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CHAPTER 90: ANIMALS

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GENERAL PROVISIONS

§ 90.01 DEFINITIONS.

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

ANIMAL. Any quadruped living creature which is required to be licensed by the city.

ANIMAL CONTROL OFFICER. A person, firm, or agency hired or engaged by the city to investigate animal complaints, and who shall have authority to seize dogs, cats, or chickens and otherwise carry out the provisions of this chapter.

AT LARGE. Any animal or chicken shall be considered **AT LARGE** when it is off the premises of the owner and not under restraint, as defined herein.

CHICKEN. A domesticated bird that serves as a source of eggs or meat. **HEN** being a female chicken and **ROOSTER** being a male chicken.

COOP. A structure that provides shelter from the elements for the keeping or housing of chickens permitted by this chapter.

HARBORER. Any person, group, organization, who has custody of any dog, cat, chicken, or other animal that is kept or stays on or about the harborer's premises for five or more days.

KENNELS. Any place, building, tract of land, abode, or vehicle wherein or whereupon four or more domestic animals over two months of age are kept, congregated, or confined, excluding municipal pounds.

OWNER. Any person, groups, or organization owning, keeping, harboring, or maintaining a dog, cat, chicken, or other animal within the city for five or more days or allowing the animal to be at large within the city.

RESTRAINT. A dog or cat properly confined within a motor vehicle or properly confined within an enclosure, house, other building, by leash, by voice control, or by an e-collar shall be considered properly restrained; or a chicken, properly confined within an enclosure or other building, shall be considered properly restrained.

RUN. A fully enclosed and covered area attached to a coop where chickens can roam unsupervised.

TORTURE, CRUELTY. Every act, omission, or neglect which causes or permits unnecessary or unjustifiable pain, suffering, or death.

VOICE CONTROL. Dogs must be under verbal control at all times, regardless of distractions. Dogs must immediately obey verbal command and always remain in sight. Dogs under **VOICE CONTROL** are not allowed to charge, chase, or display aggression toward other people, dogs, or others. Dogs under **VOICE CONTROL** may not go on private property without permission of said owner.

(Ord. 151, passed 11-22-2016)

DOGS, CATS AND OTHER ANIMALS

§ 90.15 REGULATIONS.

(A) *Generally.* It is unlawful for any person, group, or organization, to keep, harbor, or maintain a dog or cat over the age of six months unless it has been vaccinated for rabies. The number of licensed dogs and/or cats shall not exceed a total of three, in any combination: three dogs, or three cats, two dogs and one cat, or two cats and one dog.

(B) *Registration; possession of other animals.* It is unlawful for any person to keep, harbor, or maintain any animal of a mammalian species other than a dog, cat, or an animal which is a member of the order of lagomorpha (rabbit) or rodentia (rodent). Animal hybrids that are the offspring of wild animals bred with domestic dogs or cats are considered wild animals. They shall be maintained in a kennel with a perimeter fence of eight feet surrounding the kennel. They must be vaccinated.

(C) *Hoofed and agricultural animals.* Hoofed and agricultural animals shall be forbidden within the city limits, except on agriculturally zoned land, and except for chickens as regulated in §§ 90.45 through 90.51. Horses and other shod animals are allowable only in parades. Bees are considered an agricultural animal.

(D) *Exotic animals.* Exotic animals are required to be licensed and maintained under the provisions set forth for exotic animals under the United States Department of Agriculture.

(E) *Service animals.* Any properly identified service dog that aids persons who are totally or partially blind or deaf, or who have physical or sensory disabilities will require proof the dog has been certified as a service dog and has received a current rabies vaccination. Other service animals will also require proof of certification as a service animal; vaccinations will be dependent on type of animal.

(Ord. 151, passed 11-22-2016) Penalty, see § 90.99

§ 90.16 TAGS.

All dogs and cats shall be harnessed or collared at all times. A metallic tag must be securely fastened to the animal's harness or collar at all times to indicate vaccination and/or owner information; or the animal must have an implanted identification chip. Tags shall be provided and attached by the owner, not by the city.

(Ord. 151, passed 11-22-2016) Penalty, see § 90.99

§ 90.17 VACCINATION.

(A) *Duty of owner.* Every animal over the age of six months which is susceptible to rabies which is kept, harbored, or maintained by its owner in the city, or which is permitted by its owner to ran at large in the city shall be vaccinated at least every three years against rabies. Vaccination shall be performed only by a veterinarian, or trained employee of a licensed veterinary clinic. The veterinarian or duly trained employee of a licensed veterinary clinic, who vaccinated an animal to be kept, harbored, or maintained in the city, shall prepare and deliver to the owner, sufficient information to identify the animal vaccinated, the date of vaccination, and the type of vaccination, and the type and lot of vaccine used. In addition, the veterinarian or his or her employee shall issue to the owner of each animal so vaccinated a distinctive metal tag which sets forth the year of the vaccination, the owner shall forthwith cause such animal to wear this tag on a collar or harness.

(B) *Harboring unvaccinated animals.* No person shall keep, harbor, or maintain an animal required to be vaccinated pursuant to this section which has not been vaccinated.

(Ord. 151, passed 11-22-2016) Penalty, see § 90.99

§ 90.18 RUNNING AT LARGE.

(A) No owner of any animal, whether kept, harbored, or maintained within or without the city, shall permit or suffer such animal to run or move at large at any time within the city.

(B) For the purpose of this section, every such animal at large shall be deemed at large with the permission and at the sufferance of its owner, and in the event of a violation of the provisions of this section, it shall be no defense that the offending animal escaped or is otherwise at large without the permission or sufferance of its owner.

(Ord. 151, passed 11-22-2016) Penalty, see § 90.99

§ 90.19 CITY DESIGNATED POUND.

The designated pound for the city is the city maintenance garage located at 420 South Avenue SE or a contracted facility as designated by the city.

(Ord. 151, passed 11-22-2016)

§ 90.20 APPREHENSION OF DOGS AND CATS.

An animal control officer or any police officer may apprehend and take possession of any animal in violation of this chapter. Any animal apprehended by an animal control officer may be conveyed to the city animal pound to be there confined until release or disposal of as hereinafter provided.
(Ord. 151, passed 11-22-2016)

§ 90.21 NOTICE OF APPREHENSION.

(A) *Tagged animals.* Within 48 hours after apprehending any tagged dog or cat the city shall make reasonable efforts to contact the owner via the information listed on the tags.

(B) *Animals with no tags.* The city shall post notices at City Hall and the city post office alerting the public to contact the city if they are missing an animal.
(Ord. 151, passed 11-22-2016)

§ 90.22 RECLAIMING ANIMALS FROM CITY DESIGNATED POUND.

(A) Within the time hereinafter limited, the owner of any animal apprehended may retrieve or recover the same from the city designated pound by paying the impound fee as listed in the city fee schedule, plus boarding fees as listed in the city's fee schedule per day, to cover the cost of sheltering the animal and fees to cover the cost of veterinary care for the animal, if any. Animals that do not have proof of rabies vaccination at the time of apprehension shall be required to be vaccinated before being released from the pound. The owner must make arrangements to the animal appropriately vaccinated by the local veterinarian only; and done so in the presence of an animal control officer prior to being released from the shelter. The City Clerk-Treasurer shall give an official city pre-numbered, written receipt, to each person paying such fees and penalties.

(B) No person shall break open the city pound or attempt to do so, or take or attempt to take from an animal control officer or any police officer or any other authorized representative of the city, any animal taken up or apprehended in compliance with this chapter or in any manner intentionally interfere with or hinder such persons in the discharge of his or her duties under this chapter.
(Ord. 151, passed 11-22-2016) Penalty, see § 90.99

§ 90.23 DISPOSING OF UNCLAIMED ANIMALS.

(A) *Generally.* If any animal apprehended by the city animal control officer is not claimed by its owner within five days after the date of apprehension, excluding holidays or other days the city pound is closed, the city shall cause the animal to be destroyed in a humane way or may allow the animal to be adopted.

(B) *Adoptions.* Any person wishing to adopt an animal from the city pound after the five-day waiting period must pay the fees for a complete veterinary examination and vaccinations as it applies to city residents.
(Ord. 151, passed 11-22-2016)

§ 90.24 BARKING DOGS.

It shall constitute a nuisance and be unlawful if any dog barks, whines, howls, bays, cries, or makes other noise excessively so as to cause annoyance, disturbance or discomfort to any individual provided that such noise continues for a period of more than three minutes or intermittent barking that continues for more than one hour and is plainly audible from a distance of 100 feet from the premises whereupon the dog is kept. It shall not be a violation of this section if the dog is barking, crying or making other noise due to harassment or injury to the dog or a trespass upon the premises whereupon the dog is located.

(Ord. 151, passed 11-22-2016) Penalty, see § 90.99

§ 90.25 DANGEROUS DOGS.

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

DANGEROUS DOG. Any dog that has:

- (a) Without provocation, inflicted substantial bodily harm on a human being on public or private property;
- (b) Killed a domestic animal without provocation while off the owner's property; or
- (c) Has been found to be potentially dangerous, and after the owner has been served notice that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of human beings or domestic animals.

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

POTENTIALLY DANGEROUS DOG. Any dog that:

- (a) When unprovoked, inflicts bites on a human or domestic animal on public or private property;
- (b) When unprovoked, chases or approaches a person or domestic animal upon the streets, sidewalks, or any public property in an apparent attitude of attack; or
- (c) Has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

PROPER ENCLOSURE. A securely confined area indoors or in an enclosure which has flooring that prevents digging, sides which prevent chewing or exit through them, secured with a covering which prevents escape and provides protection from the elements. This enclosure must be

locked. A porch, patio, house, garage, or other structure that cannot be locked or has walls, windows, or doors that are not substantial enough to prevent the escape of the dog shall not be considered a ***PROPER ENCLOSURE***.

(B) *Notice of potentially dangerous or dangerous dogs.* If after an investigation conducted by an animal control officer or police officer, it is determined that a dog is potentially dangerous or dangerous according to the criteria described in the definitions for potentially dangerous or dangerous dogs in division (A) above, the city will serve a notice of intent to declare the dog as potentially dangerous or dangerous on the owner of the dog in question. This notice shall inform the owner of this designation, the basis for the determination, the procedures for contesting the designation as described in division (C) below and the result of the failure to contest the designation as described in division (D) below.

(C) *Contesting declaration of dangerous or potentially dangerous dogs.*

(1) If the owner of a dog has received a notice of intent to declare a dog potentially dangerous or a dangerous dog, the owner may request a hearing be conducted to determine whether or not such a determination is justified. This request must be made in writing and delivered to the City Clerk-Treasurer within 14 calendar days of receipt of the notice of the intent to declare a dog as potentially dangerous or dangerous. The City Clerk-Treasurer will schedule the hearing with the City Council. Witnesses may be called and documents reviewed to make a determination on the issue. Owners shall have the right to present evidence on their behalf and to cross-examine any witnesses. A simple majority of the Council is necessary for a finding that the dog is either dangerous or potentially dangerous. The decision shall be in writing and shall indicate the reasons for the findings.

(2) If the Council finds there is sufficient basis to declare a dog as potentially dangerous or dangerous, that finding will serve as notice to the owner that the dog is in fact a potentially dangerous or dangerous dog and the owner must immediately comply with all applicable requirements of this chapter or immediately cause the animal to be humanely destroyed or removed from the city limits.

(3) If the owner of the dog disputes the finding of the City Council, the owner may appeal to the County District Court.

(D) *Failure to contest notice of intent to declare.* If the owner of a dog receives a notice from the city of the intent to declare the dog as potentially dangerous or dangerous, and the owner fails to contest that notice within 14 calendar days, the owner shall be considered as having forfeited the right to the hearing described in division (C) above and as having consented to the designation of the dog as potentially dangerous or dangerous by default. The city will then issue a declaration of dangerous or potentially dangerous to the owner and the owner must immediately comply with all applicable requirements of this chapter or cause the dog to be humanely destroyed or removed from the city.

