All initial permits will expire on December 31st of the following year after their issuance unless sooner revoked. Renewal permits shall expire on December 31st of the second year following their issuance unless sooner revoked.
- (3) A permit is subject to all terms and conditions of this section and any additional conditions deemed necessary by the city to protect the public health, safety and welfare.
- (4) The city may revoke a permit for failure to comply with the provisions of this section or any of the permit's conditions. Prior to revoking a permit, the city shall provide the owner with notice of the revocation and an opportunity to appeal the revocation to the city council.
- (5) The city may inspect the premises for which a permit has been granted in order to ensure compliance with this subdivision. If the city is not able to obtain the occupant's consent to enter the property, it may seek an administrative search warrant.
- (6) All poultry and fowl must be kept either in a pen or within a fenced-in yard. Poultry and fowl are not allowed to be located in any part of a dwelling or unfenced yard. The poultry and fowl's living area must be maintained in a clean and sanitary condition, devoid of all rodents and vermin and free from objectionable odors. Waste must be disposed of properly on a regular basis. Grains and feed must be stored in rodent and raccoon-proof containers inside of a structure. If the poultry and fowl are kept in a pen, the pen must be maintained in good condition and be sufficient in strength and size to allow the poultry fowl to move about, but also able to prevent escape. The pen must have a minimum square footage of four feet per animal. The pen or fenced in area must be located in the backyard and set back at least not less than (5) five feet from the side yard lines and the rear yard. On corner lots not less than twenty-five (25) feet from the adjacent street, but in no case less than the set back of an adjacent lot which has its front yard on the same street. If a preexisting structure cannot meet the setback requirements as stated then the setback requirement may be waived by a recommendation of the Planning and Zoning Commission to the City Council in the permit application. A new accessory structure must maintain the setbacks as required by this ordinance.
- (7) No person shall allow any poultry or fowl under his or her ownership or control to disturb the peace and quiet of the city or to otherwise become a public or private nuisance so as to annoy, injure or endanger the health, safety, comfort or repose of the public.

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- (8) Persons that intend to no longer keep poultry or fowl on their premises shall notify the City Clerk.
- (9) Dead poultry or fowl must be disposed of according to the Minnesota Board of Animal Health rules which require poultry or fowl carcasses to be disposed of as soon as possible after death, usually within forty-eight (48) to seventy-two (72) hours. Legal forms of poultry or fowl carcass disposal include offsite burial, offsite incineration or rendering, or offsite composting.
- (10) All eggs and meat are for personnel use only, not for resale.

§ 91.05 IMPOUNDING.

- (A) *Running at large.* Any unlicensed animal running at large is hereby declared a public nuisance. Any Animal Control Officer or law enforcement officer may impound any dog or other animal found unlicensed or any animal found running at large and shall give notice of the impounding to the owner of the dog or other animal, if known. The Animal Control Officer or law enforcement officer shall not enter the property of the owner of an animal found running at large or the owner of an unlicensed animal unless the law enforcement officer has first obtained the permission of the owner to do so or has obtained a warrant issued by a court of competent jurisdiction, as provided for in §10.20, to search for and seize the animal. In case the owner is unknown, the law enforcement officer shall post notice at the city office that if the dog or other animal is not claimed within the time specified in division (C) of this section, it will be sold or otherwise disposed of. Except as otherwise provided in this section, it shall be unlawful to kill, destroy or otherwise cause injury to any animal, including dogs and cats running at large.
- (B) *Biting animals.* Any animal that has not been inoculated by a live modified rabies vaccine and which has bitten any person, wherein the skin has been punctured or the services of a doctor are required, shall be confined in the city pound for a period of not less than ten days, at the expense of the owner. The animal may be released at the end of the time if healthy and free from symptoms of rabies and by the payment of all costs by the owner. However, if the owner of the animal shall elect immediately upon receipt of notice of need for the confinement by the law enforcement officer to voluntarily and immediately confine the animal for the required period of time in a veterinary hospital of the owner's choosing, not outside of the county in which this city is located and provide immediate proof of confinement in the manner as may be required, the owner may do so. If, however, the animal has been inoculated with a live modified rabies vaccine and the owner has proof of the vaccination by a certificate from a licensed veterinarian, the owner may confine the dog or other animal to the owner's property.
- (C) *Reclaiming.* For the purposes of this section, **REGULAR BUSINESS DAY** means a day during which the establishment having custody of the animal is open to the public at least four consecutive hours between 8:00 a.m. and 7:00 p.m. All animals conveyed to the pound shall be kept, with humane treatment and sufficient food and water for their comfort, at least five regular business days, unless the animal is a dangerous animal as defined under §91.11 in which case it shall be kept for seven regular business days or the times specified in §91.11 and except if the animal is a cruelly-treated animal in which case it shall be kept for ten regular business days, unless sooner reclaimed by their owners or keepers as provided by this section. In case the owner or keeper shall desire to reclaim the animal from the pound, the following shall be required, unless otherwise provided for in this code or established from time to time by resolution of the City Council:

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- (1) Payment of the release fee and receipt of a release permit as established by the city;
- (2) Payment of maintenance costs, as provided by the pound, per day or any part of day while animal is in the pound; and
- (3) If a dog is unlicensed, payment of a regular license fee as established by the city and valid certificate of vaccination for rabies and distemper shots are required.

(D) *Unclaimed animals.* At the expiration of the times established in division (C) of this section, if the animal has not been reclaimed in accordance with the provisions of this section, the law enforcement officer appointed to enforce this section may let any person claim the animal by complying with all provisions in this section or the law enforcement officer may sell the animal to the University of Minnesota or cause the animal to be destroyed in a proper and humane manner and shall properly dispose of the remains thereof. Any money collected under this section shall be payable to the City Clerk-Treasurer.

§ 91.06 NUMBER OF DOGS AND CATS IN ANY COMBINATION ON A SINGLE PROPERTY:

- (A) The number of dogs or cats in any combination allowable on a single property is three (3).
- (B) An owner of more than three (3) dogs or cats in any combination must obtain a variance from the City Council for the allowance of each animal over the allowable three (3).
- (C) A variance will be granted to the dog or cat owner for the number of dogs or cats, not according to the name or species of the dog or cat.
- (D) The maximum amount of grandfathered or variances dogs or cats is two (2).
- (E) A variance will be granted on a case to case basis.
- (F) The Council will grandfather in any licensed dog or cat in any combination to the current dog or cat owner, from the date of the passage of this Ordinance.
- (G) If a dog or cat dies, is sold or given away that has been granted a grandfather status or a variance has been granted to the owner, a new variance must be obtained from the City Council prior to any new dog or cat entering the property.
- (H) A variance fee is required for each dog or cat in any combination over the (3) three allowed. The variance fee will be stipulated in Title III, Chapter 33: Fee Schedule, Section 33.01: Fee Schedule, which may be amended from time to time.
- (I) If an issue arises with a dog or cat owner who has a dog or cat that has been grandfathered in or who received a variance the City Council may order that the grandfathered in status or variance is null and void and the dog or cat owner must remove any dog or cat over the allowable combination and may be fined.
- (J) The fine amount shall be stipulated in Title III, Chapter 33: Fee Schedule, Section 33.01: Fee Schedule, which may be amended from time to time
- (K) Any person, firm or corporation who violates this ordinance section shall, upon conviction, be guilty of a misdemeanor. The penalty which may be imposed shall be a sentence of no more than 90 days jail or a fine of no more than \$1,000.00, or both.

§ 91.07 NUISANCES.

- (A) *Habitual barking.* It shall be unlawful for any person to keep or harbor a dog which habitually barks or cries. Habitual barking shall be defined as barking for repeated intervals of at least five minutes with less than one minute of interruption. The barking must also be audible off of the owner's or caretaker's premises.
- (B) *Damage to property.* It shall be unlawful for any person's dog or other animal to damage any lawn, garden or other property, whether or not the owner has knowledge of the damage.
- (C) *Cleaning up litter.* The owner of any animal or person having the custody or control of any

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animal shall be responsible for cleaning up any feces of the animal and disposing of the feces in a sanitary manner whether on their own property, on the property of others or on public property.

- (D) *Warrant required.* The Animal Control Officer or law enforcement officer shall not enter the property of the owner of an animal described in this section unless the law enforcement officer has first obtained the permission of the owner to do so or has obtained a warrant issued by a court of competent jurisdiction, as provided for in §10.20, to search for and seize the animal.
- (C) *Other.* Any animals kept contrary to this section are subject to impoundment as provided in §91.05.

§ 91.08 SEIZURE OF ANIMALS.

Any law enforcement officer or Animal Control Officer may enter upon private property and seize any animal with the permission of the owner of the property, if that person is also the owner of the animal, provided that the following exist:

- (A) There is an identified complainant other than the law enforcement officer or Animal Control Officer making a contemporaneous complaint about the animal;
- (B) The law enforcement officer reasonably believes that the animal meets either the barking dog criteria set out in §91.07(A); the criteria for cruelty set out in §91.13; or the criteria for an at large animal set out in §91.02(A);
- (C) The law enforcement officer can demonstrate that there has been at least one previous complaint of a barking dog; inhumane treatment of the animal; or that the animal was at large at this address on a prior date;
- (D) The law enforcement officer has made a reasonable attempt to contact the owner of the animal and the property to be entered and those attempts have either failed or have been ignored;
- (E) The Animal Control Officer or law enforcement officer shall not enter the property of the owner of an animal described in this section unless the law enforcement officer has first obtained the permission of the owner to do so or has obtained a warrant issued by a court of competent jurisdiction, as provided for in §10.20, to search for and seize the animal. If the law enforcement officer has the permission of the owner, a property manager, landlord, innkeeper or other authorized person to enter the property or has obtained a pass key from a property manager, landlord, innkeeper or other authorized person to have that key shall not be considered unauthorized entry and a warrant to search for and seize the animal need not be obtained; and
- (F) Written notice of the seizure is left in a conspicuous place if personal contact with the owner of the animal is not possible.

§ 91.09 ANIMALS PRESENTING A DANGER TO HEALTH AND SAFETY OF CITY.

If, in the reasonable belief of any person or the Animal Control Officer or law enforcement officer, an animal presents an immediate danger to the health and safety of any person or the animal is threatening imminent harm to any person or the animal is in the process of attacking any person, the person or law enforcement officer may destroy the animal in a proper and humane manner whether or not the animal is on the property of its owner. Otherwise, the person or law enforcement officer may apprehend the animal and deliver it to the pound for confinement under §91.05. If the animal is destroyed, the owner or keeper of the animal destroyed shall be liable to the city for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examination. If the animal is found not to be a danger to the health and safety of the city, it may be

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released to the owner or keeper in accordance with §91.05(C).

§ 91.10 DISEASED ANIMALS.

- (A) *Running at large.* No person shall keep or allow to be kept on his or her premises or on premises occupied by them, nor permit to run at large in the city, any animal which is diseased so as to be a danger to the health and safety of the city, even though the animal be properly licensed under this section and a warrant to search for and seize the animal is not required.
- (B) *Confinement.* Any animal reasonably suspected of being diseased and presenting a threat to the health and safety of the public, may be apprehended and confined in the pound by any person, the Animal Control Officer or a law enforcement officer. The law enforcement officer shall have a qualified veterinarian examine the animal. If the animal is found to be diseased in a manner so as to be a danger to the health and safety of the city, the law enforcement officer shall cause the animal to be painlessly killed and shall properly dispose of the remains. The owner or keeper of the animal killed under this section shall be liable to the city for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examinations.
- (A) *Release.* If the animal, upon examination, is not found to be diseased the animal shall be released to the owner or keeper free of charge.

§ 91.11 DANGEROUS AND POTENTIALLY DANGEROUS DOGS.

- (A) *Adoption by reference.* Except as otherwise provided in this section, the regulatory and procedural provisions of M.S. §347.50 to 347.565 (commonly referred to as the “Dangerous Dog Regulations”), are adopted by reference.
- (B) *Definitions.* Definitions in this section shall have the following meanings:
- DANGEROUS DOG.** A dog that:
- (1) Has when unprovoked, inflicted substantial bodily harm on a human being on public or private property;
 - (2) Has killed a domestic animal when unprovoked while off the owner’s property;
 - (3) Has attacked one or more persons on two or more occasions; or
 - (4) Has been found to be potentially dangerous and after the owner has notice of the same, the dog aggressively bites, attacks or endangers the safety of humans or domestic animals.

DOG. Both the male and female of the canine species, commonly accepted as domesticated household pets.

GREAT BODILY HARM. Bodily injury which creates a high probability of death or which causes serious permanent disfigurement or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

OWNER. Any person or persons, firm, corporation, organization, department or association owning, possessing, harboring, keeping, having an interest in or having care, custody or control of a dog.

MAINTENANCE COSTS. Any costs incurred as a result of seizing an animal for impoundment, including, but not limited to, the capturing, impounding, keeping, treating, examining, securing, confining, feeding, destroying, boarding or maintaining seize animals, whether these services are provided by the city or the pound.

POTENTIALLY DANGEROUS DOG. A dog that:

- (1) Has when unprovoked, inflicted a bite on a human or domestic animal on public or

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private property;

- (2) Has when unprovoked, chased or approached a person, including a person on a bicycle, upon the streets, designated public sidewalks or any public or private property, other than the owner's property, in an apparent attitude of attack; or
- (3) Has a known propensity, tendency or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

PROPER ENCLOSURE. Securely confined indoors or in a securely enclosed and locked pen or structure suitable to prevent the dog from escaping and to provide protection for the dog from the elements. A **PROPER ENCLOSURE** does not include a porch, patio or any part of a house, garage or other structure that would allow the dog to exit of its own volition or any house or structure in which windows are open or in which door or window screens are the only barriers which prevent the dog from exiting. The **ENCLOSURE** shall not allow the egress of the dog in any manner without human assistance. A pen or kennel shall meet the following minimum specifications:

- (1) A minimum overall floor size of 32 square feet;
- (2) Sidewalls shall have a minimum height of five feet and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed two inches, support post shall be one and one-fourth inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of 18 inches in the ground;
- (3) A cover over the entire pen or kennel shall be provided. The cover shall be constructed of the same gauge wire or heavier as the sidewalls and openings in the wire shall not exceed two inches; and
- (4) An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and openings in the wire shall not exceed two inches. The gate shall be self-closing and self-locking. The gate shall be locked at all times when the dog is in the pen or kennel.

SUBSTANTIAL BODILY HARM. Bodily injury that involves a temporary, but substantial, disfigurement or that causes a temporary, but substantial, loss or impairment of the function of any bodily member or organ or that causes a fracture of any bodily member.

UNPROVOKED. The condition in which the dog is not purposely excited, stimulated, agitated or disturbed.