(E) *Registration.* No person may own, possess, keep, harbor, maintain, or otherwise have a dangerous dog in this city unless the dog is registered as provided in this section. The city shall issue a certificate of registration to the owner of the dangerous dog if the owner presents sufficient evidence that:

(1) A proper enclosure exists for the dangerous dog and the premises shall be posted with clearly visible warning signs issued or approved by the city, that there is a dangerous dog on the

property;

(2) A surety bond has been issued by a surety company authorized to conduct business in this state in a form acceptable to the city or the City Attorney in the sum of at least \$300,000, payable to any person injured by the dangerous dog, or a policy of liability insurance has been issued by an insurance company authorized to conduct business in this state in the amount of at least \$300,000 insuring the owner for any personal injuries inflicted by the dangerous dog; and

(3) A microchip identification has been implanted in the dangerous dog.

(F) *Fees.* The city may charge the owner an annual fee as set out in the city's fee schedule to obtain a certificate of registration for a dangerous dog under this section. A fee as set out in the city's fee schedule may be charged for signs that are designated as the official symbols for posting.

(G) *Seizure of dangerous dogs and violations.* An animal control officer shall or any police officer may immediately seize any dangerous dog and/or issue a citation to the owner of any dangerous dog if:

(1) Fourteen calendar days after the owner has received notice that the dog is dangerous, the dog is not validly registered under division (E) above;

(2) The dog is not maintained in a proper enclosure;

(3) The dog is outside the proper enclosure and is not muzzled and restrained by a substantial chain or cable and under the physical restraint of a responsible person;

(4) Fourteen calendar days after the owner has received notice that the dog is dangerous, the owner does not secure the proper liability insurance or surety bond as required in division (E)(2) above;

(5) After the owner has been notified that the dog is dangerous or potentially dangerous, the dog bites or attacks a person or domestic animal; or

(6) The owner has not had the dog sterilized within 30 days; the dog shall be sterilized at the owner's expense.

(H) *Confiscation and destruction of dangerous dogs.* If the owner of a dangerous dog is convicted of a crime for which the dog was originally seized, the court may order the dog be confiscated and destroyed in a proper and humane manner, and that the owner pay the costs incurred in the confiscating, confining, and destroying of the dog.

(I) *Exemptions.* Dogs may not be declared dangerous if the threat, injury, or damage was sustained by a person:

(1) Who was at the time of injury committing or attempting to commit willful trespass or other tort or crime upon the premises occupied by the dog;

(2) Who was provoking, tormenting, teasing, abusing, or assaulting the dog or who can be shown to have repeatedly, in the past, provoked, tormented, teased, abused, or assaulted the dog; or

(3) Dogs used by law enforcement personnel within the scope of duty are exempt from this section.

(Ord. 151, passed 11-22-2016)

§ 90.26 ANIMAL BITES.

Whenever any animal shall have bitten a person or there is good reason to believe that such animal has bitten a person, such fact shall be reported within 24 hours to the County Health Department and thereafter the owner of such animal shall comply with the instructions of said Department concerning such animal.

(Ord. 151, passed 11-22-2016)

§ 90.27 KENNELS.

Kennels, as defined in § 90.01 of this chapter, are not allowed in R-1 or R-2 zoned districts.

(Ord. 151, passed 11-22-2016)

§ 90.28 ABUSE/NEGLECT OF ANIMALS.

(A) *Food.* Animals must be provided food with sufficient quantity to allow for normal growth and maintenance of body weight.

(B) *Water.* Animals must be provided with clean, fresh water in sufficient quantity to satisfy the animal's needs or supplied by free choice.

(C) *Transportation.* Animals must be contained within the passenger section of any vehicle or placed in crates or carriers of sufficient size to accommodate the animal. Animals carried in open vehicles, including trucks, boats, motorcycles, dirt bikes, trailers, and the like, must be restrained in a crate or carrier or restrained by a chain or cable to prevent the animal from leaving the vehicle or being tossed out.

(D) *Shelter.* Animals must be provided shelter at all times during inclement weather. The shelter must be large enough to comfortably accommodate the animal, be wind-proof and waterproof and contain enough bedding to provide the animal with insulation against the elements. Shade must be provided at all times during the months of May through October.

(E) *Sanitation.* It shall be unlawful for any person to allow food or water receptacles, kennels, yards, or the premises where the animal is kept to be or to remain in an unhealthy, unsanitary, or obnoxious condition or to permit the premises to be in such condition that obnoxious odors can be plainly detected on adjacent public or private property.

(F) *Enforcement.* An animal control officer or a police officer may issue a citation to the owner of any animal and/or remove any such animal from any premises if the welfare of that animal is threatened

due to a violation of this section. Written notice will be left upon the premises by the officer.

(G) *Reclaiming neglected animals.* Any animal removed from any premises pursuant to division (F) above, may be reclaimed by the owner within five working days from the time the animal was taken, provided that all conditions for which the animal was removed have been corrected. The owner shall also be liable for payment of all boarding fees to the city, amounting to a fee as listed in the city's fee schedule, per day. Any animal not reclaimed within the time allowed may be disposed of pursuant to § 90.23.

(H) *Abandonment.* No person shall abandon any animal beyond five working days after being notified as required in division (G) above. Any animal being abandoned may be disposed of according to § 90.23. The owner shall be liable for payment of all fees and expenses incurred by the city for the care and/or disposal of the animal in addition to a criminal fine. Boarding for abandonment is subject to a fee as listed in the city's fee schedule, per day.

(I) *Health care.* Every companion animal shall be provided with adequate health care, including parasite and pest control and vaccination for contagious disease between animals. Proof must be provided to the city upon request.

(J) *Cruelty and abuse.* No person shall overdrive, overload, torture, cruelly beat, neglect or unjustifiably injure, maim or kill any animal, or cruelly work any animal when it is unfit for labor, whether it belongs to that person or another person. No person shall willfully instigate or in any way further any act of cruelty to any animals, or any act tending to produce cruelty to animals.
(Ord. 151, passed 11-22-2016) Penalty, see § 90.99

§ 90.29 CONDITION OF PREMISES; EXCREMENT.

It is unlawful for any person who owns or has custody of a dog or cat to cause or permit such animal to defecate on any private property without the consent of the property owner or on any public property, unless such person immediately removes the excrement and places it in a proper receptacle. The provisions of this section shall not apply to seeing-eye dogs under the control of a blind person or dogs while being used in police activity.
(Ord. 151, passed 11-22-2016) Penalty, see § 90.99

§ 90.30 APPREHENSION.

Any animal control officer or any police officer is authorized and empowered to kill any animal which because of disease or viciousness constitutes an immediate threat to human life or safety or the life or safety of another domestic animal and cannot be safely taken up and impounded by other reasonable means. In such case, the owner shall be liable for any and/or all penalties provided by law.
(Ord. 151, passed 11-22-2016)

§ 90.45 PERMITTING.

(A) *Generally.* It is unlawful for any person, group or organization, to keep, harbor, or maintain chickens on any premises unless issued a permit to do so within R-1 zoned districts as hereinafter provided. No more than six hen chickens shall be allowed. No permit shall be issued for the keeping of any rooster. Permits shall be issued by the City Clerk-Treasurer. Applications for permits shall be made on forms provided by the Clerk-Treasurer.

(B) *Permits.*

(1) A chicken permit shall be valid for two years beginning January 1 of the year the permit is purchased. Application for a permit may be made 30 days prior to January 1, however, a permit must be obtained by December 31, or a late payment fee, as set out in the city's fee schedule, will be assessed. No reduction of permit fee shall be made because of expiration of a portion of the permit period time and no refund of any portion of the permit fee shall be made at any time for any purpose. Submission of a building plan or sketch shall be required with the permit.

(2) The two year chicken permit fee shall be as set out in the city's fee schedule. The permit fee shall be paid at the time of application. A permit renewal obtained after December 31 of the second year will be assessed a late payment fee as set out in the city's fee schedule.

(3) Chickens shall be banded. Bands will be issued by the city with the approved permit.

(4) All chicken coops and runs must meet the requirements of the Building and Zoning Codes; including electrical permits if applicable.

(5) All permits must pass a mandatory inspection of the coop and run prior to harboring any chickens.

(6) Permits may be revoked due to cruelty to the chickens, if the chickens become a nuisance, or any violation or noncompliance of this chapter.

(Ord. 151, passed 11-22-2016)

§ 90.46 CONFINEMENT.

(A) Chickens shall be confined at all times while in the city in a chicken coop or chicken run.

(B) It is unlawful to allow free range chickens, mobile coops, or to keep chickens inside a family dwelling.

(1) *Coops.* Coops shall be no larger than 24 square feet; which is four square feet per chicken.

(2) *Runs.* Runs shall be no larger than 60 square feet; which is ten square feet per chicken.

(Ord. 151, passed 11-22-2016) Penalty, see § 90.99

§ 90.47 RUNNING AT LARGE.

No owner of any chicken, whether kept, harbored, or maintained within or without the city, shall permit or suffer such chicken to run or move at large at any time within the city. For the purpose of this section, every such chicken at large shall be deemed at large with the permission and at the sufferance of its owner, and in the event of a violation of the provisions of this section, it shall be no defense that the offending chicken escaped or is otherwise at large without the permission or sufferance of its owner.

(Ord. 151, passed 11-22-2016) Penalty, see § 90.99

§ 90.48 NOTICE OF APPREHENSION.

Within 48 hours after apprehending any chicken, the city shall make reasonable efforts to contact the owner at the address/telephone number listed on permits.

(Ord. 151, passed 11-22-2016)

§ 90.49 DISPOSAL.

(A) The outdoor slaughtering of chickens on any premises within the city is prohibited.

(B) Dead chickens must be disposed of offsite within 24 hours after death.

(C) If any chicken apprehended by the city animal control officer is not claimed by its owner within 24 hours after the time of apprehension, the city shall cause the chicken to be destroyed in a humane way or may allow the chicken to be adopted.

(Ord. 151, passed 11-22-2016)

§ 90.50 ABUSE/NEGLECT OF CHICKENS.

(A) *Food.* Chickens must be provided food with sufficient quantity to allow for normal growth and maintenance of body weight.

(B) *Water.* Chickens must be provided with clean, fresh water in sufficient quantity to satisfy the chicken's needs or supplied by free choice.

(C) *Sanitation.* It shall be unlawful for any person to allow food or water receptacles, coops, or runs to be or to remain in an unhealthy, unsanitary, or obnoxious condition or to permit the premises to be in such condition that obnoxious odors can be plainly detected on adjacent public or private property.

(D) *Enforcement.* An animal control officer or a police officer may issue a citation to the owner of any chicken and/or remove any such chicken from any premises if the welfare of that chicken is

threatened due to a violation of this section. Written notice will be left upon the premises by the officer.

(E) *Reclaiming neglected chickens.* Any chicken removed from any premises pursuant to division (D) above, may be reclaimed by the owner within five days from the time the chicken was taken, provided that all conditions for which the chicken was removed have been corrected. The owner shall also be liable for payment of all boarding fees to the city, amounting to a fee as set out in the city's fee schedule, per day. Any chicken not reclaimed within the time allowed may be disposed of pursuant to § 90.49.

(F) *Abandonment.* No person shall abandon any chicken beyond five days. Any chicken being abandoned may be disposed of according to § 90.49. The owner shall be liable for payment of all fees and expenses incurred by the city for the care and/or disposal of the chicken in addition to a criminal fine. Boarding for abandonment is a fee as set out in the city's fee schedule, per day.

(G) *Health care.* Chickens shall be provided with adequate health care, including parasite and pest control and vaccination for contagious disease between chickens. Veterinarian certification must be provided to the city upon request.

(H) *Cruelty and abuse.* No person shall overdrive, overload, torture, cruelly beat, neglect or unjustifiably injure, maim, or kill any chicken, whether it belongs to that person or another person. No person shall willfully instigate or in any way further any act of cruelty to any chicken, or any act tending to produce cruelty to chickens.

(Ord. 151, passed 11-22-2016) Penalty, see § 90.99

§ 90.51 CONDITION OF PREMISES.

(A) It is unlawful for any person who owns or harbors chickens to allow the coop or run to be kept in an unhealthy, unsanitary, or noxious condition or to permit the premises to be in such condition that noxious odors are carried to adjacent public or private property.

(B) Chicken feed and manure must be kept in rodent and raccoon proof containers.

(Ord. 151, passed 11-22-2016) Penalty, see § 90.99

ENFORCEMENT

§ 90.65 WARNING OF VIOLATION.

The animal control officer, police officer or other official of the city, is authorized to issue a written notice of violation of any provisions(s) of this section, therein stating that a citation may be issued if the violation continues.

(Ord. 151, passed 11-22-2016)

§ 90.66 ISSUANCE OF CITATIONS.

The city may authorize any police officer or any other authorized representative of the law to issue a citation to any person, firm, or entity for any alleged violations of this chapter and any other ordinance or statute which provides the basis for prosecution of violations of this chapter. Nothing within this chapter shall be construed to limit the authority of police officers to enforce any provisions of this chapter or related statutes or ordinances. The animal control officer, police officer, or other official of the city, is authorized to issue a citation to any person, group, or organization for any alleged violation of this chapter as often as each day the violation persists.

(Ord. 151, passed 11-22-2016)

§ 90.99 PENALTY.

(A) Unless otherwise specified, violations of this chapter are declared to be misdemeanor offenses and shall be punished as provided by law.

(B) A first time violation of § 90.18 shall be subject to a fine as set out in the fee schedule. Subsequent violations of this section shall be deemed a petty misdemeanor.

(C) A first time violation of § 90.24 shall be deemed a petty misdemeanor.

(D) Violation of § 90.29 shall be a petty misdemeanor.

(E) A first time violation of § 90.47 shall be fined as set out in the city's fee schedule. Subsequent violations of this section shall be deemed a petty misdemeanor.

(F) Any coop and run permitted by the city may be inspected at any reasonable time by the city animal control officer or other agent of the city. Violation of § 90.51 shall be a petty misdemeanor.

(Ord. 151, passed 11-22-2016)

CHAPTER 91: STREETS AND SIDEWALKS

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CONSTRUCTION AND REPAIRING OF SIDEWALKS

§ 91.01 PERMIT REQUIRED.

No sidewalk or curb and gutter shall be constructed on any street, alley, avenue, or other public property in this city without first having obtained a permit from the City Council. Application for such permit shall be made on forms to be approved by the City Council, and shall sufficiently describe the contemplated improvements, the contemplated date of beginning of work, and the length and time of completion of the same, provided, that no permit shall be required for any such improvement ordered to be installed by the city.

(Ord. 14-3, passed 4-2-1969) Penalty, see § 91.99

§ 91.02 NEW SIDEWALK CONSTRUCTION.

(A) Whenever the City Council shall deem it necessary and expedient to construct or rebuild any sidewalk in the city, it may adopt a resolution to that effect, which resolution shall specify the place or places where such sidewalk shall be constructed or rebuilt, the kind and quality of the materials to be used therein, the width, the size and manner of construction thereof, and the time within which the same shall be completed. The Council shall hold a public hearing on the proposed improvement following two publications in the newspaper of a notice stating the time and place of the hearing, the general nature of the improvement, the estimated cost, and the area proposed to be assessed. The two publications shall be a week apart, and the hearing shall be at least three days after the last publication. The hearing may be adjourned from time to time, and a resolution ordering the improvement may be adopted at any time within six months after the date of the hearing by vote of four-fifths of all members of the Council.

(B) The cost of any improvement, or any part thereof, may be assessed upon property benefitted by the improvement, whether the property abuts on the improvement, or not, based upon the benefits received. The area assessed may be less than, but may not exceed the area proposed to be assessed as stated in the notice of hearing on the improvement. The city may pay such portion of the cost of the improvement as the Council may determine from general ad valorem tax levies or from other revenues or funds of the city available for the purpose.

(C) (1) Any time after a contract is let or the work ordered by day labor, the expense incurred in its making shall be calculated under the direction of the Council. The Council shall then determine by

resolution the amount of the total expense the city will pay, other than the amount, if any, which it will pay as a property owner, and the amount to be assessed.

(2) Thereupon, the Clerk-Treasurer, with the assistance of an engineer or other qualified person selected by the Council, shall calculate the proper amount to be specially assessed for the improvement against every assessable lot, piece or parcel of land, without regard to cash valuation based on the city's assessment policy. The proposed assessment roll shall be filed with the Clerk-Treasurer and be open to public inspection.

(3) All assessment procedures shall meet the requirements of M.S. Ch. 429, as it may be amended from time to time.
(Ord. 14-3, passed 4-2-1969)

§ 91.03 SPECIFICATIONS AND REGULATIONS.

(A) All sidewalks and curb and gutters constructed upon any street, alley, avenue, or other public property in this city shall be constructed according to the approved plans and specifications herein provided.

(B) Before any construction work is begun, the city, at its own expense, will furnish stakes for the established grade and for the line of the improvement.
(Ord. 14-3, passed 4-2-1969)

§ 91.04 SUBGRADE.

Subgrade for sidewalks and curb and gutter shall be firm, compact, and of uniform density. All soft or spongy material or vegetable matter must be removed and replaced with suitable material. The subgrade shall be finished to a uniform surface at the required depth below the established grade of the improvement.
(Ord. 14-3, passed 4-2-1969)

§ 91.05 FORMS.

All forms shall be made of rigid metal or straight and sound lumber not less than one and one-half-inch in thickness. Forms shall be free from warp and of sufficient strength to resist springing out of shape. All forms shall be thoroughly cleaned and oiled before the concrete is placed. The forms shall be securely staked to the established line and grade.
(Ord. 14-3, passed 4-2-1969)

§ 91.06 MATERIALS.

All concrete materials shall meet the most current version of the MnDOT standard specifications. Penalty, see § 10.99

§ 91.07 METHODS.

All concrete walks shall be constructed per the most current version of the MnDOT standard specifications.

§ 91.08 SIDEWALKS.

(A) *Width.* The walks in the business district shall be not less than ten feet in width and the walks in the residential districts shall be not less than five feet in width, except where the City Council shall, by resolution, order different widths. The width of new walks as far as possible shall conform to that of adjacent walks.

(B) *Thickness.*

(1) The sidewalk shall consist of two parts; referred to as the base and surfacing.

(2) The surfacing of the walk shall be not less than four inches thick where used by pedestrians only, and not less than six inches in thickness where crossed by vehicles.

(C) *The base.*

(1) The base shall consist of a layer of pit run sand or gravel not less than four inches in thickness and shall be thoroughly tamped to a uniform grade.

(2) The base of the walk shall not be less than four inches in thickness, except where the nature of the soil is such that the City Council or the City Engineer shall order a thicker base.

(D) *The surface.* The surfacing of the walk shall be concrete having not less than the thickness provided herein, laid to a slope of one-eighth-inch per foot downward towards the street, and shall be composed of materials and placed according to the methods described above.

(E) *Joints.*

(1) Contractions joints shall be made not more than five feet apart, perpendicular to the center line and to the surface of the sidewalk, and shall, where possible, align with joints of abutting or adjacent work. Expansion joints may be pre-formed or poured type.

(2) Expansion joints shall also be placed between the walk and all abutting curbs, buildings, and other masonry and concrete work.

(F) *The finishing.* The top surface of the walk shall be checked and variations of more than one-eighth inch shall be corrected; then the walk shall be finished with floats and trowls to a smooth true slightly granular surface with broom-like finish. The edges along sides and at transverse joints shall be carefully rounded and marked with the proper edging tools.

(Ord. 14-3, passed 4-2-1969)

§ 91.09 INSPECTION/SUPERVISION.

The City Council shall require inspection and supervision of all work done hereunder as deemed necessary. Any work not done according to specifications shall be corrected or removed at the expense of the permit holder. Any unsatisfactory work in the process of being constructed shall be stopped by the inspector as soon as discovered.

(Ord. 14-3, passed 4-2-1969)

SNOW AND ICE

§ 91.20 SNOW AND ICE A NUISANCE.

All snow and ice remaining upon public sidewalks is hereby declared to constitute a public nuisance, and shall be abated within 12 hours after such snow or ice has ceased to be deposited:

(A) In the case of snow and ice remaining on a sidewalk in front of a building, by the owner or occupant of such building; and

(B) In the case of snow and ice remaining on a sidewalk in front of vacant property, by the owner of such property.

(Ord. 14-1, passed 4-2-1969) Penalty, see § 10.99

§ 91.21 STREET SUPERINTENDENT TO REMOVE SNOW AND ICE.

The Street Superintendent shall cause to be removed from all 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 said removal and the lot or lots adjacent to which such accumulations were found and removed, and shall deliver such information to the Clerk-Treasurer as soon as the work of removal is completed.

(Ord. 14-1, passed 4-2-1969)

§ 91.22 COST OF REMOVAL TO BE ASSESSED.

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 Street Superintendent, extend the cost of said removal of snow or ice as a special tax against the lots or parcels of ground abutting on walks which were cleared, and such special tax shall at the time of certifying taxes to the County Auditor be certified for collection as other special taxes are certified and collected.

(Ord. 14-1, passed 4-2-1969)

§ 91.23 CIVIL SUIT FOR COST OF REMOVAL.

The Clerk-Treasurer shall, at the direction of the Council, bring suit in any court of competent jurisdiction to recover from the person owning land adjacent to which sidewalks were cleared, as provided in § 91.21, the cost of said clearing and the costs of suit in a civil action.
(Ord. 14-1, passed 4-2-1969)

RIGHT-OF-WAY CONSTRUCTION REGULATIONS**§ 91.35 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 subchapter to manage rights-of-way within its jurisdiction.

§ 91.36 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.

(A) Minn. Rules Ch. 7819, as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code of ordinances as if set out in full.

(B) The definitions included in M.S. § 237.162, as it may be amended from time to time, Minn. Rules pt. 7819.0100, subps. 1 through 23, and Minn. Rules pt. 7560.0100, subps. 1 through 12, are hereby adopted by reference and are incorporated into this subchapter as if set out in full.

§ 91.37 PERMIT REQUIREMENT.

(A) *Permit required.* Except as otherwise provided in this code of ordinances, 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 pt. 7819.1000, subp. 3, as it may be amended from time to time, and notwithstanding division (B) above, 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 provided as set by the City Council from time to time.

(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.
Penalty, see § 10.99

§ 91.38 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;

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(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, worker's 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 subchapter.

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

(5) If the person is a corporation, a copy of the certificate of incorporation issued by the Secretary of State pursuant to M.S. § 302A.155, as it may be amended from time to time; 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, estimated restoration costs, and other management costs, as set by the City Council from time to time;

(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 set by the City Council from time to time if applicable.

§ 91.39 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this subchapter, 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), as they may be amended from time to time, 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, as it may be amended from time to time, and Minn. Rules

Ch. 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the city.

§ 91.40 PERMIT FEES.

Permit fees shall be in an amount as set by the City Council from time to time.

(A) *Excavation permit fee.* The city shall establish an excavation permit fee, as set by the City Council from time to time, 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 set by the Council from time to time, and it 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 set by the City Council from time to time, 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 § 91.48, 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) *Compliance with state regulations.* All permit fees shall be established consistent with the provisions of Minn. Rules pt. 7819.1000, as it may be amended from time to time.
Penalty, see § 10.99

§ 91.41 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 pt. 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 pt. 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 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 set by the City Council from time to time, however, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

§ 91.42 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.*

(1) 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.

(2) 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.

Penalty, see § 10.99

§ 91.43 DENIAL OF PERMIT.

The city may deny a permit for failure to meet the requirements and conditions of this subchapter 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.

§ 91.44 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 pt. 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.

§ 91.45 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 pt. 7819.1300, as it may be amended from time to time.

(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 wellbeing 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 § 91.48.

§ 91.46 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 subchapter 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 of ordinances, 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 subchapter.

§ 91.47 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.

§ 91.48 REVOCATION OF PERMITS.

(A) *Substantial breach.*

(1) 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.

(2) A substantial breach by the permittee shall include, but shall not be limited, to the following:

- (a) The violation of any material provision of the right-of-way permit;
- (b) 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;
- (c) Any material misrepresentation of fact in the application for a right-of-way permit;
- (d) 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
- (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 91.45.