(C) *Declaration of dangerous or potentially dangerous dog.*

- (1) A law enforcement officer, community service officer, animal control officer or other authorized city employee may declare a dog to be dangerous or potentially dangerous when the officer has probable cause to believe that a dog is dangerous or potentially dangerous. The following factors will be considered in determining a dangerous or potentially dangerous dog:
 - (a) Whether any injury or damage to a person by the dog was caused while the dog was protecting or defending a person or the dog's offspring within the immediate vicinity of the dog from an unjustified attack or assault;
 - (b) The size and strength of the dog, including jaw strength and the animal's propensity to bite humans or other domestic animals; and/or
 - (c) Whether the dog has wounds, scarring, is observed in a fight or has other indications that the dog has been or will be used, trained or encouraged to fight with another animal or whose owner is in possession of any training apparatus,

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- paraphernalia or drugs used to prepare the dogs to fight with other animals.
- (2) Beginning six months after a dog is declared dangerous or potentially dangerous, an owner may request annually that the city review the designation. The owner must provide evidence that the dog's behavior has changed due to the dog's age, neutering, environment, completion of obedience training or other factors. If enough evidence is provided, the city may rescind the designation.
- (3) *Exceptions.*
- (a) The provisions of this section do not apply to dogs used by law enforcement.
- (b) Dogs may not be declared dangerous or potentially dangerous if the threat, injury or danger was sustained by a person who was:
- (1) Committing a willful trespass or other tort upon the premises occupied by the owner of the dog;
- (2) Provoking, tormenting, abusing or assaulting the dog or who can be shown to have a history of repeatedly provoking, tormenting, abusing or assaulting the dog; or
- (3) Committing or attempting to commit a crime.
- (D) *License required.* The owner must annually license dangerous and potentially dangerous dogs with the city and must license a newly declared dangerous or potentially dangerous dog within 14 days after notice that a dog has been declared dangerous or potentially dangerous. Regardless of any appeal that may be requested, the owner must comply with the requirements of M.S. §347.52(a) and (c) regarding proper enclosures and notification to the city upon transfer or death of the dog, until and unless a hearing officer or court of law reverses the declaration.
- (1) *Process for dangerous dogs.* The city will issue a license to the owner of a dangerous dog if the owner presents sufficient evidence that:
- (a) There is a proper enclosure;
- (b) Written proof that there is a surety bond by a surety company authorized to conduct business in the state in the sum of at least \$300,000, payable to any person injured by a dangerous dog or receipt of a copy of a policy of liability insurance issued by an insurance company authorized to do business in the state in the amount of at least \$300,000, insuring the owner for any personal injuries inflicted by the dangerous dog. The surety bond or insurance policy shall provide that no cancellation of the bond or policy will be made unless the city is notified in writing by the surety company or the insurance company at least ten days prior to the cancellation;
- (c) The owner has paid the annual license fee for dangerous dogs as established by the city.
- (d) The owner has had a microchip identification implanted in the dangerous dog. The name of the microchip manufacturer and identification number of the microchip must be provided to the city. If the microchip is not implanted by the owner, it may be implanted by the city at the owner's expense; and
- (e) The owner provides proof that the dog has been sterilized. If the owner does not sterilize the dog within 30 days, the city may seize the dog and sterilize it at the owner's expense.
- (2) *Process for potentially dangerous dogs.* The city will issue a license to the owner of a potentially dangerous dog if the owner presents sufficient evidence that:
- (a) There is a proper enclosure;

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- (b) The owner has paid the annual license fee;
- (c) The owner has had a microchip identification implanted in the potentially dangerous dog. The name of the microchip manufacturer and identification number of the microchip must be provided to the city. If the microchip is not implanted by the owner, it may be implanted by the city at the owner's expense.
- (3) *Inspection.* A pre-license inspection of the premises to ensure compliance with the city code is required. If the city issues a license to the owner of a dangerous or potentially dangerous dog, the city shall be allowed at any reasonable time to inspect the dog, the proper enclosure and all places where the animal is kept.
- (4) *Warning symbol.* The owner of a dangerous dog licensed under this section must post a sign with the uniform dangerous dog warning symbol on the property in order to inform children that there is a dangerous dog on the property. The sign will be provided by the city upon issuance of the license.
- (5) *Tags.* A dangerous dog licensed under this section must wear a standardized, easily identifiable tag at all times that contains the uniform dangerous dog symbol, identifying the dog as dangerous. The tag shall be provided by the city upon issuance of the license.
- (6) *License fee.* The city will charge the owner an annual license fee for a dangerous or potentially dangerous dog as established by the city.
- (E) *Properly restrained in proper enclosure or outside of proper enclosure.* While on the owner's property, an owner of a dangerous or potentially dangerous dog must keep it in a proper enclosure. Inside a residential home, there must be a secured area maintained where the dog will stay when persons other than family members are present. If the dog is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash no longer than four feet and under the physical restraint of an adult. The muzzle must be made in a manner that will prevent the dog from biting any person or animal but that will not cause injury to the dog or interfere with its vision or respiration.
- (F) *Notification requirements to city.*
 - (1) *Relocation or death.* The owner of a dog that has been declared dangerous or potentially dangerous must notify the City Clerk-Treasurer in writing if the dog is to be relocated from its current address or if the dog has died. The notification must be given in writing within 30 days of the relocation or death. The notification must include the current owner's name and address and the new owner's name and the relocation address. If the relocation address is outside of the city, the city may notify the local law enforcement agency of the transfer of the dog into its jurisdiction.
 - (2) *Renter's obligations.* A person who owns or possess a dangerous or potentially dangerous dog and who will rent property from another where the dog will reside must disclose to the property owner prior to entering the lease agreement and at the time of any lease renewal periods that the person owns or possesses a dangerous or potentially dangerous dog that will reside at the property. A dog owner, who is currently renting property, must notify the property owner within 14 days of city notification if the owned dog is newly declared as dangerous or potentially dangerous and the owner keeps the dog on the property.
 - (3) *Transfer of ownership into the city.* No dog that has been previously determined to be dangerous or potentially dangerous by another jurisdiction shall be kept, owned or harbored in the city unless the dog's owner complies with the requirements of this section prior to bringing the dog into the city. Dogs in violation of this division are

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subject to impoundment and destruction.

- (G) *Seizure.* Animal control may immediately seize any dangerous or potentially dangerous dog if:
- (1) After 14 days after the owner has notice that the dog is declared dangerous or potentially dangerous, the dog is not validly licensed and no appeal has been filed;
 - (2) After 14 days after the owner has notice that the dog is dangerous, the owner does not secure the proper liability insurance or surety coverage as required or such required insurance is cancelled;
 - (3) The dog is not maintained in a proper enclosure;
 - (4) The dog is outside the proper enclosure and not under proper restraint, as required by §91.11(E);
 - (5) After 30 days after the owner has notice that the dog is dangerous, the dog is not sterilized, as required by §91.11(D)(1)(e); and/or
 - (6) The dog's microchip has been removed.
- (H) *Reclamation.* A dog seized under §91.11(G) may be reclaimed by the owner of the dog upon payment of maintenance costs and presenting proof to animal control that the requirements of this section have been met. A dog not reclaimed under this division within seven days may be disposed of and the owner will be liable to the city for maintenance costs. A person claiming an interest in a seized dog may prevent disposition of the dog by posting a security in an amount sufficient to provide for the dog's maintenance costs. The security must be posted with the city within seven days of the seizure inclusive of the date seized.
- (I) *Subsequent offenses: seizure.* If a person has been convicted of violating a provision of this section and the person is charged with a subsequent violation relating to the same dog, the dog may be seized. If the owner is convicted of the crime for which the dog was seized, the court may order that the dog be destroyed in a proper and humane manner and the owner pay the maintenance costs. If the owner is not convicted and the dog is not reclaimed by the owner within seven days after the owner has been notified that the dog may be reclaimed, the dog may be disposed of, used for research or destroyed.
- (J) *Notice, hearings.*
- (1) *Notice.* After a dog has been declared dangerous or potentially dangerous or has been seized for destruction, the city shall give notice by delivering or mailing it to the owner of the dog or by posting a copy of it at the place where the dog is kept or by delivering it to a person residing on the property and telephoning, if possible. The notice shall include:
 - (a) A description of the seized dog; the authority for and purpose of the declaration and seizure; the time, place and circumstances under which the dog was declared; and the telephone number and contact person where the dog is kept;
 - (b) A statement that the owner of the dog may request a hearing concerning the declaration and that failure to do so within 14 days of the date of the notice will terminate the owner's right to a hearing;
 - (c) A statement that if an appeal request is made within 14 days of the notice, the owner must immediately comply with the requirements of M.S. § 347.52, paragraphs (a) and (c) regarding proper enclosures and notification to the city upon transfer or death of the dog, until such time as the hearing officer issues an opinion;
 - (d) A statement that if the hearing officer affirms the dangerous dog declaration, the

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owner will have 14 days from receipt of that decision to comply with all other requirements of M.S. §347.51, 347.515 and 347.52;

- (e) A form to request a hearing; and
- (f) A statement that if the dog has been seized, all maintenance costs of the care, keeping and disposition of the dog pending the outcome of the hearing are the responsibility of the owner, unless a court or hearing officer finds that the seizure or impoundment was not reasonably justified by law.

(2) *Right to hearing.*

- (a) After a dog has been declared dangerous, potentially dangerous or has been seized for destruction, the owner may appeal in writing to the city within 14 days after notice of the declaration or seizure. Failure to do so within 14 days of the date of the notice will terminate the owner's right to a hearing. The owner must pay a fee set by the city for an appeal hearing.
- (b) The appeal hearing will be held within 14 days of the request. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.
- (c) If the declaration or destruction is upheld by the hearing officer, actual expenses of the hearing up to a maximum of \$1,000, as well as all maintenance costs will be the responsibility of the dog's owner. The hearing officer shall issue a decision on the matter within ten days after the hearing. The decision shall be delivered to the dog's owner by hand delivery or registered mail as soon as practical and a copy shall be provided to the city. The decision of the hearing officer is final.

(K) *Destruction of certain dogs.* The hearing officer are authorized to order the destruction or other disposition of any dog, after proper notice is given pursuant to division (J) above and upon a finding that:

- (1) The dog has habitually destroyed property or habitually trespassed in a damaging manner on property of persons other than the owner;
- (2) The dog has been declared dangerous, the owner's right to appeal hereunder has been exhausted or expired and the owner has failed to comply with the provisions of this section;
- (3) It is determined that the dog is infected with rabies;
- (4) The dog inflicted substantial or great bodily harm on a human on public or private property without provocation;
- (5) The dog inflicted multiple bites on a human on public or private property without provocation;
- (6) The dog bit multiple human victims on public or private property in the same attack without provocation;
- (7) The dog bit a human on public or private property without provocation in an attack where more than one dog participated in the attack; or
- (8) The dog poses a danger to the public's health, safety or welfare. In determining whether the dog poses a danger to the public's health, safety or welfare, the following factors may be considered:
 - (a) The dog weighs more than 20 pounds;
 - (b) The strength of the dog, including jaw strength;
 - (c) The dog's tolerance for pain;
 - (d) The dog's tendency to refuse to terminate an attack;

- (e) The dog's propensity to bite humans or other domestic animals;
- (f) The dog's potential for unpredictable behavior;
- (g) The dog's aggressiveness; and
- (h) The likelihood that a bite by the dog will result in serious injury.

(L) *Concealing of dogs.* No person may harbor, hide or conceal a dog that the city has the authority to seize or that has been ordered into custody for destruction or other proper disposition.

(M) *Dog ownership prohibited.*

(1) Except as provided below, a person shall not own a dog if the person has been:

- (a) Convicted of a third or subsequent violation of §91.11(D), (E) or (F) or similar ordinance in another jurisdiction or M.S. §347.51, 347.515 or 347.52;
- (b) Convicted of second degree manslaughter due to negligent or intentional use of a dog under M.S. §609.205(4); or
- (c) Convicted of gross misdemeanor harm caused by a dog under M.S. §609.226(1).

(2) Any person who owns a dangerous or potentially dangerous dog and is found to be in violation of any of the provisions of this section or had owned a dangerous or potentially dangerous dog but never achieved compliance with this section may be prohibited from ownership or custody of another dog for a period of five years after the original declaration. Any dog found to be in violation, may be impounded until due process is completed, pursuant to §91.11(J).

(3) If any member of a household is prohibited from owning a dog in §91.11(M)(1) or (2), unless specifically approved with or without restrictions by the city, no person in the household is permitted to own a dog.

(N) *Dog ownership prohibition review.* Beginning three years after a conviction under §91.11(M)(1) that prohibits a person from owning a dog and annually thereafter, the person may request in writing to the City Clerk that the city review the prohibition. The city may consider such facts as the seriousness of the violation or violations that led to the prohibition, any criminal convictions or other facts that the city deems appropriate. The city may rescind the prohibition entirely or rescind it with limitations. The city also may establish conditions a person must meet before the prohibition is rescinded, including, but not limited to, successfully completing dog training or dog handling courses. If the city rescinds a person's prohibition and the person subsequently fails to comply with any limitations imposed by the city or the person is convicted of any animal violation involving unprovoked bites or dog attacks, the city may permanently prohibit the person from owning a dog in this state.

(O) *Penalties.*

- (1) Unless stated otherwise, any person who violates a provision of this section is guilty of a misdemeanor.
- (2) Any person who is convicted of a second or subsequent violation of any provision of §91.11(D), (E) or (F) is guilty of a gross misdemeanor.
- (3) Any person who violates §91.11(M), whether an owner or household member, is guilty of a gross misdemeanor.

§ 91.12 DANGEROUS ANIMALS (EXCLUDING DOGS).

(A) *Attack by an animal.* It shall be unlawful for any person's animal to inflict or attempt to inflict bodily injury to any person or other animal whether or not the owner is present. This section shall not apply to dogs as regulated by §91.11.

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(B) *Destruction of dangerous animal.* The Animal Control Officer shall have the authority to order the destruction of dangerous animals in accordance with the terms established by this chapter.

(C) *Definitions.* For the purpose of this division, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DANGEROUS ANIMAL. An animal which has:

- (1) Caused bodily injury or disfigurement to any person on public or private property;
- (2) Engaged in any attack on any person under circumstances which would indicate danger to personal safety;
- (3) Exhibited unusually aggressive behavior, such as an attack on another animal;
- (4) Bitten one or more persons on two or more occasions; or
- (5) Been found to be potentially dangerous and/or the owner has personal knowledge of the same, the animal aggressively bites, attacks or endangers the safety of humans or domestic animals.

POTENTIALLY DANGEROUS ANIMAL. An animal which has:

- (1) Bitten a human or a domestic animal on public or private property;
- (2) When unprovoked, chased or approached a person upon the streets, designated public sidewalks or any public property in an apparent attitude of attack; or
- (3) Has engaged in unprovoked attacks causing injury or otherwise threatening the safety of humans or domestic animals.

PROPER ENCLOSURE. Securely confined indoors or in a securely locked pen or structure suitable to prevent the animal from escaping and to provide protection for the animal from the elements. A **PROPER ENCLOSURE** does not include a porch, patio or any part of a house, garage or other structure that would allow the animal to exit of its own volition or any house or structure in which windows are open or in which door or window screens are the only barriers which prevent the animal from exiting. The **ENCLOSURE** shall not allow the egress of the animal in any manner without human assistance. A pen or kennel shall meet the following minimum specifications:

- (1) Have a minimum overall floor size of 32 square feet;
- (2) Sidewalls shall have a minimum height of five feet and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed two inches, support posts shall be one and one-fourth inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of 18 inches in the ground;
- (3) A cover over the entire pen or kennel shall be provided. The cover shall be constructed of the same gauge wire or heavier as the sidewalls and shall also have no openings in the wire greater than two inches; and
- (4) An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and shall also have no openings in the wire greater than two inches. The gate shall be equipped with a device capable of being locked and shall be locked at all times when the animal is in the pen or kennel.