(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, that 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 attorney's fees incurred in connection with the revocation.

§ 91.49 MAPPING DATA; INFORMATION REQUIRED.

(A) *Information required.* Each permittee shall provide mapping information required by the city in accordance with Minn. Rules pts. 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 pt. 7560.0150, subp. 2, shall require 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.

(2) 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 Minnesota 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, as it may be amended from time to time; or

(b) City approval of performance under development agreements, or other subdivision or site plan approval under M.S. Ch. 462, as it may be amended from time to time.

(C) *Failure to provide information.* 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.

§ 91.50 LOCATION OF FACILITIES.

(A) *Compliance required.* Placement, location, and relocation of facilities must comply with applicable laws, and with Minn. Rules pts. 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.*

(1) 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.

(2) 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.*

(1) 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.

(2) 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 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.

§ 91.51 DAMAGE TO OTHER FACILITIES.

(A) 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.

(B) (1) 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.

(2) 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.

§ 91.52 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 pt. 7819.3200, as it may be amended from time to time.

§ 91.53 INDEMNIFICATION AND LIABILITY.

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

§ 91.54 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.

§ 91.55 APPEAL.

A right-of-way user that has been denied registration; has been denied a permit; has had a permit revoked; believes that the fees imposed are invalid; or disputes a determination of the city regarding § 91.49(B), 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.

§ 91.56 RESERVATION OF REGULATORY AND POLICE POWERS.

A permittees or registrants rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

CHAPTER 92: PUBLIC NUISANCES

Section

- 92.01 Public nuisance defined
- 92.02 Public nuisances affecting health
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§ 92.01 PUBLIC NUISANCE DEFINED.

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

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.

(1) Maintains or allows a condition which unreasonably annoys, injures, or endangers the safety, health, comfort, or rest of any considerable number of members of the public;

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

(3) Is guilty of any other act or omission declared by law or this chapter to be a public nuisance and for which no sentence is specifically provided.

(Ord. 156, passed 5-25-2017)

§ 92.02 PUBLIC NUISANCES AFFECTING HEALTH.

The following are hereby declared to be nuisances affecting health:

Eyota - General Regulations

(A) Carcasses of animals not buried or destroyed within 24 hours after death;

(B) All ponds or pools of stagnant water;

(C) The exposed accumulation of decayed or unwholesome food or vegetable matter;

(D) Accumulations of manure, refuse, or other debris or garbage;

(E) Garbage cans or bags 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;

(F) The pollution of any public well, stream, or other body of water through the discharge of sewage, industrial waste or other pollutants;

(G) Dense smoke, noxious fumes, gas and soot, cinders or other airborne pollutants, so as to bring discomfort to persons coming in contact with such pollutants;

(H) Grass (turf type) and/or weeds which have grown upon any property to a height of six or more inches. Overgrown, uncontrolled vegetation, shrubs, trees, and vines that are conducive to the accumulation of refuse, debris, or the harborage of vermin.

(a) All property owners in the city are responsible for controlling the growth and spread of weeds, whether on public or private property. Owners of private property abutting any public street or alley shall cut the grass and weeds from the edge of his or her property line to the edge of the street or alley, or for unimproved streets and alleys to the center of the roadway.

(b) Ornamental grasses, prairie grasses, native, non-native plants, and/or natural type plantings shall not exceed 25% of a residential, commercial, or industrial zoned parcel.

(I) Conditions which, in the opinion of the enforcement officer and as consistent with public health practices, are conducive to the harborage or breeding of vermin.
(Ord. 156, passed 5-25-2017) Penalty, see § 92.99

§ 92.03 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 public sidewalks 24 hours after the snow or other precipitation causing the condition has ceased to fall;

(B) Any person participating in any party or other gathering that causes the unreasonable disturbing of the peace, quiet, or repose of another person;

(C) Obstructions and excavations effecting the ordinary public use of streets, alleys, sidewalks, or public grounds except under such conditions as are permitted by code or other applicable law;

(D) All trees, hedges, billboards, or other obstructions which prevent people from having a clear view of all traffic approaching an intersection;

(E) Satellite dishes, radio aerials, or television antennas erected or maintained in a dangerous manner;

(F) All hanging signs, awnings, and other similar structures overhanging streets and sidewalks, or so situated so as to endanger public safety, or not constructed and maintained in a safe manner;

(G) The allowing of rain water, ice, or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk thus causing an unsafe condition;

(H) All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;

(I) Waste water cast upon or permitted to flow upon streets or other public properties;

(J) Accumulations in the open of discarded or disused machinery, tires, household appliances, or other material, in a manner conducive to the harboring of rats, mice, snakes, or vermin, or the rank growth of vegetation amount the items so accumulated, or in a manner creating fire, health, or safety hazards;

(K) Any well, hole, or similar excavation which is left uncovered or in such other condition as to constitute a hazard to any child or other person coming on the premises where it is located;

(L) Obstruction to the free flow of water in a natural waterway or a public street drain, gutter, or ditch with trash or other materials;

(M) The placing or throwing on any street, 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 such substance;

(N) The placing, throwing, mechanically blown, swept or fall on any street, sidewalk, gutter, curb, or other public property of any debris including, but not limited to, weeds, grass, vegetation, leaves, or tree parts;

(O) The depositing of garbage or refuse on a public right-of-way or on adjacent private property; and

(P) All other conditions or things that is likely to cause injury to the person or property of another. (Ord. 156, passed 5-25-2017) Penalty, see § 92.99

§ 92.04 NOISE VIOLATIONS.

(A) *Prohibited noises.* The following are declared to be nuisances affecting public health, safety, peace, or welfare:

Eyota - General Regulations

(1) Any distinctly and loudly audible noise or vibration that unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace, safety, or welfare of any person, or precludes his or her enjoyment of property, or affects his or her property's value (this general prohibition is not limited by any specific restrictions provided in this chapter);

(2) All obnoxious noises, motor vehicle or otherwise, in violation of Minnesota Administrative Rules Chapter 7030, as they may be amended from time to time, are hereby incorporated into this chapter by reference;

(3) The use of any vehicle so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling, or other noise;

(4) The discharging of the exhaust or permitting the discharge of the exhaust of any statutory internal combustion engine, motor boat, motor vehicle, motorcycle, all-terrain vehicle (ATV), 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;

(5) Any loud or excessive noise in the loading, unloading, or unpacking of any vehicle;

(6) The use or operation, or permitting the use or operation, of any radio receiving set, television set, musical instrument, music device, electronic device, paging system, machine, or other device for producing or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet, and comfort of any person nearby; and

(7) Advertising noises for the purpose of advertising or announcing vocation or presence, or in connection with the buying or selling of any goods, wares, merchandise, services, or with the carrying on of any trade, occupation, vocation, or profit-making activity, an immoderate or excessive use the voice, or of any bell, gong, horn, instrument, article, or device.

(B) *Hourly restriction of certain operations.*

(1) *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 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.

(2) *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.

(3) *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 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.

(4) *Radios, music devices, electronic devices, paging systems, and the like.* The operation of any device referred to in division (A)(6) above between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at the property line of the structure or building in which it is located, 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. Exception: permitted outdoor dances.

(C) *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, alteration, or project that may be considered a potential noise source to submit a noise impact statement on a form prescribed by the Council. The Council shall evaluate each such statement and take its evaluation into account in approving or disapproving the license or permit applied for or the zoning changes requested. (Ord. 156, passed 5-25-2017) Penalty, see § 92.99

§ 92.05 ABANDONED OR DISABLED OR UNLICENSED VEHICLES.

(A) *Legislative intent.* The unsheltered storage of old, unused, stripped, or junked automobiles not in good and safe operating condition, and of any other vehicles, machinery, implements, equipment, junk, or personal property of any kind which is no longer safely usable for the purposes for which it was manufactured is hereby declared to be a nuisance and dangerous to the public health and safety. The unsheltered storage of these property items throughout the city tend to impede traffic in the streets, interfere with the enjoyment of and reduce the value of private property, invite plundering, create fire hazards and other safety and health hazards to children as well as adults, interfere with the comfort and well-being of the public, and create, extend, and aggravate urban blight. As such, the City Council determines that, in order to protect the public health, safety, and welfare, such conditions must be regulated, abated, or prohibited.

(B) *Nuisance on private property.* The unsheltered storage of old, unused, stripped, or junked automobiles not in good and safe operating condition, and of any other vehicles, machinery, implements, equipment, junk, or personal property of any kind which is no longer safely usable for the purposes for which it was manufactured is hereby declared to be a nuisance.

(1) Nothing in this section shall restrict the activities of duly established junk or salvage yards. This section does not apply to vehicles or property in an enclosed building, on the premises of a business enterprise operated in a lawful manner when necessary to the operation of such business enterprise, or in a storage or depository maintained in a lawful location and manner by the city.

(2) For purposes of this section, **JUNK** shall mean worn out or discarded material of little or no value including, but not limited to, household appliances or parts thereof, tools, discarded building materials, tin cans, broken glass, broken furniture, mattresses, box springs, boxes, crates, cardboard, tires, or any other unsightly debris the accumulation of which has an adverse effect upon neighborhood or city property value, health, safety, or general welfare.

(C) *Abandoned motor vehicles.* No person shall place, park, permit to remain, store, or leave upon an open space area of any premises located anywhere in the city any motor vehicle unless it conforms with all of the following requirements:

Eyota - General Regulations

- (1) The vehicle must have affixed to it a valid current motor vehicle license;
 - (2) The vehicle must not lack essential parts rendering it inoperable;
 - (3) The vehicle must not be in a rusted, wrecked, partially dismantled, or junked condition;
- and
- (4) The vehicle must be parked on a surface consisting of crushed rock, cement, or blacktop.

(a) If a motor vehicle fails to meet any of the above requirements, the owner or possessor of the motor vehicle shall be responsible to remove the motor vehicle to a duly licensed junk yard or other authorized place of deposit or storage within ten working days of a demand by the city.

(b) For purposes of this section, **MOTOR VEHICLE** means every vehicle which is self-propelled.

(D) *City authorized to impound.* If notice is given by the city pursuant to division (C)(4)(a) above, and the vehicle has not been removed in the required ten-day period, then the city may proceed to impound such vehicle under this chapter, and to dispose of it according to the procedures in divisions (E), (F), (G), and (H) below.

(E) *Impound facility.* The City Council shall designate a storage facility as the impound facility. Such place shall be reasonably safe from theft and vandalism. The city may contract with any individual or corporation for the use of such a facility as the designated facility. All costs of removal to and storage at the designated facility shall be the responsibility of the registered owner of the motor vehicle impounded.

(F) *Notice of taking.*

(1) When a motor vehicle is impounded under this section, as an abandoned, junk, or unauthorized vehicle, the city shall give notice of the taking within five days. The notice shall:

(a) Set forth the date and place of the taking, the year, make, model and serial number of the vehicle, if easily obtained, and the place where the vehicle is being held;

(b) Inform the owner and any lien holders of an abandoned, junk, or unauthorized vehicle of their right to reclaim the vehicle and contents. The notice shall also state that failure to exercise that right shall be deemed as a waiver by them of all rights, title, and interest in the vehicle and consent to the sale of the vehicle at a public auction pursuant to this section.

(2) The notice for abandoned, junk, or unauthorized vehicles shall be sent by mail to the registered owner, if any, and to all readily identifiable lien holders of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lien holders, the notice shall be published once in the official newspaper. Published notices may be grouped together for convenience and economy.

(G) *Right to reclaim.*

(1) The owner or any lien holder of an abandoned, junk, or unauthorized vehicle shall have the right to reclaim the vehicle upon payment of towing and storage charges resulting from taking the vehicle into custody within 20 days after the day of the notice.

(2) Nothing in this section shall be construed to impair any lien of a garage keeper under the laws of this state, or the right of a lien holder to foreclose. For the purposes of this section, **GARAGE KEEPER** is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair, or maintenance of motor vehicles.

(H) *Disposal of unclaimed motor vehicles by public sale.*

(1) An abandoned, junk, or unauthorized motor vehicle and contents taken into custody and not reclaimed under division (F) above, shall be sold to the highest bidder at public auction or sale, following the expiration of the reclamation period for the vehicle. The purchaser shall be given a receipt in a form prescribed by the Register of Motor Vehicles, which shall be sufficient title to dispose of the vehicle. The receipt shall also entitle the purchase to register the vehicle and received a certificate of title, free and clear of all liens and claims of ownership.

(2) From the proceeds of the sale of an abandoned, junk, or unauthorized motor vehicle, the city shall reimburse itself for the cost of towing, preserving, and storing the vehicle, and all administrative notice and publication costs incurred pursuant to this section. Any remainder from the sale shall be held for the owner of the vehicle or entitled lien holder for 90 days and then shall be deposited in the General Fund of the city.

(3) Disposal of vehicles not sold: when no bid has been received for an abandoned, junk or unauthorized vehicle, the city may dispose of it in compliance with state law.

(4) Contract on disposal.

(a) The city may contract with a qualified person for the collection, storage, incineration, volume reduction, transportation, or other services necessary to prepare abandoned, junk, or unauthorized vehicles and other scrap metal for recycling or other methods of disposal.

(b) Where the city enters into a contract with a person duly licensed by the Minnesota Pollution Control Agency, the Agency shall review the contract to determine whether it conforms to the Agency's plan for solid waste disposal. A contract that does so conform may be approved by the Agency. Where the city enters into a contract with a person duly authorized by the Minnesota Pollution Control Agency, the Agency shall review the contract to determine whether it conforms to the Agency's plan for solid waste disposal for the purpose of obtaining reimbursement.

(c) If the city utilizes its own equipment and personnel for disposal of the abandoned, junk, or unauthorized vehicles, it shall be entitled to reimbursement for the cost thereof along with its other costs as herein provided. However, the city may dispose of no more than five vehicles using its own resources without advertising for or receiving bids for such disposal in any 120-day period.

Eyota - General Regulations

(5) Persons who may not purchase - exception.

(a) No employee of the city, who is a member of the administrative staff, department head, a member of the Council, or an advisor serving the city in a professional capacity, may be a purchaser of a vehicle under this section. Other city employees may be purchasers, if they are not directly involved in the sale, if they are the highest bidder, and if at least one week's published or posted notice of sale has been given.

(b) It is unlawful for any person to be a purchaser of a vehicle under this section if such purchase is prohibited by the terms of this section.

(Ord. 156, passed 5-25-2017) Penalty, see § 92.99

§ 92.06 ABATEMENT.

(A) In all cases of nuisances, the City Clerk, or his or her designee, shall cause a written notice to be served upon the person or entity that maintains, operates, or permits a nuisance.

(B) The notice shall be substantially as follows:

<p>NOTICE TO ABATE NUISANCE</p> <p>City of Eyota to _____.</p> <p>You are hereby notified that the nuisance maintained, operated or permitted to exist by you located at _____ and consisting of _____ must be abated by the (removal) (destruction) (discontinuance) of the same and that if you do not comply with this notice, you are directed to appear before the undersigned at the Eyota City Hall on _____, 20____, at _____ o'clock a.m./p.m. to show cause why the same should not be abated. If you fail to appear, the undersigned will take the necessary steps to abate such nuisance. The costs of abatement incurred by the city shall be assessed against you, and a lien may be imposed on the property to secure such payment, in addition to any other remedies available to the city.</p> <p>Dated this _____ day of _____, 20____.</p> <p>_____</p> <p>Title of Signer</p> <p>A copy of the foregoing notice was served on _____ day of _____, 20____.</p> <p>By _____(describe manner or service).</p> <p>_____</p> <p>Name of Server</p>

(C) If such person or entity cannot be found, then a copy of the notice may be served by delivery to any member of the family or upon an office or agent of the entity over 18 years of age and found on the premises described in the notice or at the residence of the person named therein, and if service cannot be had in such manner, then by posting a copy in some conspicuous place on the premises or entity at the last known address.

(D) At the same time and place specified in the notice, the City Administrator, or his or her

designee, shall hear the matter. The person or entity so complained of shall have the right to appear in person or by counsel. At the conclusion of the hearing, the City Clerk, or his or her designee, may vacate the notice or may declare such condition to be a nuisance and order it abated summarily.

(E) In all cases where the City Clerk, or his or her designee, shall have determined, after hearing or notice of hearing and default, that any nuisance shall be abated, he or she shall issue an order requiring the abatement of the nuisance within a time named in the order, and shall serve the order of abatement upon the person or entity who maintains, operates, or permits the nuisance. In the event the nuisance is not abated by the party within the time provided in the order, the City Clerk, or his or her designee, shall cause the nuisance to be abated.

(F) Any person aggrieved by an order of abatement may appeal the order to the City Council. An appeal shall be taken within ten days from the date of service of the order of abatement by filing with the City Clerk-Treasurer a notice of appeal which shall specify the grounds of appeal. The matter shall be placed on the City Council's next regularly scheduled meeting for a public hearing. An appeal stays all proceedings in furtherance of the action appealed from.

(G) The City Council may reverse or affirm, in whole or in part, or may modify, the order of abatement and may issue an order, requirement, decision, or determination as is consistent with city ordinances.

(H) Any person or entity who fails to remove and abate any nuisance after proper notice, the opportunity to be heard, and final order shall be liable to the city for all expense incurred in the removal and abatement of the nuisance. The city shall have the right to recover all such costs and a lien may be imposed upon the property to secure payment of such costs. The procedure for establishing such lien shall be in accordance with M.S. § 429.101, as it may be amended from time to time.

(I) Emergency procedure; summary enforcement: in cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth herein 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 officer charged with enforcement 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 enforcement officer shall notify in writing the occupant or owner 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 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 or 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 divisions (C) through (H) above, and may order that such 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.

(J) Immediate abatement: nothing in this chapter 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.

(Ord. 156, passed 5-25-2017)

§ 92.07 RECOVERY OF COSTS.

(A) *Personal liability.* The owner of premises on which the city has abated a nuisance shall be personally liable to the city for the cost of the abatement, including administrative costs. When the abatement is complete and the cost is determined, the City Clerk-Treasurer or other official designated by the Council shall prepare a bill and mail it to the owner. The amount shall be due immediately and payable at the office of the City Clerk-Treasurer.

(B) *Assessment.* If the public nuisance is a health or safety hazard on private property, the accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect-infested trees, any unpaid charges for the cost of eliminating the nuisance may be collected by the city as a special assessment.

(Ord. 156, passed 5-25-2017)

§ 92.99 PENALTY.

Any person convicted of violating a provision of this chapter is guilty of a misdemeanor and shall be punished by a fine or imprisonment or both, not to exceed the maximum amount or duration authorized by state, but in either case the costs of prosecution may be added. Each day any violation of any provision of this chapter shall continue shall constitute a separate offense.

(Ord. 156, passed 5-25-2017)

CHAPTER 93: FIRE PREVENTION; FIREWORKS

Section

- 93.01 Outdoor fire boilers
- 93.02 Campfires
- 93.03 Inspection and removal of fire hazards
- 93.04 Regulating fireworks

- 93.99 Penalty

§ 93.01 OUTDOOR FIRE BOILERS.

(A) *Purpose.* This section is intended to promote the public health, safety, and welfare and to safeguard the health, comfort, living conditions, safety, and welfare of the citizens of the city by regulating the air pollution and fire hazards of outdoor fire boilers.

(B) *Applicability.* This section applies to all outdoor fire boilers within the city.

(1) This section does not apply to grilling or cooking food using charcoal, wood, propane, or natural gas in cooking or grilling appliances.

(2) This section does not apply to burning for the purpose of generating heat in a stove, furnace, fireplace, or other heating device within a building used for human or animal habitation.

(3) This section does not apply to the use of propane, acetylene, natural gas, gasoline, or kerosene in a device intended for heating, construction, or maintenance activities.

(4) This section does not apply to campfires; a small outdoor fire intended for recreation or cooking, but not including a fire intended for disposal of waste wood or refuse.

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

Eyota - General Regulations

CONSTRUCTION AND DEMOLITION DEBRIS. Building waste materials, including, but not limited to, waste shingles, insulation, tar paper, wallboard, treated wood, painted wood, wiring, plastics, packaging, and rubble of other similar smoke producing materials that results from construction, remodeling, repair, and demolition operations on a house, commercial, or industrial building, or other structure.

OUTDOOR FIRED BOILER. A fired boiler, stove, or furnace that is not located within a building intended for habitation by humans or domestic animals.

REFUSE. Any waste material except trees, logs, brush, stumps, leaves, grass clippings, and other vegetative matter.

(D) *Outdoor fired boilers.* An outdoor wood fired boiler may be installed and used in the city only in accordance with all of the following provisions.

(1) The outdoor fired boiler shall be installed and used only in an area zoned for R-1 Low-Density Residential.

(2) The outdoor fired boiler shall not be used to burn refuse.

(3) The outdoor fired boiler shall burn clean wood; natural wood which has not been painted, varnished, or coated with a similar material, has not been pressure-treated with preservatives, and does not contain resins or glues as in plywood or other composite wood products.

(4) The outdoor fired boiler shall be located at least 500 feet from the nearest building which is not on the same property as the outdoor fired boiler.

(5) The outdoor fired boiler shall have a chimney that extends at least 15 feet above the ground surface. If there are any residences within 500 feet, the chimney shall also extend at least as high above the ground surface as the height of the roofs of all such residences.

(E) *Outdoor fire boiler.* The following materials may not be burned in an outdoor fire boiler:

(1) Rubbish or garbage, including, but not limited to, food wastes, food wraps, packaging, animal carcasses, paint or painted materials, furniture, composite shingles, construction, or demolition debris or other household or business wastes;

(2) Asphalt and products containing asphalt;

(3) Treated or painted wood, including, but not limited to, plywood, composite wood products, or other wood products that are painted, varnished, or treated with preservatives;

(4) Any plastic material, including, but not limited to, nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, plastic films, and plastic containers; or

(5) Rubber including tires and synthetic rubber-like products.

(F) *Liability.* A person utilizing or maintaining an outdoor fire boiler shall be responsible for all fire suppression costs and any other liability resulting from damage caused by the fire.

Penalty, see § 93.99

§ 93.02 CAMPFIRES.

(A) *Purpose.* This section is intended to promote the public health, safety and welfare and to safeguard the health, comfort, living conditions, safety, and welfare of the citizens of the city by regulating the air pollution and fire hazards of recreational fires, “campfires” as delegated to cities by the state found in M.S. Ch. 88, as it may be amended from time to time.

(B) *Applicability.* This section applies to all campfires within the city.

(1) This section does not apply to outdoor fire boilers.

(2) This section does not apply to burning for the purpose of generating heat in a stove, furnace, fireplace, or other heating device within a building used for human or animal habitation.

(3) This section does not apply to the use of propane, acetylene, natural gas, gasoline, or kerosene in a device intended for heating, construction, or maintenance activities.

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

BUILDING MATERIAL. Lumber, wood shakes, and other wood products, but shall not include composite shingles, tar paper, insulation, treated wood, painted wood, plastics, packaging, wall board, wiring, or other similar smoke producing materials.

CAMPFIRE. A fire set for cooking, warming, or ceremonial purposes, which is not more than three feet in diameter by three feet high, and has had the ground five feet from the base of the fire cleared of all combustible material.

COOKING FIRE. A fire contained in a charcoal grill, camp stove, or other device designed for the purpose of cooking.

DEMOLITION DEBRIS. Burnable building material generated from demolition of buildings or structures.

GARBAGE. Discarded material resulting from the handling, processing, storage, preparation, serving, and consumption of food.

HAZARDOUS WASTE. No person shall conduct, cause, or permit open burning of hazardous waste as defined in M.S. § 116.06, subd. 11, as it may be amended from time to time, and applicable commissioners rules.

HEATING DEVICES. Furnaces or other devices which burn fuel oil, coal, natural gas, propane, corn, pellets of any kind, and wood or used petroleum products, and which conform to all local, state, and federal environmental and safety regulations, intended to provide heat.