UNPROVOKED. The condition in which the animal is not purposely excited, stimulated, agitated or disturbed.

(D) *Designation as potentially dangerous animal.* The Animal Control Officer shall designate any animal as a potentially dangerous animal upon receiving evidence that the potentially dangerous animal has, when unprovoked, then bitten, attacked or threatened the safety of

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a person or a domestic animal as stated in division (C)(2) above. When an animal is declared potentially dangerous, the Animal Control Officer shall cause one owner of the potentially dangerous animal to be notified in writing that the animal is potentially dangerous.

- (E) *Evidence justifying designation.* The Animal Control Officer shall have the authority to designate any animal as a dangerous animal upon receiving evidence of the following:
- (1) The animal has, when unprovoked, bitten, attacked or threatened the safety of a person or domestic animal as stated in division (C)(1) above; and/or
 - (2) The animal has been declared potentially dangerous and the animal has then bitten, attacked or threatened the safety of a person or domestic animal as stated in division (C)(1).
- (F) *Authority to order destruction.* The Animal Control Officer, upon finding that an animal is dangerous hereunder, is authorized to order, as part of the disposition of the case, that the animal be destroyed based on a written order containing one or more of the following findings of fact:
- (1) The animal is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning or multiple attacks; or
 - (2) The owner of the animal has demonstrated an inability or unwillingness to control the animal in order to prevent injury to persons or other animals.
- (G) *Procedure.* The Animal Control Officer, after having determined that an animal is dangerous, may proceed in the following manner: the Animal Control Officer shall cause one owner of the animal to be notified in writing or in person that the animal is dangerous and may order the animal seized or make orders as deemed proper. This owner shall be notified as to dates, times, places and parties bitten and shall be given 14 days to appeal this order by requesting a hearing before the City Council for a review of this determination.
- (1) If no appeal is filed, the Animal Control Officer shall obtain an order or warrant authorizing the seizure and the destruction of the animal from a court of competent jurisdiction, unless the animal is already in custody or the owner consents to the seizure and destruction of the animal.
 - (2) If an owner requests a hearing for determination as to the dangerous nature of the animal, the hearing shall be held before the City Council, which shall set a date for hearing not more than three weeks after demand for the hearing. The records of the Animal Control or City Clerk-Treasurer's office shall be admissible for consideration by the Animal Control Officer without further foundation. After considering all evidence pertaining to the temperament of the animal, the City Council shall make an order as it deems proper. The City Council may order that the Animal Control Officer take the animal into custody for destruction, if the animal is not currently in custody. If the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the Animal Control Officer. If the owner does not immediately make the animal available, the Animal Control Officer shall obtain an order or warrant authorizing the seizure and the destruction of the animal from a court of competent jurisdiction.
 - (3) No person shall harbor an animal after it has been found by to be dangerous and ordered into custody for destruction.
- (H) *Stopping an attack.* If any law enforcement officer or Animal Control Officer is witness to an

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attack by an animal upon a person or another animal, the officer may take whatever means the Officer deems appropriate to bring the attack to an end and prevent further injury to the victim.

- (I) *Notification of new address.* The owner of an animal which has been identified as dangerous or potentially dangerous shall notify the Animal Control Officer in writing if the animal is to be relocated from its current address or given or sold to another person. The notification shall be given in writing at least 14 days prior to the relocation or transfer of ownership. The notification shall include the current owner's name and address, the relocation address and the name of the new owner, if any.
- (J) *Dangerous animal requirements.*
- (1) *Requirements.* If the City Council does not order the destruction of an animal that has been declared dangerous, the City Council may, as an alternative, order any or all of the following:
- (a) The owner provide and maintain a proper enclosure for the dangerous animal as specified in §91.12(C)(3);
 - (b) Post the front and the rear of the premises with clearly visible warning signs, including a warning symbol to inform children, that there is a dangerous animal on the property;
 - (c) Provide and show proof annually of public liability insurance in the minimum amount of \$300,000;
 - (d) If the animal is outside the proper enclosure, the animal must be muzzled (if physically possible depending on the type of animal) and restrained by a substantial chain or leash (not to exceed six feet in length) and under the physical restraint of a person 16 years of age or older. The muzzle must be of a design as to prevent the animal from biting any person or animal, but will not cause injury to the animal or interfere with its vision or respiration;
 - (e) The animal shall have a microchip implant as provided by M.S. §347.515, as it may be amended from time to time;
 - (f) All animals deemed dangerous by the Animal Control Officer shall be registered with the county in which this city is located within 14 days after the date the animal was so deemed and provide satisfactory proof thereof to the Animal Control Officer; and/or
 - (g) If the animal is a cat or ferret, it must be up to date with rabies vaccination.
- (2) *Seizure.* As authorized by M.S. §347.54, as it may be amended from time to time, the Animal Control Officer shall immediately seize any dangerous animal if the owner does not meet each of the above requirements within 14 days after the date notice is sent to the owner that the animal is dangerous. Seizure may be appealed to district court by serving a summons and petition upon the city and filing it with the district court.
- (3) *Reclaiming animals.* A dangerous animal seized under §91.12(J)(2), may be reclaimed by the owner of the animal upon payment of impounding and boarding fees and presenting proof to animal control that each of the requirements under §91.12(J)(1), is fulfilled. An animal not reclaimed under this section within 14 days may be disposed of as provided under §91.12(F) and the owner is liable to the city for costs incurred in confining and impounding the animal.
- (K) *Subsequent offenses.* If an owner of an animal has subsequently violated the provisions under §91.12 with the same animal, the animal must be seized by animal control. The

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owner may request a hearing as defined in §91.12(G). If the owner is found to have violated the provisions for which the animal was seized, the Animal Control Officer shall order the animal destroyed in a proper and humane manner and the owner shall pay the costs of confining the animal. If the person is found not to have violated the provisions for which the animal was seized, the owner may reclaim the animal under the provisions of §91.12(J)(3). If the animal is not yet reclaimed by the owner within 14 days after the date the owner is notified that the animal may be reclaimed, the animal may be disposed of as provided under §91.12(F) and the owner is liable to the animal control for the costs incurred in confining, impounding and disposing of the animal.

§ 91.13 BASIC CARE.

- (A) *General.* All animals shall receive from their owners or keepers kind treatment, housing in the winter and sufficient food and water for their comfort. Any person not treating their pet in a humane manner will be subject to the penalties provided in this section.
- (B) *Dogs and cats.* Dogs and cats must be provided the following basic care.
- (1) *Food.* Dogs and cats must be provided with food of sufficient quantity and quality to allow for normal growth or the maintenance of body weight. Feed standards shall be those recommended by the National Research Council.
 - (2) *Water.* Dogs and cats must be provided with clean, potable water in sufficient quantity to satisfy the animal's needs or supplied by free choice. Snow or ice is not an adequate water source.
 - (3) *Transportation and shipment.* When dogs or cats are transported in crates or containers, the crates or containers must be constructed of nonabrasive wire or a smooth, durable material suitable for the animals. Crates and containers must be clean, adequately ventilated, contain sufficient space to allow the animals to turn around and provide maximum safety and protection to the animals. Exercise for 20 to 30 minutes and water must be provided at least once every eight hours. Food must be provided at least once every 12 hours or more often, if necessary, to maintain the health and condition of the animals.
 - (4) *Shelter size.* A confinement area must provide sufficient space to allow each animal to turn about freely and to easily stand, sit and lie in a normal position. Each confined animal must be provided a minimum square footage of floor space as measured from the tip of its nose to the base of its tail, plus 25%, expressed in square feet. The formula for computing minimum square footage is: (length of animal plus 25%) times (length of animal plus 25%), divided by 144. A shaded area must be provided sufficient to protect the animal from the direct rays of the sun at all times during the months of May to October.
 - (5) *Exercise.* All dogs and cats must be provided the opportunity for periodic exercise, either through free choice or through a forced work program, unless exercise is restricted by a licensed veterinarian.
 - (6) *Group housing and breeding.* Animals housed together must be kept in compatible groups. Animals must not be bred so often as to endanger their health.
 - (7) *Temperature.* Confinement areas must be maintained at a temperature suitable for the animal involved.
 - (8) *Ventilation.* An indoor confinement area must be ventilated. Drafts, odors and moisture condensation must be minimized. Auxiliary ventilation, such as exhaust fans, vents and air conditioning, must be used when the ambient temperature rises to a level that may

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endanger the health of the animal.

- (9) *Lighting.* An indoor confinement area must have at least eight hours of illumination sufficient to permit routine inspection and cleaning.
- (10) *Confinement and exercise area surfaces.* Where applicable, the interior surfaces of confinement and exercise areas, including crates or containers, must be constructed and maintained so that they are substantially impervious to moisture and may be readily cleaned. They must protect the animal from injury and be kept in good repair.
- (11) *Drainage.* Where applicable, a suitable method must be used to rapidly eliminate excess fluids from confinement areas.
- (12) *Sanitation.* Food and water receptacles must be accessible to each animal and located so as to minimize contamination by excreta. Feeding and water receptacles must be kept clean. Disposable food receptacles must be discarded when soiled. Measures must be taken to protect animals from being contaminated with water, wastes and harmful chemicals. Wastes must be disposed of properly. Where applicable, flushing methods and a disinfectant must be used periodically. Bedding, if used, must be kept clean and dry. Outdoor enclosures must be kept clean and base material replaced as necessary.

(C) *Birds, rodent other animals.* Basic care provided to pet and companion animal birds, rodents and other shall be consistent with M.S. §346.40, 346.41 and 346.42, as those statutes may be amended from time to time.

(D) *Dogs and cats in motor vehicles.*

- (1) *Unattended dogs or cats.* A person may not leave a dog or a cat unattended in a standing or parked motor vehicle in a manner that endangers the dog's or cat's health or safety.
- (2) *Removal of dogs or cats.* A law enforcement officer, as defined in M.S. §626.84, as it may be amended from time to time, a humane agent, a dog warden or a volunteer or professional member of a fire or rescue department of the city may use reasonable force to enter a motor vehicle and remove a dog or cat which has been left in the vehicle in violation of (D)(1) above. A person removing a dog or a cat under this division shall use reasonable means to contact the owner of the dog or cat to arrange for its return home. If the person is unable to contact the owner, the person may take the dog or cat to an animal shelter.

(E) *Dog houses.* A person in charge or control of any dog which is kept outdoors or in an unheated enclosure shall provide the dog with shelter and bedding as prescribed in this section as a minimum.

- (1) *Building specifications.* The shelter shall include a moisture proof and windproof structure of suitable size to accommodate the dog and allow retention of body heat. It shall be made of durable material with a solid, moisture proof floor or a floor raised at least two inches from the ground. Between November 1st and March 31st the structure must have a windbreak at the entrance. The structure shall be provided with a sufficient quantity of suitable bedding material consisting of hay, straw, cedar shavings, blankets or the equivalent, to provide insulation and protection against cold and dampness and promote retention of body heat.
- (2) *Shade.* Shade from the direct rays of the sun, during the months of May to October shall be provided.
- (3) *Farm dogs.* In lieu of the requirements of divisions (E)(1) and (E)(2), a dog kept on a farm may be provided with access to a barn with a sufficient quantity of loose hay or

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bedding to protect against cold and dampness.

§ 91.14 BREEDING MORATORIUM.

Every female dog or female cat in heat shall be confined in a building or other enclosure in a manner that it cannot come in contact with another dog or cat except for planned breeding. Upon capture and failure to reclaim the animal, every dog or cat shall be neutered or spayed prior to being transferred to a new owner.

§ 91.15 ENFORCING OFFICER.

The Council is hereby authorized to appoint an animal control officer(s) to enforce the provisions of this section. In the officer's duty of enforcing the provisions of this section, he or she may from time to time, with the consent of the City Council or designate assistants.

§ 91.16 POUND.

Every year the Council shall designate an official pound to which animals found in violation of this chapter shall be taken for safe treatment and if necessary, for destruction.

§ 91.17 INTERFERENCE WITH OFFICERS.

No person shall in any manner molest, hinder or interfere with any person authorized by the City Council to capture dogs, cats or other animals and convey them to the pound while engaged in that operation. Nor shall any unauthorized person break open the pound or attempt to do so or take or attempt to take from any agent any animal taken up by him or her in compliance with this chapter or in any other manner to interfere with or hinder the officer in the discharge of his or her duties under this chapter.

Penalty, see §91.99

§ 91.18 FIGHTING ANIMALS.

(A) The provisions of M.S. §343.31, as it may be amended from time to time, are adopted herein by reference.

(B) No person shall:

- (1) Promote, engage in or be employed in the activity of cockfighting, dogfighting or violent pitting of one pet or companion animal as defined in M.S. §346.36(6), as it may be amended from time to time, against another of the same or a different kind;
- (2) Receive money for the admission of a person to a place used or about to be used, for that activity;
- (3) Willfully permit a person to enter or use, for that activity, premises of which the permitter is the owner, agent or occupant;
- (4) Use, train or possess a dog or other animal for the purpose of participating in, engaging in or promoting that activity; or
- (5) Purchase a ticket of admission or otherwise gain admission to the activity of cockfighting, dogfighting or violent pitting of one pet or companion animal against another of the same or a different kind.

§ 91.19 FEEDING STRAY CATS AND DOGS.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FEED or **FEEDING.** The placing of dog or cat food or similar food products or consumable materials attractive to dogs and cats, which may result in dogs and cats congregating thereon on a regular basis, placed on the ground, in an obviously intended feeder or in a feeder at a height accessible to cats and dogs.

STRAY. An unlicensed domestic or feral dog or cat running at large and unaccompanied or controlled by an owner.

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(B) *Policy and purpose.* High populations of stray dogs and cats pose a hazard to human health and safety, as the animals provide a fruitful breeding ground for infectious disease, including, but not limited to, rabies and distemper and may otherwise bite or attack humans and domestic animals. In addition, food provided for stray animals is often attractive to wild animals such as raccoons and rodents and may create nuisance conditions such as a rat harborage or other wild animal infestation.

(C) *Prohibition.* No person shall feed or allow the feeding of any stray cat or dog within the city.

(D) *Exceptions.* Veterinarians and persons who, acting within the scope of their employment with any governmental entity non-profit or humane society has custody of or manages stray dogs and cats are not subject to the prohibitions of this section.

§ 91.99 PENALTY.

(A) Each day a violation of this chapter is committed or permitted to continue shall constitute a separate offense and shall be punishable under this section.

(B) Unless otherwise provided, violation of this chapter shall constitute a misdemeanor punishable as provided in §10.99.

(C)(1) Any person, owner or keeper failing to license a dog or cat as required in §91.02 shall be guilty of a petty misdemeanor.

(2) Any person violating any other provision of §91.02, 91.06 shall be guilty of a misdemeanor.

(D) Violations of §91.07, 91.13 and 91.14 are petty misdemeanors punishable as provided in §10.99.

(Ord. No. 86, passed 11-12-1991, Ord. 139 No. , passed 5-14-2013, Ord No. 145, passed 11-12-2013, Ord No. 171 – Voided, Ord No. 172, passed 2-11-2019; Ord. No. 175, passed 04-08-2019)
Penalty, see §91.99

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CHAPTER 92: HEALTH AND SAFETY; NUISANCES

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GENERAL PROVISIONS

§ 92.01 DESIGNATION OF A DESIGNATED PUBLIC SIDEWALK ROUTE.