OPEN BURNING. Open burning is the burning of any matter which is not contained within a fully enclosed firebox or container, and whereby the resulting combustion products are emitted directly to the atmosphere without passing through a stack, duct, or chimney.

OUTDOOR FIRE BOILERS. A fired boiler, stove, or furnace that is not located within a building intended for habitation by humans or domestic animals.

PROHIBITED MATERIALS. Rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke including, but not limited to, tires, railroad ties, chemically treated lumber, composite shingles, tar paper, insulation, composition board, sheetrock, wiring, paint, paint filters, and oil.

RUBBISH. Non-putrescible solid waste, such as paper, cardboard, yard clippings, and other natural matter not included in garbage.

SOLID WASTE. Garbage, refuse, sludge from a water supply treatment plant or air containment treatment facility, and other discarded waste materials and sludge's, solid, semi-solid, liquid or contained gaseous form, resulting from industrial, commercial, mining, and agricultural operations, and from community activities.

(D) *Campfires.*

(1) Open burning is allowed for the following exceptions only:

(a) A campfire is a fire set for cooking, warming, or ceremonial purposes, which is not more than three feet in diameter by three feet high, and the ground surrounding the fire has been cleared of all combustible material for five feet from the base of the fire; or

(b) Fires contained in charcoal grills, camp stoves, or other devices designed for the purpose of cooking or heating.

(2) Exemption to conduct fires under this section does not excuse a person from the consequences, damages, or injuries which may result there from, nor does it exempt any person from regulations promulgated by the State Pollution Control Agency, State Department of Natural Resources, or any other governmental unit exercising jurisdiction in matters of pollution or fire hazard regulations.

(E) *Restrictions on burning.* No person shall cause, allow, or permit open burning of any prohibited materials, hazardous wastes, solid wastes, demolition debris, motor vehicles, building materials, garbage, or rubbish within the city limits of the city.

(F) *Liability.* A person utilizing or maintaining a campfire shall be responsible for all fire

suppression costs and any other liability resulting from damage caused by the fire.
(Ord. 116, passed 6-28-2007) Penalty, see § 93.99

§ 93.03 INSPECTION AND REMOVAL OF FIRE HAZARDS.

(A) *Inspection of premises authorized.* The Chief of the Fire Department, or other officer or member of the Fire Department designated by the Fire Chief shall make inspection of property in this city at intervals of not more than six months apart and locate and report to the Council places where fire hazards exist, and report and abate any conditions existing contrary to this section or the laws of the state.

(B) *Conditions prohibited.* No owner, agent, or occupant of any building in the city shall allow any ashes, waste-paper, hay, straw, rags, or other waste material of a combustible nature to accumulate in the basement or on any floor of any building, or in any hallway, court, yard, or alley adjoining any building owned, controlled, or occupied by such person, except that hay and straw may be stored in buildings where livestock is housed. No such person shall permit to exist upon any premises as aforesaid any electric wiring or defective heating device or part thereof, including flues and chimneys of that character, or use or permit to exist on any premises, buildings, or structures, or any portion thereof, which by reason of want of repairs, age, dilapidated condition or damage by fire, or any other cause, are especially liable to fire, or which are so situated or are in such condition as to endanger its occupants or persons therein, or the general public.

(C) *Access to premises.* For the purpose of making inspections, the Fire Chief or other properly designated officer shall have authority to enter any dwelling or other building and upon any premises in the city between the hours of 9:00 a.m. and 5:00 p.m. Such officer as aforesaid shall notify in writing persons violating the provisions of division (B) above to correct any such condition found offensive to this section. Any such order concerning combustible materials shall be complied with within 40 hours after service. Any such order concerning defective equipment or unsound construction shall be complied with within a reasonable time, and such notice shall specify such reasonable time. Upon failure to comply with any such notice, the same shall be reported to the City Council.
(Ord. 9-2, passed 4-2-1969) Penalty, see § 93.99

§ 93.04 REGULATING FIREWORKS.

(A) *Definition.* The definition set forth in M.S. § 624.20, as it may be amended from time to time, and all subsections thereof are hereby adopted.

PARENTAL LIABILITY. A parent, foster parent, or legal guardian of a minor is liable for damages caused by the minor's use of the fireworks.

(B) *Sale/use/possession.*

(1) Except as provided in M.S. § 624.21, as it may be amended from time to time, no person shall possess, use, ignite, or give away within the city any fireworks except for specific fireworks displays or regulated sale for which the City Fire Chief or his or her designee has issued a permit.

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(2) No person may use fireworks or a device listed in M.S. § 624.20(1)(a)(b) and (c), as it may be amended from time to time, while attending a fireworks display for which a permit has been issued pursuant to this section.

(3) Sales will be limited to devices as provided in M.S. § 624.21, as it may be amended from time to time, and location of sales:

(a) Established businesses during normal designated business hours; and

(b) Out of a tent with written permission from the property owner limited to properties zoned as commercial, manufacturing, or agricultural. No tents will be permitted on any public property: city, county, state, and the like. Tent sales will be limited to 14 days before and five days after July 4; from sun up to sun down. All sales shall comply with National Fire Protection Association Standard 1124.

(C) *Display permits.*

(1) *Issuance.* The Fire Chief or his or her designee is authorized to issue permits for fireworks displays. Permits may only be issued to the persons and entities enumerated in M.S. §§ 624.22 and 624.221, as they may be amended from time to time

(2) *Voiding permit.* After issuance of a permit, the City Fire Chief may void said permit at any time if any aspect of the firework display the permit is issued for is in danger of causing harm to any individuals or property.

(3) *Qualifications.* A permit shall only be issued to a person who is at least 21 years of age and who is certified by the Minnesota State Fire Marshal pursuant to M.S. § 624.22(2), as it may be amended from time to time, to display fireworks. The permit holder must be present during setup, display and take-down. Permits will only be issued after all appropriate documentation has been approved and maintained on file with the City Fire Chief.

(4) *Insurance requirement.* A permit shall not be issued unless the applicant provides written proof of liability insurance coverage in an amount not less than \$1,000,000 from an insurer licensed in Minnesota. The city shall be named insured on such coverage.

(5) *Crowd control.* The permit holder shall be responsible for crowd control for the fireworks display such permit is issued for. Appropriate law enforcement must be notified by the permit holder of the event. All additional costs of having EMS and law enforcement on scene for the event are the responsibility of the permit holder.

(6) *National Fire Protection Association Code provisions.* The permit holder will be responsible for complying with all applicable National Fire Protection Association Code provisions, including, but not limited to, NFPA 1123.

(7) *Fire Department and ambulance service on scene.*

(a) The permit holder must have the Fire Department and ambulance service on scene during the setup, ignition, and take down of the permitted display.

(b) Permit holder is responsible for all fees incurred for fire and ambulance services being on scene.

(D) *Sale permits.*

(1) *Issuance.* The city or its designee is authorized to issue permits for the sale of fireworks. Permits may only be issued to the persons and entities enumerated in M.S. §§ 624.22 and 624.221, as they may be amended from time to time.

(2) *Voiding permit.* After issuance of a permit, the City Fire Chief may void said permit at anytime if any aspect of the firework display the permit is issued for is in danger of causing harm to any individuals or property.

(3) *Qualifications.* A permit shall only be issued to a person who is at least 18 years of age.

(4) *Insurance requirement.* A permit shall not be issued unless the applicant provides written proof of liability insurance coverage in an amount not less than \$1,000,000 from an insurer licensed in the state.

(5) *National Fire Protection Association Code provisions.* The permit holder will be responsible for complying with all applicable National Fire Protection Association Code provisions, including but not limited to, NFPA 1123.

(6) *Age of purchaser.* Consumer fireworks shall not be sold to persons younger than 18 years of age. The age of a purchaser must be verified by photographic identification.

(7) *Ownership or copy of lease.* If the applicant does not own the business premises, a true and correct copy of the current, executed lease, as well as, the written authorization of the property owner for the applicant's use of the property for the sale of permitted consumer fireworks is required.

§ 93.99 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) Any person convicted or violating a provision of § 93.01 is guilty of a misdemeanor and shall be punished by a fine as set out by the city, per occurrence, plus the costs of prosecution in any case. (Ord. 117, passed 7-12-2007; Ord. 116, passed 6-28-2007)

CHAPTER 94: PARKS

Section

- 94.01 Definition
- 94.02 Regulation of traffic
- 94.03 Speed limits
- 94.04 Snowmobile and unlicensed vehicle use
- 94.05 Commercial and user parking and delivery
- 94.06 Restricted areas
- 94.07 Protection of trees, plants, and structures
- 94.08 Protection of animals
- 94.09 Hours
- 94.10 Miscellaneous park activities
- 94.11 Alcoholic beverages in park
- 94.12 Dangerous games
- 94.13 Firearms and fireworks
- 94.14 Exclusive park use
- 94.15 Rubbish
- 94.16 Animals
- 94.17 Signs restricted
- 94.18 Parades restricted
- 94.19 Theatrical entertainments and the like

- 94.99 Penalty

§ 94.01 DEFINITION.

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

PARK. Includes all public ground maintained as pleasure grounds in the city.
(Ord. 70, passed 4-20-1994)

§ 94.02 REGULATION OF TRAFFIC.

No horses or other animals used for riding or driving, or vehicle of any description, will be

allowed upon any part of the parks, nor will any vehicle drawn by any animal, or any automobile be allowed upon any footwalk, nor will any vehicle used for driving or riding be allowed to stand or go upon any drive, except at such places as the city shall designate for such purpose, to the obstruction of the way or inconvenience of persons riding or driving in the parks; and no person shall solicit or invite passengers for hire in said park.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.03 SPEED LIMITS.

No person shall ride or drive a bicycle, automobile, or other road machine or vehicle within the parks faster than reasonable under the circumstances. The city may, at its discretion, make such rules and regulations governing the speed of the said vehicles, while traveling upon any of the park roads or pathways of said city, and may impose such other conditions or rules governing the use of such vehicles, while traveling upon any of such park roads or park pathways, as may be deemed by the city necessary to the protection and safety of the public.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.04 SNOWMOBILE AND UNLICENSED VEHICLE USE.

Snowmobiles, motorcycles, dirt bikes, and all other all-terrain vehicles are prohibited in city parks, except as otherwise provided in this code.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.05 COMMERCIAL AND USER PARKING AND DELIVERY.

Parking and delivery is prohibited on grassy areas and shall be limited to hard-surfaced areas only. Vehicles illegally parked are subject to tow at the owner's expense.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.06 RESTRICTED AREAS.

The parks and every part thereof are for the use and enjoyment of the public, subject to such restrictions as may be lawfully made for their orderly government, and therefore, all visitors are free to go upon the grass, lawn, or turf of any park unless otherwise posted by the city.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.07 PROTECTION OF TREES, PLANTS, AND STRUCTURES.

No person shall climb any trees, or pluck any flowers or fruit, whether wild or cultivated, or break, cut down or trample upon or remove, or in any manner injure or deface any statue, ornament, tree, plant, shrub, flower bed, curb, or any of the buildings, fences, bridges, or other construction, within city parks; nor shall any person write on any building, structure, statue, fence, bench, rock, or stone within

such parks.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.08 PROTECTION OF ANIMALS.

No person shall send or throw any animal or thing in or upon the waters of any park, or kill, injure, molest, or unnecessarily disturb any fish, any water fowl or other birds, or any animal properly within any park.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99)

§ 94.09 HOURS.

No person, except a law enforcement official and the employees and servants of the city, shall be allowed in any park between the hours of 10:00 p.m. and 5:00 a.m. each day, unless a designated special event approved by the city.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.10 MISCELLANEOUS PARK ACTIVITIES.

No person shall play any music, or keep or offer for sale, or post or display any sign or placard, flag, target, transparency, advertisement, or device of business within any park, building, or place within a park or park structure, unless by the permission of the city, and subject to such rules and regulations as the city shall prescribe, and no person shall in any such park, publicly solicit subscription, or play any game of cards or other games of chance, or any game with table or instruments of gaming, or any language tending to cause a breach of the peace, or be guilty of any indecent, obscene or disorderly conduct.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.11 ALCOHOLIC BEVERAGES IN PARK.

It is unlawful for any person to bring upon or possess in a park a container of an alcoholic beverage which contains or has a capacity of more than eight gallons. This section shall not apply to a person licensed to sell alcoholic beverages on parkland, to an employee or agent acting on behalf of such license, nor to a person delivering an alcoholic beverage to such licensee.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.12 DANGEROUS GAMES.

No person shall play or engage in any game or exercise which shall be liable to injure travelers or endanger the passage of vehicles on any adjoining street, or within the limits of any park.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.13 FIREARMS AND FIREWORKS.

No person shall fire or discharge any gun, pistol, BB/pellet gun, bow and arrow, sling shot, or other firearm, or any rocket, torpedo, or other fireworks of any description, unless otherwise permitted by the city and provided in this code, or throw any stones or missiles within city parks, nor carry any of the above in any park. Exception: ceremonial firearms.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.14 EXCLUSIVE PARK USE.

(A) *Permits.* Athletic games, sports, picnics, and other forms of recreation or amusement sanctioned by the city may be held or practiced in such parts of the parks as shall be designated for such use, subject to such regulations as may be made by the city, and subject to the orders of any law enforcement official or other officer connected with the park on duty enforcing the rules of the city. Permits for the exclusive use of any picnic area or playground for any specified date or time may be granted at the discretion of the city, and no person shall in any manner disturb or interfere with a club or party occupying the ground under such permit without their consent.

(B) *Reservations.* Reservations for any picnic area or playground shall be made by contract with the city at City Hall during regular business hours, made by completing an application form that names the responsible party, name, address, phone, and date requested for reservation, and activity planned, and shall be made on a first-come-first-serve basis. The responsible party shall be responsible for any and all damage to facilities for the event, and is responsible for the group's conduct while using the facilities.

(C) *Fees.* Refer to the city fee schedule.

(D) *Camping.* No camping is allowed unless specifically authorized by the city.
(Ord. 70, passed 4-20-1994)

§ 94.15 RUBBISH.

No filth, dirt, stone, wood, ashes, dead carcass, garbage matter, substance, or rubbish of any kind shall be placed or deposited in any park.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.16 ANIMALS.

No quadrupeds or other animals, except those placed in the parks by the authority of the city, and excepting dogs and cats, accompanying their owners or other person having charge thereof and controlled by a line, chain, or leash, shall be conducted into the parks, or to be allowed to remain therein. Animal excrement shall be removed immediately.

(Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.17 SIGNS RESTRICTED.

No person shall post or affix any printed or written bill or placard, notice or other paper, or any sign, upon any tree, structure, or thing within the parks, or upon any gate, fence, or enclosure within the limits thereof except park notices and other authorized bulletins or signs put up by direction of the city. (Ord. 70, passed 4-20-1994)

§ 94.18 PARADES RESTRICTED.

No military target, fire, hook, and ladder or hose company, or civic or other procession, shall parade, march, drive, or perform any military or other evolution or movement within the parks without the written permission of the city. (Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.19 THEATRICAL ENTERTAINMENTS AND THE LIKE.

No person or persons shall have or give any theatrical entertainment in any park, nor shall any parade, procession, public gathering, or public meeting of any kind, take place in any public park; nor shall any person march in columns on any parkway, but this shall not exclude social or other picnics in such portion of the various parks as may be designated by the city for that purpose, unless approved by the city. (Ord. 70, passed 4-20-1994) Penalty, see § 94.99

§ 94.99 PENALTY.

Any person found guilty of violating this chapter shall be guilty of a petty misdemeanor and shall be punished as provided by law. (Ord. 70, passed 4-20-1994)

CHAPTER 95: TREES

Section

General Provisions

- 95.01 Authority and purpose
- 95.02 Definitions
- 95.03 Responsibilities of city and private property owners
- 95.04 Tree planting, maintenance, and removal
- 95.05 Tree protection
- 95.06 Claims

Duty of Owners

- 95.20 Duty of property owner to cut grass and weeds
- 95.21 City authority to order work done
- 95.22 Personal liability
- 95.23 Assessment

- 95.99 Penalty
- Appendix A: Possible Planting Locations Map

GENERAL PROVISIONS

§ 95.01 AUTHORITY AND PURPOSE.

The purpose of this subchapter is promoting preservation, protection, and planting of trees within the city. In perpetuating a healthy city forest, it is necessary and desirable to regulate tree planting and maintenance on public property within the city. To ensure the health of the city forest, the authority to require removal of hazard trees from public or private property is needed.
(Ord. 136, passed 11-26-2013)

§ 95.02 DEFINITIONS.

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

BOULEVARD. Area between curb or street edge and the private property/parcel line. This publicly- owned area is defined by the distance noted on official city maps from the center of the street or cul-de-sac to the property's lot line.

PUBLIC PROPERTY. Any area or building owned by the city including sidewalks, alleys, and public parking lots, but not limited to, boulevards, parks, playgrounds, wetlands, and streets.

PUBLIC RIGHT-OF-WAY. Portion of property reserved for public use and accepted for such use by the city to provide circulation and travel to abutting properties, including, but not limited to, streets, boulevards, alleys, sidewalks, and easements for public utilities.

PUBLIC UTILITY. Any public or private facility or system for producing, transmitting, or distributing communications, electricity, gas, oil products, water, sanitary water, or stormwater, which directly or indirectly serves the public or any part thereof within the corporate limits of the city.

TOPPING. The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. This is an undesirable practice, causing shock to the tree, leaving it susceptible to disease and affecting the overall health by disturbing the crown to root ratio.

TREE. Any tree, shrub, hedge, or woody vegetation.

(1) *Sizes.*

- (a) **SMALL TREES.** Those growing to a maximum height of 30 feet;
- (b) **MEDIUM TREES.** Those growing to a maximum height of 30 to 50 feet; and
- (c) **LARGE TREES.** Those growing to a maximum height of over 50 feet.

(2) *Descriptions.*

(a) **BOULEVARD TREE.** A tree planted within the strip of land lying between property lines and the edge of streets, avenues, boulevards, or roadways within the city.

(b) **PARK TREE.** A tree growing in designated parks owned by the city to which the public has free access.

(c) **PUBLIC TREE.** Any tree growing on public rights-of-way and city-owned lands, including boulevard and park trees.

(d) **PRIVATE TREE.** All trees growing on private property within the city limits.

(e) **HAZARD TREE.** Any public or private tree or part thereof which has an infectious or destructive disease, insect problem, or other pestilence which endangers the growth, health, life, or wellbeing of trees in the city, or which threatens to or is capable of causing a spread of a disease,

pestilence, or insect infestation:

1. Is infected with Dutch elm disease, oak wilt, or emerald ash borer;
2. Is dead, dying, broken, or decayed;
3. Obstructs street lights, traffic signs, or the view of any street intersection;
4. Obstructs the free passage of pedestrians or vehicles;
5. Is causing the surface of a public street, curb, or sidewalk to be up heaved or otherwise disturbed;
6. Poses an imminent threat to the sewer system, electric power lines, gas lines, water lines, or other public improvement; or
7. Constitutes an imminent danger to the health, safety or wellbeing of the general public.

URBAN FOREST. A forest or a collection of trees growing within a city. It may include any kind of woody plant vegetation growing in and around the city.
(Ord. 136, passed 11-26-2013)

§ 95.03 RESPONSIBILITIES OF CITY AND PRIVATE PROPERTY OWNERS.

(A) City responsibilities.

(1) City Tree Board established.

(a) The City Park Board will serve as the City Tree Board. This Tree Board shall serve in an advisory capacity to the City Council concerning issues related to the wellbeing of the urban forest resources within the municipal boundaries of the city.

(b) 1. The responsibilities of the Tree Board shall include, but are not limited to, promoting well-managed growth and development of the urban forest within the city.

2. Duties shall be to:

a. Serve as an advocate of the city's urban forest. It will meet monthly, or otherwise as needed;

b. Recommend to City Council the adoption and alteration of all rules and regulations which it shall deem in the public interest to enhance and beautify the urban forest as well as to carry out the purposes of this subchapter, which may include, but are not limited to:

i. Establishing standards and specifications needed to carry out tree care

work in the city; or

ii. Develop and maintain a list of both desirable and unsuitable trees for planting along streets in three size classes: small; medium; and large.

c. Encourage improvement of the urban forest:

i. Promote appreciation of trees and the urban forest, through Arbor Day;

ii. Encourage landscaping, planting, and maintenance of trees and vegetation on private property by providing information on the value of landscaping and on the proper planting and care of trees and other vegetation; and

iii. Assist city departments to enhance the urban forest in the city and recommend obtaining professional assistance when needed.

(2) *City may annually appoint a qualified City Tree Inspector.* The Tree Inspector will coordinate activities relating to control and prevention of damage by tree pests. The Tree Inspector will recommend to the Council the details of any program for declaration, control, and prevention of tree pests.

(3) *Designation of resources.* The city will designate resources for the planting and care of public trees and other vegetation. This includes assigning and managing city staff to complete necessary tasks. If needed, the city shall appoint or contract with a licensed arborist to perform the duties imposed by this subchapter. The arborist will provide proof of liability insurance and worker's compensation insurance.

(B) *Private property owners responsibilities.* Any owner of private property abutting a boulevard shall have the following responsibilities for public trees located in the boulevard adjacent to the owner's property:

(1) Periodic watering of trees, located in the boulevard, when necessary to maintain good health and vigor;

(2) Protection of trees against damage caused by lawn mowers, weed trimmers, snow blowers, and similar equipment;

(3) The city may maintain boulevard trees, but residents are encouraged to care for trees in the boulevard adjoining their property according to these specifications; that branches are no closer than eight feet above sidewalks or level of turf and a minimum of 12 feet above the street; and

(4) It shall be the responsibility of the property owner to accomplish the trimming and/or removal of private trees with due consideration for public safety concerns, such as, a duty to adequately block off any affected street, sidewalk, and/or yard area to make certain there are no pedestrians under a proposed fall line of the trees or branches to be trimmed and that adequate consideration for protection of neighboring property is also provided. Third parties are required to provide proof of liability insurance.

(Ord. 136, passed 11-26-2013) Penalty, see § 95.99

§ 95.04 TREE PLANTING, MAINTENANCE, AND REMOVAL.

(A) *Permits required.*

(1) It is unlawful for any person to plant or remove any tree on public property (boulevard tree), without first obtaining a permit from the city.

(2) In the case of a requested boulevard planting, a permit application shall be submitted and the city will provide a list of approved and suggested trees and guidelines for planting and pruning.

(3) Permits shall not be required for tree removal from private property, but due consideration for streets, pedestrians, neighbors, and proof of third party liability insurance must be made.

(4) There is no fee for the permits.

(5) Permits shall not be required for work performed by city employees.

(B) *Planting; boulevard tree specifications.*

(1) *Tree species.* A list of desirable trees for planting and a list of trees not suitable for planting in boulevards will be available at City Hall.

(2) *Utilities.* No public trees may be planted under or within ten lateral feet of any overhead transmission or primary utility wire, over or within five lateral feet of any underground water line, sewer line, sub-drain, transmission line, or other utility. No trees shall be planted within utility easements. A local call must be made prior to planting to determine location of utility lines (Gopher State One-Call: 800-252-1166).

(3) *Distance from intersection.* Tree's minimum distance from an intersection is defined by "clear vision areas" (see § 153.123). A clear vision area shall be maintained on the corners of all property at the intersection of two streets, or a street and a railroad. A clear vision area shall be a triangular shaped area with two sides following lot lines; the clear vision areas shall extend along the edge of the road surface or curb for a distance of not less than 25 feet. The clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding 36 inches in height, except for trees with branches and foliage removed to a height of eight feet above the ground, and open wire fencing that does not obscure sight.

(4) *Distance from driveways.* Trees must be at least five feet from any driveway or approach sidewalk within a boulevard area.