- (A) North side of Main Street from Prior Street east to the intersection of Hall Street
- (B) West side of Prior Street from Martha Street south to the beginning of 210 Prior Street
- (C) North side of Croyden Street from the alley east of Grove Street to Bowman Street
- (D) West side of Bowman Street from Croyden Street to Powers Street
- (E) North side of Powers Street from the 805 Powers Street driveway east to Prior Street
- (F) North side of Hall Street from 811 Hall Street east to Prior Street
- (G) South side of Main Street from Prior Street to Mowbray Street
- (H) East side of Prior Street from Main Street to Hall Street
- (I) North side of Hall Street from Prior Street to Mowbray Street
- (J) West side of Mowbray Street from Hall Street north to Main Street
- (K) North side of Croyden Street from Herbert Street to the east side of the property known as 351 Croyden Street
- (L) North side of Powers Street mid-block from Prior Street west to Bowman Street

§ 92.02 ASSESSABLE CURRENT SERVICES.

- (A) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

CURRENT SERVICE. One or more of the following: snow, ice, or rubbish removal from designated public sidewalks; weed elimination from street grass plots adjacent to designated public sidewalks or from private property; removal or elimination of public health or safety hazards from private property, excluding any hazardous building included in M.S. §463.15 through 463.26 as they may amended from time to time; installation or repair of water or sewer service lines; street sprinkling, street flushing, light street oiling or other dust treatment of streets; repair of designated public sidewalks and alleys; trimming and care of trees and removal of unsound and insect-infected trees from the public streets or private property; and the operation of a street lighting system.

- (B) *Snow, ice, dirt, and rubbish.*

(1) *Duty of owners and occupants.* The owner and the occupant of any property adjacent to a designated public sidewalk route shall use diligence to keep the walk safe for pedestrians. No owner or occupant shall allow snow, ice, dirt, or rubbish to remain on the walk longer than 24 hours after its deposit thereon. Failure to comply with this section shall constitute a violation.

- (a) In the event the City experiences a year of excessive snowfall, by Council vote of approval reserves the right to extend the time frame for removal from 24 hours to 48 hours

(2) *Removal by city.* The City Clerk-Treasurer or other person designated by the City Council may cause removal from all designated public sidewalk route all snow, ice, dirt, and rubbish as soon as possible beginning 24 hours after any matter has been deposited thereon. The City Clerk-Treasurer or other designated person shall keep a record showing the cost of removal adjacent to each separate lot and parcel.

- (a) In the event the City experiences a year of excessive snowfall, by Council vote of approval reserves the right to extend the time frame for removal from 24 hours to 48 hours

- (C) *Public health and safety hazards.* When the city removes or eliminates public health or

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safety hazards from private property under the following provisions of this chapter, the administrative officer responsible for doing the work shall keep a record of the cost of the removal or elimination against each parcel of property affected and deliver that information to the City Clerk-Treasurer.

- (D) *Installation and repair of water service lines.* Whenever the city installs or repairs water service lines serving private property under Chapter 52 of this code, the City Clerk-Treasurer shall keep a record of the total cost of the installation or repair against the property.
- (E) *Repair of sidewalks and alleys.*
- (1) *Duty of owner.* The owner of any property within the city abutting a designated public sidewalk or alley shall keep the designated public sidewalk or alley in repair and safe for pedestrians. All repairs shall be made by the City in accordance with the standard specifications approved by the City Council and on file in the office of the City Clerk-Treasurer.
- (2) *Inspections; notice.* The City Council or its designee may make inspections as are necessary to determine that the designated public sidewalks and alleys within the city are kept in repair and safe for pedestrians or vehicles. If it is found that any designated public sidewalk or alley abutting on private property is unsafe and in need of repairs, the City Council will repair the designated public sidewalk route or alley at no expense to the resident. Any sidewalk that is not located on the designated public sidewalk route will be the sole and complete responsibility of the resident.
- (F) *Damage to public property.* Any person driving any vehicle, equipment, object or contrivance upon any street, road, highway, designated public sidewalk, alley or structure shall be liable for all damages which the surface or structure thereof may sustain as a result of any illegal operation or driving or moving of the vehicle, equipment or object or contrivance; or as a result of operating, driving or moving any vehicle, equipment, object or contrivance weighing in excess of the maximum weight permitted by statute or this code. When the driver is not the owner of the vehicle, equipment, object or contrivance, but is operating, driving or moving it with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any damage. Any person who willfully acts or fails to exercise due care and by that act damages any public property shall be liable for the amount thereof, which amount shall be collectable by action or as a lien under M.S. §514.67, as it may be amended from time to time.
- (G) *Assessment.* the City Clerk-Treasurer shall list the total unpaid charges for each type of current service and charges under this section against each separate lot or parcel to which they are attributable under this section. The City Council may then spread the charges against property benefitted as a special assessment under the authority of M.S. §429.101 as it may be amended from time to time and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case.

§ 92.03 TREE DISEASES AND SHADE TREE PEST CONTROL.

- (A) *Declaration of policy.* The health of the trees in the city is threatened by shade tree pests and the loss or ill health of trees growing upon public and private property substantially depreciates the value of property within the city and impairs the safety, good order, general welfare and convenience of the public. In addition to and in accordance with M.S. §89.001, 89.01 and 89.51 through 89.64, as those sections may be amended from time to

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time, the provisions of this section are adopted to attempt to control and prevent the spread of these shade tree pests.

- (B) *Jurisdiction.* The city shall have control of all street trees, shrubs and other plantings now or hereafter in any street, park, public right-of-way or easement or other public place within the city limits and shall have the power to plant, care for, maintain, remove and replace the trees, shrubs and other plantings.
- (C) *Declaration of a shade tree pest.* The Council may declare any vertebrate or invertebrate animal, plant pathogen or plant threatening to cause significant damage to a shade tree or community forest in the community, to be a shade tree pest and prescribe control measures to effectively eradicate, control or manage the shade tree pest including necessary timelines for action.
- (D) *Public nuisances declared.* A shade tree pest declared by Council occurring within a declared control zone is a public nuisance.
- (E) *Shade tree pest nuisances are unlawful.* It is unlawful for any person to permit any public nuisance, as defined in this section, to remain on any premises the person owns or controls within the city. The nuisance may be abated as provided in this section.
- (F) *Definition of control areas.* Upon declaring a shade tree pest, the Council may define one or more locations within the geographic boundaries of the city to be within a shade tree pest control area provided the locations are characterized by biologic, composition, environmental and size factors favorable to successful application of the control measures prescribed by Council.
- (G) *Tree Inspector.* The Council may appoint a Tree Inspector to coordinate the activities of the city relating to the control and prevention of damage by shade tree pests. The Tree Inspector will recommend to the Council the details of any program for the declaration, control and prevention of shade tree pests. The Tree Inspector is authorized to enforce or cause to be enforced the duties incident to such a program adopted by the Council. The term **TREE INSPECTOR** includes any person designated by Council or the Tree Inspector to carry out activities authorized in this section.
- (H) *Abatement of shade tree pest nuisances.*
 - (1) In abating a nuisance declared by ordinance under divisions (B) and (C) above, the organism, condition or plant and any tree, wood or material identified as injurious to the health of shade trees shall be removed or effectively treated so as to destroy and prevent as fully as possible the spread of the shade tree pest. The abatement procedures shall be carried out in accordance with the control measures and areas prescribed by ordinance according to divisions (C) above and (K) and (O) below.
 - (2) In addition, should the appropriate abatement procedure be removal and the tree(s) and/or hedge(s) are within the limits of a highway in a rural area within the city's jurisdiction, M.S. §160.22, as it may be amended from time to time, shall be complied with as necessary.
- (I) *Reporting discovery of shade tree pest.* Any owner or occupier of land or any person engaged in tree trimming or removal who becomes aware of the existence of public nuisance caused by a shade tree pest as defined under division (C) above shall report the same to the city.
- (J) *Registration of tree care firms.* Any person, firm or corporation that provides tree care, tree trimming or removal of trees, limbs, branches, brush or shrubs for hire must be registered with the State Commissioner of Agriculture under M.S. §18G.07, as it may be amended from time to time.

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(K) *Inspection and application of control measures.*

- (1) The Tree Inspector is authorized to cause premises and places within the city to be inspected to determine whether shade tree pests exist thereon and to investigate all reported incidents of shade tree pests. The Tree Inspector shall have the power to take all reasonable precautions to prevent the maintenance of public nuisances and may enforce the provisions relating to abatement in this section. Diagnosis of shade tree pests may be by the presence of commonly recognized symptoms or by tests as may be recommended by the Commissioner of the State Department of Agriculture or the Commissioner of the State Department of Natural Resources.
- (2) Except in situations of imminent danger to human life and safety, the Tree Inspector shall not enter private property for the purpose of inspecting or preventing maintenance of public nuisances without the permission of the owner, resident or other person in control of the property, unless the Tree Inspector has obtained a warrant or order from a court of competent jurisdiction authorizing the entry.
- (3) No person, firm or corporation shall interfere with the Tree Inspector acting under his or her authority while engaged in activities authorized by this section.

(L) *Standard abatement procedure.* Except as provided in divisions (M) and (O) below, whenever a Tree Inspector determines with reasonable certainty that a public nuisance as described by this section is being maintained or exists on premises in the city, the Tree Inspector is authorized to abate a public nuisance according to the following procedure.

- (1) The Tree Inspector will notify in writing the owner of record or occupant of the premises of such fact and order that the nuisance be terminated or abated. The notice must be given in person or by certified mail. Failure of any party to receive the mail does not invalidate the service of the notice. A copy of the notice shall be filed with the City Clerk-Treasurer.
- (2) The notice of abatement shall state that unless the public nuisance is abated by the owner or occupant, it will be abated by the city at the expense of the owner or occupant. The notice shall specify the control measures to be taken to abate the nuisance and provide a reasonable amount of time to abate the nuisance. The notice will also state that the owner or occupant has the right to appeal the determination that a public nuisance exists by submitting a request in writing to the City Clerk-Treasurer within seven days after service of the notice or before the date by which abatement must be completed, whichever comes first.
- (3) If no timely appeal is submitted and the notice of abatement and its prescribed control measures are not complied with within the time provided by the notice or any additional time granted, the Tree Inspector or designated person shall have the authority to obtain permission or an administrative search warrant, enter the property and carry out abatement in accordance with the notice of abatement.

(M) *High cost abatement.* If the Tree Inspector determines that the cost of abating a nuisance will exceed \$5,000 based on a reasonable, good faith estimate, the written notice referred to in division (L) above must provide that if the nuisance is not abated within the reasonable amount of time provided, the matter will be referred to the City Council for a hearing. The date, time and location of the hearing must be provided in the notice.

(N) *Appeal procedure.* If the City Clerk-Treasurer receives a written request for a hearing on the question of whether a public nuisance in fact exists, the City Council shall hold a hearing within seven calendar days following receipt by the Clerk-Treasurer of the written request.

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At least three days' notice shall be given to the individual who made the written request for the hearing. The Council may modify the abatement notice or extend the time by which abatement must be completed. Each owner, agent of the owner, occupant and lienholder of the subject property or properties in attendance, if any, shall be given the opportunity to present evidence at the hearing. After holding the hearing, the City Council may issue an order requiring abatement of the nuisance.

(O) *Abatement procedure in event of imminent danger.*

(1) If the Tree Inspector determines that the danger of infestation to other shade trees is imminent and delay in control measures may put public health, safety or welfare in immediate danger, the Tree Inspector may provide for abatement without following divisions (L) or (M) above. The Tree Inspector must reasonably attempt to notify the owner or occupant of the affected property of the intended action and the right to appeal the abatement and any cost recovery at the next regularly scheduled City Council meeting.

(2) *Immediate Abatement.* Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.

(P) *Recovery of cost of abatement; liability and assessment.*

(1) The owner of premises on which a nuisance has been abated by the city shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Clerk-Treasurer or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk-Treasurer.

(2) After notice and hearing as provided in M.S. §429.061, as it may be amended from time to time, the City Clerk-Treasurer may list the total unpaid charges along with all other charges as well as other charges for current services to be assessed under M.S. §429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then certify the charges against the property under that statute and other pertinent statutes to the County Auditor for collection along with current taxes the following year or in annual installments as the City Council may determine in each case.

(Q) *Penalty.*

(1) Any person, firm or corporation who violates any provision of this section shall, upon conviction, be guilty of a misdemeanor. The penalty which may be imposed for any crime which is a misdemeanor under this section, including state statutes specifically adopted by reference, shall be a sentence of not more than 90 days or a fine of not more than \$1,000 or both.

(2) Upon conviction of a misdemeanor, the costs of prosecution may be added. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

(3) The failure of any officer or employee of the city to perform any official duty imposed by this section shall not subject the officer or employee to the penalty imposed for a violation.

(4) In addition to any penalties provided for in this section, if any person, firm or corporation fails to comply with any provision of this section, the City Council or any

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official designated by it may institute appropriate proceedings at law or at equity to restrain, correct or abate the violation.

(R) *Declared shade tree pests, control measures and control areas.*

(1) *Oak Wilt.* Oak Wilt is declared a shade tree pest and is defined as any living or dead tree, log, firewood, limb, branch, stump or other portion of a tree from any species of the genus *Quercus* existing within the control area defined that has bark attached and that exceeds three inches in diameter or ten inches in circumference and contains to any degree any spore or reproductive structures of the fungus *Ceratocystis fagacaarum*. Control measures prescribed for abating Oak Wilt Disease are:

(a) *Installation of a root graft barrier.* A root graft barrier can be ordered installed to prevent the underground spread of Oak Wilt Disease. The city will mark the location of the root graft barrier. The barrier disrupts transmission of the fungus within the shared vascular systems of root grafted trees. The barrier is created by excavating or vibratory plowing a line at least 42 inches deep between any oak tree infected with Oak Wilt Disease and each nearby and apparently healthy oak tree within 50 feet of the infected tree.

(b) *Removal and disposal of trees on property zoned for residential and commercial use.* On property that is zoned residential and commercial the city may mark for removal trees that have the potential to produce spores of the fungus *Ceratocvstis fagacearum*. After and in no case before the installation of the root graft barrier and no later than May 1 of the year following infection all marked trees must be felled. The stump from the felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked. If, however, after the city prescribes the location for a root graft barrier, the city determines that installation of the barrier is impossible because of the presence of pavement or obstructions such as a septic system or utility line, the city may mark for removal all oak trees whether living or dead, infected or not and located between an infected tree and the marked barrier location. These marked trees must be felled and disposed of no later than May 1 of the year following infection. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked.

(c) *Removal and disposal of trees on all other property.* On all other property the city may mark for removal all oak trees whether living or dead, infected or not and located between an infected tree and the marked barrier location. These marked trees must be felled and disposed of no later than May 1st of the year following infection. The stump from the felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked.

(d) *Wood disposal.* All wood more than three inches in diameter or ten inches in circumference from the felled trees must be disposed of by burying or debarking or chipping or sawing into wane-free lumber or by splitting into firewood, stacking the firewood and immediately covering the woodpile with unbroken four-mil or thicker plastic sheeting that is sealed into the ground until October 1st of the calendar year following the calendar year in which the tree was felled or by burning before May 1st of the year following infection. Wood chips from infected trees may be stockpiled or immediately used in the landscape.

(e) *Control area.* The control area for Oak Wilt Disease is defined as all lands within the

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boundaries of the city.

(2) *Emerald Ash Borer*. Emerald Ash Borer is declared a shade tree pest and is defined as an insect that attacks and kills ash trees. The adults are small, iridescent green beetles that live outside of trees during the summer months. The larvae are grub or worm-like and live underneath the bark of ash trees.

(a) Control measures prescribed for abating Emerald Ash Borer are those provided in the document, *Minnesota Emerald Ash Borer Science Advisory Group Recommendations on Preparing for Emerald Ash Borer in Minnesota*.

(b) The control area for Emerald Ash Borer is defined as all lands within the boundaries of the city.

(3) *Dutch Elm Disease*. Dutch Elm Disease is declared a shade tree pest and is defined as a disease of elm trees caused by the fungus *Ophiostoma ulmi* or *Ophiostoma novo-ulmi* and includes any living or dead tree, log, firewood, limb, branch, stump or other portion of a tree from any species of the genus *Ulmus* existing within the control area defined that has bark attached and that exceeds three inches in diameter or ten inches in circumference and could contain bark beetles or any spore or reproductive structures of the fungus *Ophiostoma ulmi* or *Ophiostoma novo-ulmi*.

(a) Control measures prescribed for abating Dutch Elm Disease are:

(1) *Use of fungicide*. Fungicides may be effective in preventing Dutch elm disease when injected into living trees that do not already show symptoms of Dutch elm disease. Fungicide injections on private lands are optional and, if performed, are at the landowner's expense.

(2) *Removal and disposal of trees*. Prompt removal of diseased trees or branches reduces breeding sites for elm bark beetles and eliminates the source of Dutch elm disease fungus. Trees that wilt before July 15th must be removed within 20 days of detection [alternative: 30 days]. Trees that wilt after July 15th must be removed by April 1 of the following year. Diseased trees not promptly removed will be removed by the city at the landowner's expense. Wood may be retained for use as firewood or sawlogs if it is de-barked or covered from April 15th to October 15th with 4mm plastic. The edges of the cover must be buried or scaled to the ground.

(b) The control area for Dutch Elm Disease is defined as all lands within the boundaries of the city.

NUISANCES

§ 92.15 PUBLIC NUISANCE.

Whoever, by his or her act or failure to perform a legal duty, intentionally does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor:

(A) Maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public;

(B) Interferes with, obstructs or renders dangerous for passage any public highway or right-of-way or waters used by the public; or

(C) Is guilty of any other act or omission declared by law or §92.16, 92.17 or 92.18 or any other part of this code to be a public nuisance and for which no sentence is specifically provided.

§ 92.16 PUBLIC NUISANCES AFFECTING HEALTH.

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The following are hereby declared to be nuisances affecting health:

- (A) Exposed accumulation of decayed or unwholesome food or vegetable matter;
- (B) All diseased animals running at large;
- (C) All ponds or pools of stagnant water;
- (D) Carcasses of animals not buried or destroyed within 24 hours after death;
- (E) Accumulations of manure, refuse or other debris;
- (F) Privy vaults and garbage cans which are not rodent-free or fly-tight or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;
- (G) The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste or other substances;
- (H) All noxious weeds and other rank growths of vegetation upon public or private property;
- (I) Dense smoke, noxious fumes, gas and soot or cinders, in unreasonable quantities;
- (J) All public exposure of people having a contagious disease;
- (K) Any offensive trade or business as defined by statute not operating under local license; and
- (L) All unnecessary and annoying vibrations.

§ 92.17 PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.

The following are hereby declared to be nuisances affecting public morals and decency:

- (A) All gambling devices, slot machines and punch boards, except as otherwise authorized by federal, state or local law;
- (B) Betting, bookmaking and all apparatus used in those occupations;
- (C) All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame and bawdy houses;
- (D) All places where intoxicating liquor is manufactured or disposed of in violation of law or where, in violation of law, people are permitted to resort for the purpose of drinking intoxicating liquor or where intoxicating liquor is kept for sale or other disposition in violation of law and all liquor and other property used for maintaining that place. For the purposes of this section, **INTOXICATING LIQUOR** shall mean any ethyl alcohol, distilled, fermented, spirituous, vinous or malt beverage containing more than 0.5% alcohol by volume; and
- (E) Any vehicle used for the unlawful transportation of intoxicating liquor or for promiscuous sexual intercourse or any other immoral or illegal purpose.

§ 92.18 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

The following are declared to be nuisances affecting public peace and safety:

- (A) All snow and ice, not removed from designated public sidewalks 24 hours after the snow or other precipitation causing the condition has ceased to fall;
 - (1) In the event the City experiences a year of excessive snowfall, by Council vote of approval reserves the right to extend the time frame for removal from 24 hours to 48 hours
- (B) All trees, hedges, billboards or other obstructions which prevent people from having a clear view of all traffic approaching an intersection;
- (C) All wires and limbs of trees which are so close to the surface of a designated public sidewalk or street as to constitute a danger to pedestrians or vehicles;
- (D) All obnoxious noises in violation of Minn. Rules Ch. 7030, as they may be amended from time to time which are hereby incorporated by reference into this code;
- (E) The discharging of the exhaust or permitting the discharging of the exhaust of any stationary internal combustion engine, motor boat, motor vehicle, motorcycle, all-terrain

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vehicle, snowmobile or any recreational device except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws and regulations;

- (F) It is unlawful for any person, whether in a public or private place, to play or permit to be played any AM/FM radio receiving set, tape player, stereo, or phonograph producing or reproducing amplified sound from which sound emanates. It is prima facie evidence that the amplified sound is offensive if it can be clearly heard from a distance of 50 feet. The owner or person in charge of the sound producing device shall immediately abate the sound when ordered to do so by a law enforcement officer;
- (G) No person shall participate in any party or other gathering of people giving rise to noise, unreasonably disturbing the peace, quiet or repose of another person. When a law enforcement officer determines that a gathering is creating such a noise disturbance, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave after being ordered by a law enforcement officer to do so. Every owner or tenant of such premises who has knowledge of the disturbance shall make every reasonable effort to see that the disturbance is stopped;
- (H) Obstructions and excavations affecting the ordinary public use of streets, alleys, designated public sidewalks or public grounds except under conditions as are permitted by this code or other applicable law;
- (I) Radio aerials or television antennae erected or maintained in a dangerous manner;
- (J) Any use of property abutting on a public street or designated public sidewalk or any use of a public street or designated public sidewalk which causes large crowds of people to gather, obstructing traffic and the free use of the street or designated public sidewalk;
- (K) All hanging signs, awnings and other similar structures over streets and designated public sidewalks, so situated so as to endanger public safety or not constructed and maintained as provided by ordinance;
- (L) The allowing of rain water, ice or snow to fall from any building or structure upon any street or designated public sidewalk or to flow across any public sidewalk;
- (M) Any barbed wire fence less than six feet above the ground and within three feet of a designated public sidewalk or way;
- (N) All dangerous, unguarded machinery in any public place or so situated or operated on private property as to attract the public;
- (O) Waste water cast upon or permitted to flow upon streets or other public properties;
- (P) Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or other material in a manner conducive to the harboring of rats, mice, snakes or vermin or the rank growth of vegetation among the items so accumulated or in a manner creating fire, health or safety hazards from accumulation;
- (Q) Any well, hole or similar excavation which is left uncovered or in another condition as to constitute a hazard to any child or other person coming on the premises where it is located;
- (R) Obstruction to the free flow of water in a natural waterway or a public street drain, gutter or ditch with trash or other materials;
- (S) The placing or throwing on any street, designated public sidewalk or other public property of any glass, tacks, nails, bottles or other substance which may injure any person or animal or damage any pneumatic tire when passing over the substance;
- (T) The depositing of garbage or refuse on a public right-of-way or on adjacent private

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property;

- (U) All other conditions or things which are likely to cause injury to the person or property of anyone.
- (V) Any structure which because of fire, wind or other natural disaster, or physical deterioration is no longer habitable as a dwelling or useful for any other purpose for which it may have been intended.
- (W) Any vacant dwelling, garage or other out-building, unless such buildings are kept securely locked, window kept glazed or neatly boarded up and otherwise protected to prevent entrance thereto by vandals or rodents.

(X) (1) *Noises prohibited.*

- (a) *General prohibition.* No person shall make or cause to be made any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace, safety or welfare of any person or precludes their enjoyment of property or affects their property's value. This general prohibition is not limited by the specific restrictions of this section.
- (b) *Defective vehicles or loads.* No person shall use any vehicle so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling or other noise.
- (c) *Loading, unloading, unpacking.* No person shall create loud or excessive noise in loading, unloading or unpacking any vehicle.
- (d) *Radios, phonographs, paging systems and the like.* No person shall use or operate or permit the use or operation of any radio receiving set, musical instrument, phonograph, paging system, machine or other device for the production or reproduction of sound in a distinct and loudly audible manner as to unreasonably disturb the peace, quiet and comfort of any person nearby. Operation of any set, instrument, phonograph, machine or other device between the hours of 10:00 p.m. and 7:00 a.m. in a manner as to be plainly audible at the property line of the structure or building in which it is located, in the hallway or apartment adjacent or at a distance of 50 feet if the source is located outside a structure or building, shall be prima facie evidence of a violation of this section.
- (e) *Schools, churches, hospitals and the like.* No person shall create any excessive noise on a street, alley or public grounds adjacent to any school, institution of learning, church or hospital when the noise unreasonably interferes with the working of the institution or disturbs or unduly annoys its occupants or residents and when conspicuous signs indicate the presence of the institution.

(2) *Hourly restriction of certain operations*

- (a) *Domestic power equipment.* No person shall operate a power lawn mower, power hedge clipper, chain saw, mulcher, garden tiller, edger, drill or other similar domestic power maintenance equipment except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday. Snow removal equipment is exempt from this provision
- (b) *Refuse hauling.* No person shall collect or remove garbage or refuse in any residential district except between the hours of 6:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.
- (c) *Construction activities.* No person shall engage in or permit construction activities involving the use of any kind of electric, diesel or gas-powered machine or other

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power equipment except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.

(3) *Noise impact statements.* The Council may require any person applying for a change in zoning classification or a permit or license for any structure, operation, process, installation or alteration or project that may be considered a potential noise source to submit a noise impact statement on a form prescribed by the Council. It shall evaluate each statement and take its evaluation into account in approving or disapproving the license or permit applied for or the zoning change requested.

(Y) Reflected glare or light from private exterior lighting exceeding 0.5 footcandles as measured on the property line of the property where the lighting is located when abutting any residential parcel and one footcandle when abutting any commercial or industrial parcel

§ 92.19 NUISANCE PARKING AND STORAGE.

(A) *Declaration of nuisance.* The outside parking and storage on residentially-zoned property of large numbers of vehicles and vehicles, materials, supplies or equipment not customarily used for residential purposes in violation of the requirements set forth below is declared to be a public nuisance because it:

- (1) Obstructs views on streets and private property;
- (2) Creates cluttered and otherwise unsightly areas;
- (3) Prevents the full use of residential streets for residential parking;
- (4) Introduces commercial advertising signs into areas where commercial advertising signs are otherwise prohibited;
- (5) Decreases adjoining landowners' and occupants' enjoyment of their property and neighborhood; and
- (6) Otherwise adversely affects property values and neighborhood patterns.

(B) *Unlawful parking and storage.*

- (1) A person must not place, store or allow the placement or storage of ice fish houses, skateboard ramps, playhouses or other similar non-permanent structures outside continuously for longer than 24 hours in the front-yard area of residential property unless more than 100 feet back from the front property line.
- (2) A person must not place, store or allow the placement or storage of pipe, lumber, forms, steel, machinery or similar materials, including all materials used in connection with a business, outside on residential property, unless shielded from public view by an opaque cover or fence.
- (3) A person must not cause, undertake, permit or allow the outside parking and storage of vehicles on residential property unless it complies with the following requirements.
 - (a) No more than four vehicles per lawful dwelling unit may be parked or stored anywhere outside on residential property, except as otherwise permitted or required by the city because of nonresidential characteristics of the property. This maximum number does not include vehicles of occasional guests who do not reside on the property.
 - (b) Vehicles that are parked or stored outside in the front-yard area must be on a paved or graveled parking or driveway area.
 - (c) Vehicles, watercraft and other articles stored outside on residential property must be owned by a person who resides on that property. Students who are away at

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school for periods of time but still claim the property as their legal residence will be considered residents on the property.

§ 92.20 INOPERABLE MOTOR VEHICLES.

- (A) It shall be unlawful to keep, park, store or abandon any motor vehicle which is not in operating condition, partially dismantled, used for repair of parts or as a source of repair or replacement parts for other vehicles, kept for scrapping, dismantling or salvage of any kind or which is not properly licensed for operation with the state, pursuant to M.S. §168B.011(3), as it may be amended from time to time.
- (B) This section does not apply to a motor vehicle enclosed in a building and/or kept out of view from any street, road or alley and which does not foster complaint from a resident of the city. A privacy fence is permissible.
- (C) Any motor vehicles described in this section constitute a hazard to the health and welfare of the residents of the community in that such vehicles can harbor noxious diseases, furnish a shelter and breeding place for vermin and present physical danger to the safety and well-being of children and citizens; and vehicles containing fluids which, if released into the environment, can and do cause significant health risks to the community.

§ 92.21 BUILDING MAINTENANCE AND APPEARANCE.

- (A) *Declaration of nuisance.* Buildings, fences and other structures that have been so poorly maintained that their physical condition and appearance detract from the surrounding neighborhood are declared to be public nuisances because they:
 - (1) Are unsightly;
 - (2) Decrease adjoining landowners and occupants' enjoyment of their property and neighborhood; and
 - (3) Adversely affect property values and neighborhood patterns.
- (B) *Standards.* A building, fence or other structure is a public nuisance if it does not comply with the following requirements.
 - (1) No part of any exterior surface may have deterioration, holes, breaks, gaps, loose or rotting boards or timbers.
 - (2) Every exterior surface that has had a surface finish such as paint applied must be maintained to avoid noticeable deterioration of the finish. No wall or other exterior surface may have peeling, cracked, chipped or otherwise deteriorated surface finish on more than 20% of:
 - (a) Any one wall or other flat surface; or
 - (b) All door and window moldings, eaves, gutters and similar projections on any one side or surface.
 - (3) No glass, including windows and exterior light fixtures, may be broken or cracked and no screens may be torn or separated from moldings.
 - (4) Exterior doors and shutters must be hung properly and have an operable mechanism to keep them securely shut or in place.
 - (5) Cornices, moldings, lintels, sills, bay or dormer windows and similar projections must be kept in good repair and free from cracks and defects that make them hazardous or unsightly.
 - (6) Roof surfaces must be tight and have no defects that admit water. All roof drainage systems must be secured and hung properly.
 - (7) Chimneys, antennae, air vents and other similar projections must be structurally sound and in good repair. These projections must be secured properly, where applicable, to an

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exterior wall or exterior roof.