(5) *Distance from curb, sidewalk, and streets edges without curbing.* When no sidewalk exists the trees must be a minimum of eight feet behind the curb. When a sidewalk exists with an eight-foot boulevard, the trees may be centered between the sidewalk and the curb. If the boulevard is

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smaller than eight feet, the trees should be planted at least four feet to the house side of the sidewalk. On streets lacking curbing and a paved parking area, plant trees a minimum distance of 12 feet from the edge of the road. Follow these distance requirements, unique situations or specific requirement questions should be referred to the Tree Board.

(6) *Distance from fire hydrants.* No public tree shall be planted closer than ten feet to any fire hydrant.

(7) *Evergreen trees.* Evergreen trees must not be planted in boulevard areas.

(C) *Maintenance.*

(1) (a) The city shall have the right to plant, prune, maintain, and remove public trees as may be necessary to ensure the public safety or to preserve or enhance the symmetry and beauty of such public property.

(b) The city may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition of which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect, or other pest, including Dutch elm disease, oak wilt disease, or emerald ash borer.

(2) If the city chooses to plant boulevard trees on a property's boulevard, the property owners shall be notified in writing and have the right to stop the planting.

(a) *Prevention of visual obstructions.* Every public or private tree overhanging any street or right-of-way within the city shall be trimmed so that the branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection or street sign and so that there shall be a clear space of at least 12 feet above the street or eight feet above the sidewalk.

(b) *Topping.* It shall be unlawful for any person, firm, or city department to top any street tree, park tree, or other tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this subchapter at the determination of the City Inspector.

(c) *Control of private hazard trees.*

1. The city maintains the right to take action on private trees that meet the definition of hazard trees to protect the public. Every effort will be made to cooperate with the citizen before action is taken.

2. Required process for orders relating to private hazard trees is as follows.

a. Except in situations of imminent danger to human life and safety, the Tree Inspector or city representative will not enter private property for the purpose of inspecting for hazard trees without the permission of the owner, resident, or other person in control of the property, unless the Inspector has obtained a warrant or order from a court of competent jurisdiction authorizing the entry.

b. All orders to remove, treat or trim trees, eradicate, or otherwise control the hazardous condition given pursuant to this section shall be in writing and authorized by the city or its designated representative. Orders shall be served in person or by mail upon the owner of the property where such trees are located. Such orders shall afford the owner of the property not less than 30 days or a reasonable amount of time determined by the city from the date of the mailing of such notice to comply with such order.

c. If the required action is not taken by the properly owner within the specified time, the city may cause the tree concerned to be trimmed, removed, or treated for the hazardous condition to be eradicated or otherwise controlled. The costs of such actions shall be apportioned as provided in this subchapter. (See division (C)(2)(c)2.e. below.)

d. Disposal of wood from hazard trees must follow accepted Department of Natural Resource standards to ensure diseased wood does not infect healthy trees. Wood from elms infected with Dutch elm disease, oaks infected with oak wilt, or green ash infected with emerald ash borer must follow DNR approved quarantine procedures.

e. Apportionment of costs relating to hazard trees.

i. *Public trees.* In the event that the city determines that a tree located on a boulevard or on public land as defined in § 95.02 is a hazard, the city will be responsible for the tree treatment, trimming, or removal.

ii. *Private trees.*

A. In the event the city determines that a private tree is a hazard to city owned utilities, the homeowner will assume responsibility for the cost of removal, treatment, trimming, or otherwise eradicating or controlling the hazardous condition.

B. In cases wherein the tree is determined to be infected with a shade tree pest or disease, including, but not limited to, Dutch elm disease, oak wilt disease, and emerald ash borer, and where the city has determined that a private tree is a hazard, the owner will be responsible for removal, treatment, trimming, or otherwise eradicating or controlling the hazardous private tree.

C. In situations where a private tree is dead, dying, and decayed and deemed of being an imminent danger to public health, safety, and wellbeing, the owner will be responsible for appropriate trimming or removal of their tree.

iii. *Special assessments.* If a private hazard tree is not removed or treated as ordered or if the owner does not voluntarily pay to the city the cost of removal or treatment by the city, all costs incurred by the city for trimming, tree removal, treatment, or eradicating or controlling the hazardous condition may be recovered by the city by assessing the property.

(D) *Removal.* Permits shall not be required for trees removed from private property, but due consideration for streets, pedestrians, neighbors, and proof of third party liability insurance must be made. Permits are required, at no cost, to remove any boulevard tree.

(Ord. 136, passed 11-26-2013) Penalty, see § 95.99

§ 95.05 TREE PROTECTION.

(A) *Generally*. No person may plant, remove, alter, destroy, cut, or disturb any public tree within the city without permission from the city.

(B) *Abuse or mutilation of public trees*. No person shall damage, transplant, top, remove, or mutilate any public tree. **DAMAGE** may include, but is not limited to, the following, posting signs with nails, staples, screws, or other devices, hanging wires of any kind, vehicle damage, weed whip, lawn mower damage, stripping bark off the tree, and poison or toxin applications.

(C) *Protection of public trees near construction activities*. Any public tree in the immediate vicinity of any excavation, demolition, or construction site of any building, structure, street, or utilities work which has potential for injury, shall be protected from injury by the person responsible for carrying out the construction activities.

(Ord. 136, passed 11-26-2013) Penalty, see § 95.99

§ 95.06 CLAIMS.

(A) *Assessment of claim*. In the event that a hazardous condition is not removed by the date specified in the notice, the city is authorized to cause the removal of such hazardous condition. The reasonable cost of such removal shall be filed as an assessment against the property on which the hazardous tree was located.

(B) *Appeals*. Any person aggrieved by any ruling or order of the city may appeal to the City Council, which shall hear the matter and make a final decision. The City Council shall have the right to review decisions and may modify, affirm, or reverse any determination of the City Tree Board.

(Ord. 136, passed 11-26-2013)

DUTY OF OWNERS

§ 95.20 DUTY OF PROPERTY OWNER TO CUT GRASS AND WEEDS.

(A) Every owner of property abutting on any public street or alley shall cut the grass and weeds from the edge of his or her or her property line to the edge of the street or alley, or for unimproved streets and alleys to the center of the roadway.

(B) If the grass or weeds in such place are six inches or more in height, it shall be sufficient evidence of a violation of this section. All property owners in the city are responsible for controlling the growth and spread of weeds, whether on public or private property.

(Ord. 63, passed 2-20-1991) Penalty, see § 95.99

§ 95.21 CITY AUTHORITY TO ORDER WORK DONE.

The city shall cause to be cut and destroyed all grass and weeds growing within the area of any public street or alley when the same are not cut by the property owners as required by § 95.20. Charges for cutting grass and weeds shall be set by the fee schedule, and shall be charged to the effected owner. (Ord. 63, passed 2-20-1991)

§ 95.22 PERSONAL LIABILITY.

The owner of property on which or adjacent to which a current service has been performed shall be personally liable for the cost of such service. As soon as the service has been completed and the cost determined, the City Clerk-Treasurer or other designated official shall prepare a bill and mail it to the owner and thereupon the amount shall be immediately due and payable at the office of the City Clerk-Treasurer.

(Ord. 63, passed 2-20-1991)

§ 95.23 ASSESSMENT.

Annually, the Clerk-Treasurer shall list the total unpaid charges for each type of current service against each separate lot or parcel to which they are attributable under this subchapter. After notice and hearing as provided in M.S. § 429.061, as it may be amended from time to time, the Council may then spread the charges against property benefitted as a special assessment under 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 Council may determine in each case.

(Ord. 63, passed 2-20-1991)

§ 95.99 PENALTY.

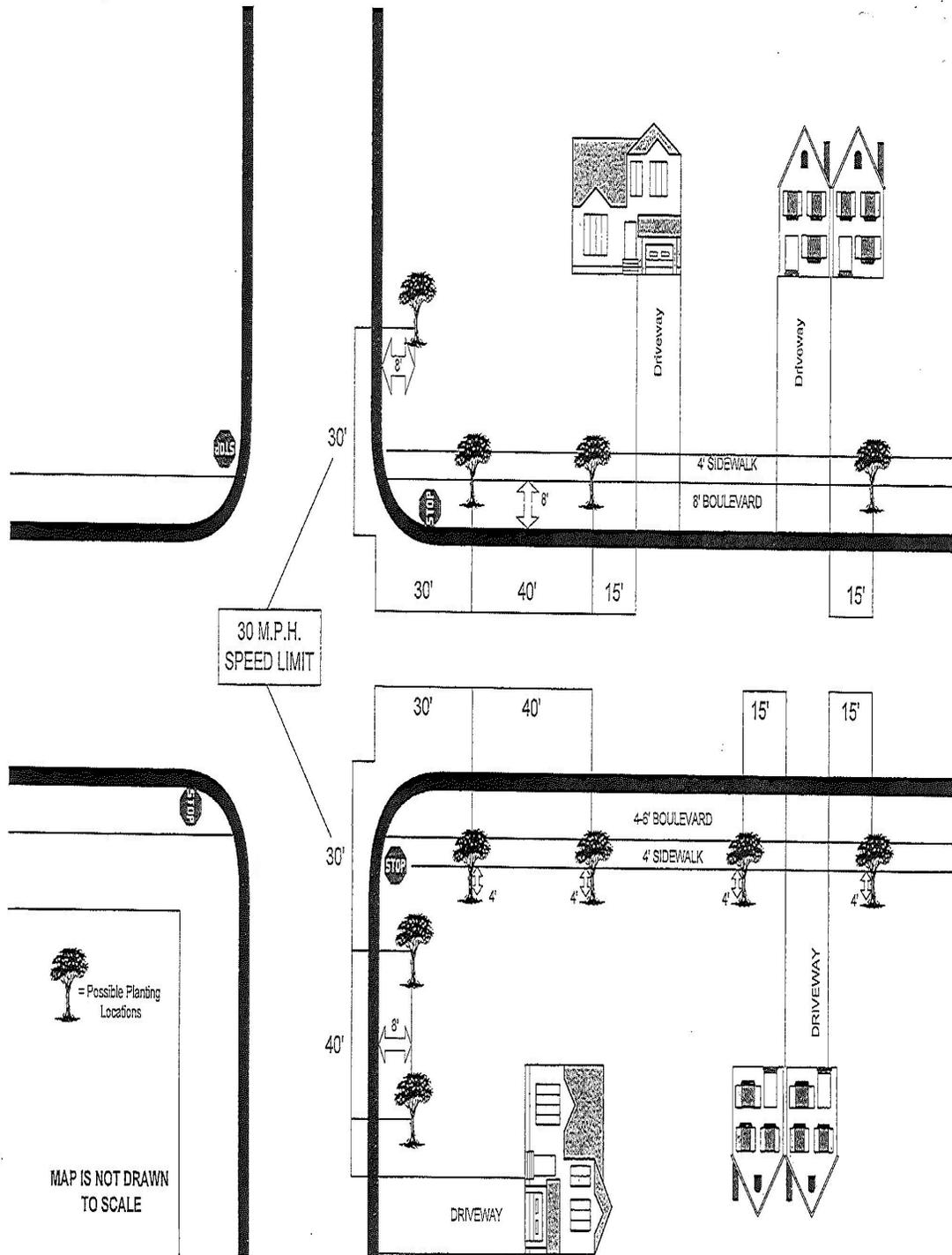
(A) (1) Any person who violates any provision of §§ 95.01 through 95.06 or who fails to comply with any notice issued pursuant to provisions of the subchapter, upon being found guilty of a misdemeanor and shall be punished as provided by law, plus, the costs of prosecution.

(2) If, as the result of the violation of any provision of §§ 95.01 through 95.06 the injury, mutilation, or death of a tree, shrub, or other plant located on city-owned property is caused, the cost of repair or replacement of such tree, shrub, or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with the latest revision of the International Society of Arboriculture/Council of Landscape Appraisers system.

(B) Any person who interferes with a city employee or other authorized person in the performance of any current service under this chapter is guilty of a misdemeanor, but a prosecution shall be brought for such violation only on the direction of the Council. If convicted of such violation, such person shall

be subject to a fine as set out by the city, or imprisonment of not more than 90 days, and the costs of prosecution in either case may be added.

(Ord. 63, passed 2-20-1991; Ord. 136, passed 11-26-2013)



Appendix A: Possible Planting Locations Map