(8) Foundations must be structurally sound and in good repair.

§ 92.22 FILING COMPLAINT.

Any person, including the city, who believes there is property located within the corporate limits of the city which has nuisances, shall make a written complaint signed, dated and filed with the City Clerk-Treasurer. If the city makes the complaint, an employee, law enforcement officer or Council member of the city shall file the complaint in all respects as set out above.

§ 92.23 DUTIES OF CITY OFFICERS.

For purposes of §92.23 and 92.24, the Sheriff or person designated by the City Council under §10.20, if the city has at the time no Police Department, may enforce the provisions relating to nuisances. Any law enforcement officer or designated person shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances. Except in emergency situations of imminent danger to human life and safety, no law enforcement officer or designated person shall enter private property for the purpose of inspecting or preventing public nuisances without the permission of the owner, resident or other person in control of the property, unless the law enforcement officer or person designated has obtained a warrant or order from a court of competent jurisdiction authorizing the entry, as provided in §10.20.

§ 92.24 ABATEMENT.

- (A) *Notice.* Written notice of the City Council order to remove, or eliminate the causes of blight or blighting factor from the property within ten days after the mailing or personal presentation of the notice of violation;
- (1) *Notice of violation.* Written notice of violation shall be served on the owner of record and occupant of the premises either in person or by certified registered mail. If the premise is not occupied, the owner of record is unknown or the owner of record or occupant refuses to accept notice of violation, notice of violation shall be served by posting it on the premises.
- (2) *Notice of City Council order.* Except for those cases determined by the city to require summary enforcement, written notice of any City Council order shall be made as provided in M.S. §463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time.
- (3) *Notice of motion for summary enforcement.* Written notice of any motion for summary enforcement shall be made as provided for in M.S. §463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time.
- (B) *Procedure.* Whenever a law enforcement officer or designated person determines that a public nuisance is being maintained or exists on the premises in the city, the City Clerk shall notify in writing the owner of record and occupant of the premises of the fact and order that the nuisance be terminated or abated. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated. If the notice of violation is not complied with within the time specified, the law enforcement officer or designated person shall report that fact forthwith to the City Clerk. Thereafter, the City Council may, after notice to the owner and occupant and an opportunity to be heard, determine that the condition identified in the notice of violation is a nuisance and further order that if the nuisance is not abated within the time prescribed by the City Council, the city may seek injunctive relief by serving a copy of the City Council order and notice of motion for summary enforcement or obtain an administrative search and seizure

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warrant and abate the nuisance.

- (C) *Emergency procedure; summary enforcement.* In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in divisions (A) and (B) of this section will permit a continuing nuisance to unreasonably endanger public health safety or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the law enforcement officer or designated person shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare. The law enforcement officer or designated person shall notify in writing the owner and occupant of the premises of the nature of the nuisance and of the city's intention to seek summary enforcement and the time and place of the City Council meeting to consider the question of summary enforcement. The City Council shall determine whether or not the condition identified in the notice to the owner and occupant is a nuisance, whether public health, safety or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in division (A) of this section and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.
- (D) *Immediate abatement.* Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.

§ 92.25 RECOVERY OF COST.

- (A) *Personal liability.* The owner of premises on which a nuisance has been abated by the city or a person who has caused a public nuisance on a property not owned by that person shall be personally liable for the cost to the city of the abatement, including administrative costs and storage costs. As soon as the work has been completed and the cost determined, the City Clerk-Treasurer or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk-Treasurer.
- (B) *Assessment.* After notice and hearing as provided in M.S. §429.061, as it may be amended from time to time, if the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice, on designated public sidewalks, the growth of weeds on private property or outside the traveled portion of streets or unsound or insect-infected trees, the City Clerk-Treasurer shall, following abatement of the nuisance, list the total unpaid charges along with all other charges as well as other charges for current services to be assessed under M.S. §429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case.

§ 92.26 UNCLAIMED PROPERTY; DISPOSAL

- (A) *Purpose.* The purpose of this ordinance is to provide for the custody and disposal of property lawfully coming into the City's possession in the course of municipal operations and remaining unclaimed by the owner. The source of this authority is found in part in Minnesota Statutes Section 471.195.
- (B) *Custody.* Property lawfully coming into the City's possession in the course of municipal

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operations will be retained by the City or its agent for a period of 60 days. Reasonable effort will be made to identify the owner and notify the owner that the property is in the custody of the City.

- (C) *Storage.* The city acquiring possession of the property shall arrange for its storage. If city facilities are unavailable or inadequate, the department may arrange for storage at a privately-owned facility.
- (D) *Disposal.* Property that remains unclaimed for a period of more than 60 days may be sold to the highest bidder at public auction or sale following reasonable published notice. In the alternative unclaimed property may be donated to a non-profit charitable corporation. In the alternative unclaimed property may be destroyed if it is found to be unusable or damaged beyond repair. The City will keep detailed records of the sold, donated or destroyed items.
- (E) *Proceeds.* The proceeds received from any sale, after deducting the costs of the sale, costs to the city of the abatement, administrative costs and storage costs, will be placed in the general fund.
- (F) *Owners Right to Redemption.* In the event that the owner of property sold pursuant to this ordinance makes application to the City Clerk within six months of the sale and provides satisfactory proof of ownership, the owner will be reimbursed the net proceeds from the sale, if any. If no application is made within six months, the net proceeds will become the absolute property of the City.
- (G) *Other Statutes or Authority.* This ordinance does not supersede the provisions of other statutes that govern the disposal of specific items of property (i.e. abandoned motor vehicles)

WEEDS

§ 92.35 SHORT TITLE.

This subchapter shall be cited as the “Weed Ordinance”.

§ 92.36 JURISDICTION.

This subchapter shall be in addition to any state statute or regulation or county ordinance presently in effect, subsequently added, amended or repealed.

§ 92.37 DEFINITIONS; EXCLUSIONS.

- (A) For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DESTRUCTION ORDER. The notice served by the City Council or designated city official, in cases of appeal, on the property owner of the ordinance violation that shall conform to M.S. §18.83(2), as it may be amended from time to time.

MEADOW VEGETATION. Grasses and flowering broad-leaf plants that are native to or adapted to the state and that are commonly found in meadow and prairie plant communities, except weeds as defined herein.

PROPERTY OWNER. The person occupying the property, the holder of legal title or a person having control over the property of another, such as a right-of-way, easement, license or lease.

WEEDS, GRASSES and RANK VEGETATION. Includes but is not limited to the following:

- (a) Noxious weeds and rank vegetation shall include but not be limited to: alum (allium), Buckthorn, Bur Cucumber, Canada Thistle, Corncockle, Cressleaf Groundsel, Curly Dock, Dodder, Field Bindweed, French Weed, Hairy Whitetop,

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Hedge Bindweed, Hoary Cress, Horsenettle, Johnsongrass, Leafy Spurge, Mile-A-Minute Weed, Musk Thistle, Oxeye Daisy, Perennial Sowthistle, Poison Hemlock, Purple Loosestrife, Quackgrass, Russian Knapweed, Russian Thistle, Serrated Tussock, Shatter Cane, Sorghum, Wild Carrot, Wild Garlic, Wild Mustard, Wild Onion, Wild Parsnip;

- (b) Grapevines when growing in groups of 100 or more and not pruned, sprayed, cultivated or otherwise maintained for two consecutive years;
- (c) Bushes of the species of tall, common or European barberry, further known as *berberis vulgaris* or its horticultural varieties;
- (d) Any weeds, grass or plants, other than trees, bushes, flowers or other ornamental plants, growing to a height exceeding 6 inches;
- (e) Rank vegetation includes the uncontrolled, uncultivated growth of annuals and perennial plants;
- (f) The term **WEEDS** does not include shrubs, trees, cultivated plants or crops; and
- (g) Any other weed designated by M.S. §18.77(8), Minn. Rules §1505.0730, 1505.0732 or 1505.0750, as they may be amended from time to time, as noxious.

(B) In no event shall cultivated plants or crops include plants which have been defined by state statute or administrative rule as being noxious or detrimental plants.

§ 92.38 OWNERS RESPONSIBLE FOR TRIMMING, REMOVAL AND THE LIKE.

(A) All property owners shall be responsible for the removal, cutting or disposal and elimination of weeds, grasses and rank vegetation or other uncontrolled plant growth on their property, which at the time of notice, is in excess of 6 inches in height.

(B) These provisions shall not apply to an area established with meadow vegetation if:

- (1) The prior vegetation is eliminated and the meadow vegetation is planted through transplanting or seed by human or mechanical means; and
- (2) A sign is posted on the property in a location likely to be seen by the public, advising that a meadow or prairie is being established. This sign must be no smaller than ten inches square, no larger than one square foot and no higher than three feet tall.

§ 92.39 FILING COMPLAINT.

Any person, including the city, who believes there is property located within the corporate limits of the city which has growing plant matter in violation of this subchapter shall make a written complaint signed, dated and filed with the City Clerk-Treasurer. If the city makes the complaint, an employee, law enforcement officer or Council member of the city shall file the complaint in all respects as set out above.

§ 92.40 NOTICE OF VIOLATIONS.

(A) Upon receiving notice of the probable existence of weeds in violation of this subchapter, a person designated by the City Council shall make an inspection and prepare a written report to the City Clerk regarding the condition. The City Clerk along with the Blight Inspector, upon concluding that there is a probable belief that this subchapter has been violated, shall forward written notification in the form of a “destruction order” to the property owner or the person occupying the property as that information is contained within the records of the City Clerk-Treasurer or any other city agency. The notice shall be posted upon the property. The notice shall provide that within five days after the posting of the notice that the designated violation shall be removed by the property owner or person occupying the property or the City Maintenance Department will remove the blight and bill the property owner or person occupying the property on the properties utility billing per

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the Fee Schedule.

- (B) (1) All notices are to be in writing and all filings are to be with the City Clerk-Treasurer.
- (2) Certified mailing to the City Clerk-Treasurer or others is deemed filed on the date of posting to the United States Postal Service.

§ 92.41 APPEALS.

- (A) The property owner may appeal by filing written notice of objections with the City Council within 48 hours of the notice, excluding weekends and holidays, if the property owner contests the finding of the City Council. It is the property owner's responsibility to demonstrate that the matter in question is shrubs, trees, cultivated plants or crops or is not otherwise in violation of this subchapter and should not be subject to destruction under the subchapter.
- (B) An appeal by the property owner shall be brought before the City Council and shall be decided by a majority vote of the Council members in attendance and being at a regularly scheduled or special meeting of the City Council.

§ 92.42 ABATEMENT BY CITY.

In the event that the property owner shall fail to comply with the "destruction order" within five days and has not filed a notice within 48 hours to the City Clerk-Treasurer of an intent to appeal, the City Council may employ the services of city employees or outside contractors and remove the weeds or grass to conform to this subchapter by all lawful means.

§ 92.43 LIABILITY.

- (A) The property owner is liable for all costs of removal, cutting or destruction of weeds or grass as defined by this subchapter.
- (B) The property owner is responsible for all collection costs associated with weed or grass destruction, including but not limited to court costs, attorney's fees and interest on any unpaid amounts incurred by the city. If the city uses municipal employees, it shall set and assign an appropriate per hour rate for employees, equipment, supplies and chemicals which may be used.
- (C) All sums payable by the property owner will be placed upon the utility billing and are to be paid to the City Clerk-Treasurer and to be deposited in a general fund as compensation for expenses and costs incurred by the city.
- (D) All sums payable by the property owner may be collected as a special assessment as provided by M.S. §429.101, as it may be amended from time to time.

OPEN BURNING

§ 92.60 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FIRE CHIEF, FIRE MARSHAL and ***ASSISTANT FIRE MARSHALS***. The Fire Chief, Fire Marshal and Assistant Fire Marshals of the Fire Department which provides fire protection services to the city.

OPEN BURNING. The burning of any matter if the resultant combustion products are emitted directly to the atmosphere without passing through a stack, duct or chimney, except a "recreational fire" as defined herein. Mobile cooking devices such as manufactured hibachis, charcoal grills, wood smokers and propane or natural gas devices are not defined as ***OPEN BURNING***.

RECREATIONAL FIRE. A fire set with approved starter fuel no more than three feet in height,

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contained within the border of a “recreational fire site” using dry, clean wood; producing little detectable smoke, odor or soot beyond the property line; conducted with an adult tending the fire at all times; for recreational, ceremonial, food preparation for social purposes; extinguished completely before quitting the occasion; and respecting weather conditions, neighbors, burning bans and air quality so that nuisance, health or safety hazards will not be created. No more than one recreational fire is allowed on any property at one time.

RECREATIONAL FIRE SITE. An area of no more than a three foot diameter circle (measured from the inside of the fire ring or border); completely surrounded by non-combustible and non-smoke or odor producing material, either of natural rock, cement, brick, tile or blocks or ferrous metal only an which area is depressed below ground, on the ground or on a raised bed. Included are permanent outdoor wood burning fireplaces. Burning barrels are not a **RECREATION FIRE SITE**, as defined herein. Recreational fire sites shall not be located closer than 25 feet to any structure.

RUNNING FIRE. An attended fire allowed to spread through surface vegetative matter under controlled conditions for the purpose of vegetative management, forest management, game habitat management or agricultural improvement.

STARTER FUELS. Dry, untreated, unpainted, kindling, branches, cardboard or charcoal fire starter. Paraffin candles and alcohols are permitted as starter fuels and as aids to ignition only. Propane gas torches or other clean gas burning devices causing minimal pollution must be used to start an open burn.

VEGETATIVE MATERIALS. Dry leaves, dry grass clippings, twigs, branches, tree limbs, untreated or unpainted wood that contains no glues or resins and other similar materials. Paper and cardboard are not considered **VEGETATIVE MATERIALS**.

WOOD. Dry, clean fuel only such as twigs, branches, limbs, “presto logs”, charcoal, cord wood or untreated dimensional lumber. The term does not include wood that is green with leaves or needles, rotten, wet, oil soaked or treated with paint, glue or preservatives. Clean pallets may be used for recreational fires when cut into three foot lengths.

§ 92.61 PROHIBITED MATERIALS.

- (A) No person shall conduct, cause or permit open burning oils, petro fuels, rubber, plastics, chemically treated materials or other materials which produce excessive or noxious smoke such as tires, railroad ties, treated, painted or glued wood composite shingles, tar paper, insulation, composition board, sheet rock, wiring, paint or paint fillers.
- (B) No person shall conduct, cause or permit open burning of hazardous waste or salvage operations, open burning of solid waste generated from an industrial or manufacturing process or from a service or commercial establishment or building material generated from demolition of commercial or institutional structures.
- (C) No person shall conduct, cause or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving or consumption of food.
- (D) No person shall conduct, cause or permit open burning of any leaves or grass clippings.

§ 92.62 PERMIT REQUIRED FOR OPEN BURNING.

No person shall start or allow any open burning on any property in the city without first having obtained an open burn permit, except that a permit is not required for any fire which is a recreational fire as defined in §92.60.

Penalty, see §92.99

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§ 92.63 PURPOSES ALLOWED FOR OPEN BURNING.

- (A) Open burn permits may be issued only for the following purposes:
- (1) Elimination of fire of health hazard that cannot be abated by other practical means;
 - (2) Ground thawing for utility repair and construction;
 - (3) Disposal of vegetative matter for managing forest, prairie or wildlife habitat and in the development and maintenance of land and rights-of-way where chipping, composting, land spreading or other alternative methods are not practical;
 - (4) Disposal of diseased trees generated on-site, diseased or infected nursery stock, diseased bee hives;
 - (5) Disposal of unpainted, untreated, non-glued lumber and wood shakes generated from construction, where recycling, reuse, removal or other alternative disposal methods are not practical; and/or
 - (6) Running fires.
- (B) Fire training permits can only issued by the State Department of Natural Resources.
- (C) Permits for the operation of permanent tree and brush burning sites may only be issued by the State Department of Natural Resources (DNR).

§ 92.64 PERMIT APPLICATION FOR OPEN BURNING; PERMIT FEES.

- (A) Open burning permits shall be obtained by making application on a form prescribed the Department of Natural Resources (DNR) and adopted by the Fire Department. The permit application shall be presented to the Fire Chief, Fire Marshal and Assistant Fire Marshals for reviewing and processing those applications.
- (B) An open burning permit shall require the payment of a fee. Permit fees shall be in the amount established by the city.

§ 92.65 PERMIT PROCESS FOR OPEN BURNING.

Upon receipt of the completed open burning permit application and permit fee, the Fire Chief, Fire Marshal or Assistant Fire Marshals, if he or she reasonably believes necessary, may schedule a preliminary site inspection to locate the proposed burn site, note special conditions and set dates and time of permitted burn and review fire safety considerations.

§ 92.66 PERMIT HOLDER RESPONSIBILITY.

- (A) Prior to starting an open burn, the permit holder shall be responsible for confirming that no burning ban or air quality alert is in effect. Every open burn event shall be constantly attended by the permit holder or his or her competent representative. The open burning site shall have available, appropriate communication and fire suppression equipment as set out in the fire safety plan.
- (B) The open burn fire shall be completely extinguished before the permit holder or his or her representative leaves the site. No fire may be allowed to smolder with no person present. It is the responsibility of the permit holder to have a valid permit, as required by this subchapter, available for inspection on the site by the Sheriff's Department, Fire Department, MPCA representative or DNR forest officer.
- (C) The permit holder is responsible for compliance and implementation of all general conditions, special conditions and the burn event safety plan as established in the permit issued. The permit holder shall be responsible for all costs incurred as a result of the burn, including but not limited to fire suppression and administrative fees.

§ 92.67 REVOCATION OF OPEN BURNING PERMIT.

The open burning permit is subject to revocation at the discretion of DNR forest officer, the Fire

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Chief, Fire Marshal or Assistant Fire Marshals. Reasons for revocation include but are not limited to a fire hazard existing or developing during the course of the burn, any of the conditions of the permit being violated during the course of the burn, pollution or nuisance conditions developing during the course of the burn or a fire smoldering with no flame present.

§ 92.68 DENIAL OF OPEN BURNING PERMIT.

If established criteria for the issuance of an open burning permit are not met during review of the application, it is determined that a practical alternative method for disposal of the material exists or a pollution or nuisance condition would result or if a burn event safety plan cannot be drafted to the satisfaction of the Fire Chief, Fire Marshal or Assistant Fire Marshals, these officers may deny the application for the open burn permit.

§ 92.69 BURNING BAN OR AIR QUALITY ALERT.

No recreational fire or open burn will be permitted when the city or DNR has officially declared a burning ban due to potential hazardous fire conditions or when the MPCA has declared an Air Quality Alert.

§ 92.70 RULES AND LAWS ADOPTED BY REFERENCE.

The provisions of M.S. §88.16 to 88.22, as these statutes may be amended from time to time, are hereby adopted by reference and made a part of this subchapter as if fully set forth at this point.

§ 92.71 EXTERNAL SOLID FUEL-FIRED HEATING DEVICES (OUTDOOR WOOD BURNING STOVES).

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

EXTERNAL SOLID FUEL-FIRED HEATING DEVICE. A device designed for external solid fuel combustion so that usable heat is derived for the interior of a building and includes solid fuel-fired stoves, solid fuel-fired cooking stoves and combination fuel furnaces or boiler which burn solid fuel. Solid fuel-fired heating devices do not include natural gas-fired fireplace logs or wood-burning fireplaces or wood stoves in the interior of a dwelling.

PERSON. An individual, partnership, corporation, company or other association.

STACKS OR CHIMNEYS. Any vertical structure incorporated into a building and enclosing a flue or flues that carry off smoke or exhaust from a solid fuel-fired heating device, especially, the part of a structure extending above a roof.

(B) *Requirements for operation.*

(1) Any dense smoke, noxious fumes, gas and soot or cinders, in unreasonable quantities or any use of an external solid fuel-fired heating device to burn solid fuels other than those solid fuels for which the external solid fuel-fired heating device was designed, is declared a public nuisance.

(2) No person may install, use or operate an external solid fuel fired heating device on a lot less than four acres in size.

(3) All stacks or chimneys must be so constructed to withstand high winds or other related elements and in accordance to the specifications of the manufacturer of the external solid fuel-fired heating device. The stack height shall be a minimum of 25 feet above ground level, but shall also extend at least as high as the height of the roofs of residents within 500 feet. All stacks or chimneys must be of masonry or insulated metal with a minimum six-inch flue.

(4) All external solid fuel-fired heating devices must be setback a minimum of 50 feet from all property lines.

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(5) All external solid fuel-fired heating devices must be setback a minimum of ten feet from any principal or accessory structure.

(C) *Fuels.*

(1) Only fuels designed for burning in an external solid fuel-fired heating device may be burned. No garbage may be burned in an external solid fuel-fired heating device.

(2) The only fuel permitted to be burned is untreated fuel. Wood may not be treated, processed, stained, finished or painted - specifically prohibited woods include plywood, particle board and similar products. Other fuels, such as corn, shall not contain any additives, treatments or chemicals. No petroleum products or processed materials of any kind may be burned.

§ 92.72 RECREATIONAL FIRES.

(A) The city adopts the 1997 Uniform Fire Code, Article 11, General Precautions, regarding recreational fires:

§1102.4 Recreational Fires

(1) You cannot have a fire within 25 twenty-five feet of any structure of combustible material.

(2) The 3x3 rule / a fire ring cannot be bigger than (3) three feet in diameter and the flames cannot be higher than (3) three feet.

(3) You must have fire-extinguishing capability available at all times. This can mean a fire extinguisher (minimum) 4-A rating), garden hose, etc.

(4) Recreational fire must be attended to at all time by an adult until it is totally extinguished

(5) You must follow all burning bans when issued for your area.

(6) If your recreational fire is causing anyone in your neighborhood concern about the safety of their property or in any way disrupts normal lifestyle expectations of you neighborhood, the fire must be extinguished immediately.

(7) If your recreational fire causes damage (can be smoke, heat of cinders) in any way to your property or your neighbor's property, you will be held responsible.

(8) No permit is required.

(B) Recommendations:

(1) Use a "NSF" approved fire container.

(2) Call your local Fire Chief, or County Dispatcher to see if a burning ban is in effect.

§ 92.99 PENALTY.

(A) Violation of any provision of this chapter, including maintaining a nuisance after being notified in writing by first class mail of a violation of any provision of this chapter, shall be a misdemeanor and punished as provided in §10.99.

(B) Violation of §92.18(F) shall be a petty misdemeanor and carry a fine of \$50 for the first, or any other following offense.

(C) Any person violating any provision of §92.72 is guilty of a misdemeanor and, upon conviction, shall be punished by a fine and/or imprisonment in accordance with law.

(Ord. No. 91, passed 10-11-1993; Ord. No. 106, passed 6-14-2004; Ord. No. 126, passed 4-13-2009; Ord. No. 138, passed 5-13-2013 Ord. No. 140, passed 5-13-2013; Ord. No. 142, passed 5-13-2013; Ord. No. 143, passed 5-13-2013, Ord. No. 165, passed 8-24-2017; Ord. No. 175, passed 04-08-2019)

Penalty, see §92.99

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CHAPTER 93: STREETS AND SIDEWALKS

Section

General Provisions

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Cross-reference:

Assessable current services, see §92.01

GENERAL PROVISIONS

§ 93.01 UNLOADING ON STREET OR DESIGNATED PUBLIC SIDEWALK.

No person shall unload any heavy material in the streets of the city by throwing or letting the material fall upon the pavement of any street, alley, designated public sidewalk or other public way, without first placing some sufficient protection over the pavement.

§ 93.02 STREET AND DESIGNATED PUBLIC SIDEWALK OBSTRUCTION.

No person shall obstruct any street, alley, designated public sidewalk or other public way within the city by erecting thereon any fence or building or permitting any fence or building to remain thereon. Each day that any fence or building is permitted to remain upon the public way shall constitute a separate offense.

§ 93.03 MATERIALS ON STREET OR DESIGNATED PUBLIC SIDEWALK.

- (A) No person shall encumber any street, designated public sidewalk or right-of-way. No

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owner, occupant or person having the care of any building or lot of land, bordering on any street, designated public sidewalk or right-of-way shall permit it to be encumbered with barrels, boxes, cans, articles or substances of any kind, so as to interfere with the free and unobstructed use thereof.

- (B) Except for the actions of the city employees and contractors carrying out their duties, no person shall:
- (1) Obstruct any street or designated public sidewalk by depositing snow or ice thereon;
 - (2) Push or otherwise move leaves, branches and grass clippings upon any designated public sidewalks or streets adjacent to said property
 - (3) Dig any holes in any street, designated public sidewalk or right-of-way;
 - (4) Remove any earth, gravel or rock from any street, designated public sidewalk or right-of-way;
 - (5) Obstruct any ditch draining any street or drain any noisome materials into any ditch;
 - (6) Deface, mar, damage or tamper with any structure, work, material, equipment, tools, signs, markers, signals, paving, guardrails, drains or any other highway appurtenance on or along any street, designated public sidewalk or right-of-way;
 - (7) Remove, injure, displace or destroy right-of-way markers or reference or witness monuments or markers placed to preserve section or quarter-section corners; and
 - (8) Drive over, through or around any barricade, fence or obstruction erected for the purpose of preventing traffic from passing over a portion of a street or designated public sidewalk closed to public travel or to remove, deface or damage any barricade, fence or obstruction.
- (C) (1)(a) It shall be unlawful for the owner or occupant of any building in front of which, or adjacent to which, a designated public sidewalk has been constructed for the use of the public, to allow any accumulation of snow, ice, to remain upon the designated public sidewalk longer than 24 hours after its deposit thereon
- (1) In the event the City experiences a year of excessive snowfall, by Council vote of approval reserves the right to extend the time frame for removal from 24 hours to 48 hours
- (b) It shall be unlawful for any owner of a vacant lot, filling station, implement dealer, corporation or any other person or corporation owning property adjacent to which a designated public sidewalk has been constructed for the use of the public to blow, push or otherwise move the leaves, branches and grass clippings which has fallen upon the property owned by the foregoing persons or corporations, upon the designated public sidewalks or the streets adjacent to said property.
- (c) It shall be unlawful for any owner of a vacant lot, filling station, implement dealer, corporation or any other person or corporation owning property adjacent to which a designated public sidewalk has been constructed for the use of the public to push or otherwise move the snow, which has fallen upon the property owned by the foregoing persons or corporations, upon the designated public sidewalks or the streets adjacent to the property.
- (d) All snow and ice remaining upon designated public sidewalks is hereby declared to constitute a public nuisance, and all persons owning vacant property adjacent to the designated public sidewalks are hereby required to abate the nuisance or cause the same to be abated within 24 hours after its deposit thereon.
- (1) In the event the City experiences a year of excessive snowfall, by Council vote of

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approval reserves the right to extend the time frame for removal from 24 hours to 48 hours

- (e) It shall be the duty of the Public Works Supervisor to cause to be removed from all designated public sidewalks, beginning 24 hours after any snow or ice has ceased to fall, all snow and ice which may be discovered thereon, and he or she shall keep a record of the cost of the removal and the lot or lots adjacent to which the accumulations were found and removed, and shall deliver the information to the Clerk-Treasurer as soon as the work removal is completed.
 - (1) In the event the City experiences a year of excessive snowfall, by Council vote of approval reserves the right to extend the time frame for removal from 24 hours to 48 hours
- (f) The Clerk-Treasurer shall, upon direction of the Council, on receipt of the information provided for in the preceding section to be delivered to him or her by the Public Works Supervisor, extend the cost of the removal of snow or ice as a special utility billing against the lots or parcels of ground abutting on which designated public sidewalks were cleared, and the special utility billing shall at the time of certifying taxes to the County Auditor be certified for collection as other special taxes are certified and collected.
- (g) The Clerk-Treasurer shall, at the direction of the Council, bring suit in any court of competent jurisdiction to recover from the person, firm or corporation owning land adjacent to which designated public sidewalks were cleared, as provided in division (B)(1) above, the cost of the clearing and the costs of suit in a civil action.
- (h) If the Council so directs, any person, firm or corporation who violates division (B)(1) above shall be prosecuted in district court and, if convicted of the violation, shall be deemed guilty of a misdemeanor.
- (i) No person shall cause any snow, ice or combination thereof to be placed upon any street or roadway in the city after the street or roadway has been plowed, including snow being deposited there by shoveling, snowblower or other mechanical devices. There shall, however, be an exception to this prohibition in the downtown business district. There persons shall be entitled to deposit snow upon designated public sidewalks upon the roadways following the first plowing of the street, but before the second plowing of the street following each snow fall.

RIGHT-OF-WAY CONSTRUCTION REGULATIONS

§ 93.20 ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY.

In accordance with the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant to this chapter to manage rights-of-ways within its jurisdiction.

§ 93.21 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.

Minn. Rules Ch. 7819, as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code as if set out in full. The definitions included in M.S.

§237.162, Minn. Rules 7819.0100 subs. 1 through 23 and Minn. Rules 7560.0100 subs. 1 through 12 is hereby adopted by reference and is incorporated into this chapter as if set out in full.

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§ 93.22 PERMIT REQUIREMENT.

- (A) *Permit required.* Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the city.
- (1) *Excavation permit.* An excavation permit is required to excavate that part of the right-of-way described in the permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
- (2) *Obstruction permit.* An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
- (B) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless the person makes a supplementary application for another right-of-way permit before the expiration of the initial permit and a new permit or permit extension is granted.
- (C) *Delay penalty.* In accordance with Minn. Rules part 7819.1000 subs. 3, as it may be amended from time to time and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching or restoration. The delay penalty shall be established from time to time by the city.
- (D) *Permit display.* Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council.

§ 93.23 PERMIT APPLICATIONS.

Application for a permit shall contain and will be considered complete only upon compliance with the requirements of the following provisions:

- (A) Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities and the following information:
- (1) Each permittee's name, gopher one-call registration certificate number, address and e-mail address if applicable and telephone and facsimile numbers;
- (2) The name, address and e-mail address, if applicable and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration;
- (3) A certificate of insurance or self-insurance:
- (a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state or a form of self-insurance acceptable to the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council;
- (b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees and

placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;

- (c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all coverages;
- (d) Requiring that the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council be notified 30 days in advance of cancellation of the policy or material modification of a coverage term; and
- (e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

(4) The city may require a copy of the actual insurance policies;

(5) If the person is a corporation, a copy of the certificate required to be filed under M.S. §300.06, as it may be amended from time to time as recorded and certified to by the Secretary of State; and

(6) A copy of the person's order granting a certificate of authority from the State Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have the certificate from the Commission or other state or federal agency.

(B) Payment of money due the city for:

(1) Permit fees as established by the city, as that ordinance may be amended from time to time, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

(3) Any undisputed loss, damage or expense suffered by the city because of the applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city; or

(4) Franchise fees or other charges as established by the city

§ 93.24 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council shall issue a permit.

(B) *Conditions.* The director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state and federal laws, including but not limited to M.S. §216D.01 through 216D.09 (Gopher One Call Excavation Notice System) and Minn. Rules Ch. 7560.

(C) *Trenchless excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including, but not limited to, Horizontal Directional Drilling, shall follow all requirements set forth in M.S. Ch. 216D and Minn. Rules Ch. 7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the city.

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§ 93.25 PERMIT FEES.

Permit fees shall be in an amount established by the city.

- (A) *Excavation permit fee.* The city shall establish an excavation permit fee as established by the city, in an amount sufficient to recover the following costs:
 - (1) The city management costs; and
 - (2) Degradation costs, if applicable.
- (B) *Obstruction permit fee.* The city shall establish the obstruction permit fee as established by the city and shall be in an amount sufficient to recover the city management costs.
- (C) *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay those fees within 30 days of billing.
- (D) *Non-refundable.* Permit fees as established by the city that were paid for a permit that the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council has revoked for a breach as stated in §93.33 are not refundable.
- (E) *Application to franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.
- (F) All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.100, as it may be amended from time to time.

§ 93.26 RIGHT-OF-WAY PATCHING AND RESTORATION.

- (A) *Timing.* The work to be done under the excavation permit and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under this subchapter.
- (B) *Patch and restoration.* The permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
 - (1) *City restoration.* If the city restores the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If following the restoration, the pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.
 - (2) *Permittee restoration.* If the permittee restores the right-of-way itself, it may be required at the time of application for an excavation permit to post a construction performance bond or a deposit in accordance with the provisions of Minn. Rules part 7819.3000, as it may be amended from time to time.
- (C) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules part 7819.1100, as it may be amended from time to time. The Clerk-Treasurer, Utilities Superintendent or other person designated by the Council shall have the authority to prescribe the manner and extent of the restoration and may do so in written procedures of general application or on a case-by-case basis.
- (D) *Duty to correct defects.* The permittee shall correct defects in patching or restoration performed by the permittee or its agents. The permittee upon notification from the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council, shall correct all restoration work to the extent necessary, using the method required by the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council. The work

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shall be completed within five calendar days of the receipt of the notice from the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under this subchapter.

- (E) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council or fails to satisfactorily and timely complete all restoration required by the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council, the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council at his or her option may do the work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.
- (F) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee as established by the city. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

§ 93.27 SUPPLEMENTARY APPLICATIONS.

- (A) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area make application for a permit extension and pay any additional fees required thereby and be granted a new permit or permit extension.
- (B) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

§ 93.28 DENIAL OF PERMIT.

The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

§ 93.29 INSTALLATION REQUIREMENTS.

The excavation, backfilling, patching and restoration and all other work performed in the right-of-way shall be done in conformance with Minn. Rules part 7819.1100, as it may be amended from time to time and other applicable local requirements, in so far as they are not inconsistent with M.S. §237.162 and 237.163, as they may be amended from time to time.

§ 93.30 INSPECTION.

- (A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rules part 7819.1300, as it may be amended from time to time.

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- (B) *Site inspection.* The permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- (C) *Authority of Clerk-Treasurer, Utilities Superintendent or other person designated by the Council.*
- (1) At the time of inspection, the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
 - (2) The Clerk-Treasurer, Utilities Superintendent or other person designated by the Council may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council that the violation has been corrected. If proof has not been presented within the required time, the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council may revoke the permit pursuant to §93.33.

§ 93.31 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.*

- (1) Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.
- (2) If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

- (B) *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit and as a penalty pay double the normal fee for the permit, pay double all the other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

§ 93.32 SUPPLEMENTARY NOTIFICATION.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council of the accurate information as soon as this information is known.

§ 93.33 REVOCATION OF PERMITS.

- (A) *Substantial breach.* The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation or any material condition of the permit. A substantial breach by the permittee shall include, but shall not be limited, to the following:
- (1) The violation of any material provision of the right-of-way permit;

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- (2) An evasion or attempt to evade any material provision of the right-of-way permit or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to §93.30.

(B) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy that violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

(C) *Response to notice of breach.* Within 24 hours of receiving notification of the breach, the permittee shall provide the city with a plan, acceptable to the city, which will cure the breach. The permittee's failure to so contact the city or the permittee's failure to submit an acceptable plan or the permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

(D) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with the revocation.

§ 93.34 MAPPING DATA; INFORMATION REQUIRED.

(A) *Information required.* Each permittee shall provide mapping information required by the city in accordance with Minn. Rules parts 7819.4000 and 7819.4100, as it may be amended from time to time.

(B) *Service laterals.*

(1) All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. Rules 7560.0150, subs. 2, shall be required the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the city reasonably requires it. Permittees or other subcontractors shall submit to the city evidence of the installed service lateral locations. Compliance with this division (B) and with applicable Gopher State One Call law and Minn. Rules governing service laterals installed after December 31, 2005, shall be a condition of any city approval necessary for:

- (a) Payments to contractors working on a public improvement project including those under M.S. Ch. 429;
- (b) City approval of performance under development agreements or other subdivision or site plan approval under M.S. Ch. 462.

(2) The city shall reasonably determine the appropriate method of providing such information. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

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§ 93.35 LOCATION OF FACILITIES.

- (A) *Compliance required.* Placement, location and relocation of facilities must comply with applicable laws and with Minn. Rules parts 7819.3100, 7819.5000 and 7819.5100, as they may be amended from time to time, to the extent the rules do not limit authority otherwise available to cities.
- (B) *Corridors.* The city may assign specific corridors within the right-of-way or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.
- (C) *Limitation of space.* To protect the health, safety and welfare or when necessary to protect the right-of-way and its current use, the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way and future city plans for public improvements and development projects which have been determined to be in the public interest.

§ 93.36 DAMAGE TO OTHER FACILITIES.

When the city does work in the right-of-way and finds it necessary to maintain, support or move facilities to protect it, the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that owner's facilities.

§ 93.37 RIGHT-OF-WAY VACATION.

If the city vacates a right-of-way which contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules part 7819.3200, as it may be amended from time to time.

§ 93.38 INDEMNIFICATION AND LIABILITY.

By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rules part 7819.1250, as it may be amended from time to time.

§ 93.39 ABANDONED FACILITIES; REMOVAL OF ABANDONED FACILITIES.

Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation or construction, unless this requirement is waived by the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council.

§ 93.40 APPEAL.

A right-of-way user that has been denied registration; has been denied a permit; has had permit revoked; believes that the fees imposed are invalid; or disputes a determination of the city

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regarding §93.34(B) of this chapter, may have the denial, revocation or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation or fee as imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

§ 93.41 RESERVATION OF REGULATORY AND LAW ENFORCEMENT POWERS.

A permittee's or registrant's rights are subject to the regulatory and law enforcement powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

§ 93.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to §10.99.

(B) Any person violating any provision of §93.03(C) is guilty of a misdemeanor and, upon conviction, shall be subject to the penalties set forth in M.S. §609.02(3).

(Ord. No. 109, passed 2-14-2005; Ord. No. 111, passed 2-14-2005; Ord. No. 140, passed 5-13-2013; Ord. No. 175, passed 04-08-2019)

Penalty, see §93.99

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CHAPTER 94. CEMETERY REGULATION

Section:

- 94.01 Definitions
- 94.02 Establishment
- 94.03 Sale of Lots
- 94.04 Conditions of Lot Purchase
- 94.05 Handling of Funds
- 94.06 Burial Permits
- 94.07 Interments
- 94.08 Burial Vaults
- 94.09 Disinterment and Removal
- 94.10 Monuments and Markers
- 94.11 Foundations
- 94.12 Installation of Monuments and Markers
- 94.13 Decoration of Lots

- 94.99 Penalty

94.01 DEFINITIONS

CITY. The City of Stewart, Minnesota, owning and controlling the cemetery

CEMETERY. A tract of land used for burials

BURIAL PERMIT. Legal written documents needed for burial to occur

BURIAL VAULT. A container that houses a casket for final interment in the cemetery

INTERMENT. Disposition of human remains or cremated human remains by burial

LOT. A parcel of land eight (8) ft. in length; three (3) ft. in width on which one traditional or two cremation burials are permitted. There is a two (2) ft. space between each of the lots and a two (2) ft. space between each end of the lot

DOUBLE LOT. A parcel of land eight (8) ft. in length; six (6) ft. in width on which two traditional or four cremation burials are permitted. There is a two (2) ft. space between each of the lots and a two (2) ft. space between each end of the lot

BASE PAD. A masonry, granite or marble foundation a monument or marker is placed upon

MONUMENT. A memorial of granite, marble, bronze, wrought iron or boulder (stone) that extends above the surface of the lawn and is placed at the head of the burial plot

MARKER. A memorial of granite, marble or bronze that does not extend above the surface of the lawn and is placed at the head of the burial plot

FOOT MARKER. A memorial of granite, marble or bronze that does not extend above the surface of the lawn and is placed at the foot of the burial plot

§ 94.02 ESTABLISHMENT

A cemetery has been established and is continued upon land owned and designated by the City of Stewart, Minnesota, as Round Grove Lake Cemetery. The plats of the cemetery filed with the county recorder in McLeod County, Minnesota, are adopted as the official plat of the cemetery. No person shall lay out or establish any cemetery, or use any lot of land within this City for the burial of dead except in the Round Grove Lake Cemetery, or some other tract of land duly designated by the City as a cemetery.

§ 94.03 SALE OF LOTS

The prices of cemetery lots and services will be set by the Fee Schedule adopted by the City

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Council. Any person paying for a lot is entitled to a license agreement conveying the lot. A license agreement conveying a lot gives the purchaser only the right of burial therein and shall be considered as a license that restricts the use to burial purposes.

§ 94.04 CONDITIONS OF LOT PURCHASE

All lot agreements are subject to reasonable rules and regulations as the City Council may adopt relative to the use of the cemetery. No lot shall be used for any purpose other than the burial of human remains and the placing of memorials as permitted by this ordinance or any additional regulation that the City Council may adopt.

§ 94.05 HANDLING OF FUNDS

All money received from the sale of lots and other services must be paid to the City Treasurer. No lot agreement to any cemetery lot shall be issued, nor any cemetery service performed until payment has been received or a payment plan has been agreed upon.

§ 94.06 BURIAL PERMITS

A burial permit from a funeral home or State Registrar of Vital Statistics, or a disposition permit, or death certificate as prescribed by a State Department of Health shall be filed with the City within one week of a burial.

§ 94.07 INTERMENTS.

All excavations shall be made under the supervision of the cemetery superintendent or his agents. At least twenty-four (24) hour notice shall be given, and the type of burial and the location shall be specified. One traditional burial and/or two cremation burials will be permitted per lot. Two traditional burials and/or four cremation burials will be permitted per double lot.

§ 94.08 BURIAL VAULTS

All caskets, traditional or cremation, must be encased in a permanent type burial case or vault delivered and installed by a bonded and insured burial vault provider. Fiberglass vaults are prohibited.

§ 94.09 DISINTERMENT AND REMOVAL

Disinterment and re-interment must comply with Minnesota Statute Section 149A.96. Before any grave may be opened, written permission of the lot owner shall be filed with the City Clerk, a permit from the county health officer or licensed mortician shall be secured and presented, and the required fees paid. If the casket is re-interred in another cemetery the lot owner or his/her representative will pay one open/close fee. If the casket is re-interred in the Round Lake Cemetery a fee twice the open/close fee will be paid. This provision does not apply when disinterment is ordered by a duly authorized public authority.

- (A) Removal of a body by the heirs so that the lot may be sold for profit to themselves, or removal contrary to the expressed or implied wish of the original lot owner is forbidden.
- (B) A body may be removed from its original lot to a larger or better lot in the cemetery when there has been an exchange or purchase for that purpose.
- (C) The City shall assume no liability for damage to any casket or burial case in making the disinterment and removal.

§ 94.10 MONUMENTS and MARKERS

- (A) All monuments and markers shall be placed as shown as directed by the cemetery superintendent.
- (B) The masonry, granite or marble foundation base pad of a monument or marker shall not exceed two (2) ft. by five (5) ft. on a double lot or two (2) by three (3) on a lot. All monuments and markers shall be slightly smaller than the foundation base pad.
- (C) All monuments and markers shall be placed at the head end of the grave and must be

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attached to the base pad to ensure no movement.

(D) All foot markers shall be placed at the foot end of the grave and must be placed on the actual burial plot not in the two (2) space between graves

(E) All monuments shall be set level.

(F) Monuments and markers must be constructed of granite, marble, bronze, wrought iron or boulder (stone) material.

§ 94.11 FOUNDATIONS

All monuments and markers shall be placed on foundations of solid masonry, granite or marble. The top of all foundations shall not be higher than two inches below the established grade.

§ 94.12 INSTALLATION OF MONUMENTS AND MARKERS

No monument or marker may be placed without the supervision of the cemetery superintendent or his agent. Monuments and markers cannot be placed after November 20th. Monuments and markers shall be placed during city work hours 7:00 a.m. to 3:30 p.m. Monday through Friday. Monuments and markers placed after regular city work hours will be subject to a fee equal to the overtime wages and benefits of the supervising employee.

§ 94.13 DECORATION OF LOTS

(A) Plants and flowers may be placed permanently on cemetery lots when in an urn that is part of the monument or marker. Plants and flowers placed in other containers shall be permitted as long as the item does not impede the maintenance of the cemetery; if such items are placed, the City may remove them and the City shall not be responsible for damaged or lost items.

(B) No trees, shrubs or vines may be planted, nor may fences be erected. The City reserves the right to remove any tree shrub, vine, plant, or flower that may become unsightly, dangerous, or not in keeping with the landscape design of the cemetery. The City shall not be responsible for damaged, lost, or misplaced flower containers.

(C) The placing of boxes, shells, toys, metal designs, ornaments, chairs, settees, glass, wood or iron cases, and similar articles upon lots shall be permitted as long as the item does not impede the maintenance of the cemetery; if such items are placed, the City may remove them and the City shall not be responsible for damaged or lost items.

(D) All objects not described above, including balloons, banners, food and beverages, knick, knacks, shepherd hooks, solar lights and lanterns, stuffed animals, wind chimes, windmills, windsocks, and statuary not incorporated into a monument, and similar articles upon lots shall be permitted as long as the item does not impede the maintenance of the cemetery; if such items are placed, the City may remove them and the City shall not be responsible for damaged or lost items.

(E) The City reserves the right to remove all monuments, markers, flowers, plants, trees, decorations, or other similar things without liability to the owner whenever any of these objects become unsafe.

§ 94.99 PENALTY

Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to §10.99.

(Ord. 136, passed 11-12-2012, Ord. 152, passed 11-10-14)

