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CHAPTER 90: ABANDONED PROPERTY

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GENERAL PROVISIONS

§ 90.01 DISPOSITION OF ABANDONED PROPERTY.

(A) *Procedure.* Except for abandoned and junked vehicles, all property lawfully coming into possession of the city shall be disposed of as provided in this section which is adopted pursuant to M.S. § 471.195, as it may be amended from time to time. Abandoned and junked vehicles shall be disposed of according to the procedures of §§ 90.15 *et seq.*

(B) *Storage.* The department of the city acquiring possession of the property shall arrange for its storage. If city facilities are unavailable or inadequate, the department may arrange for storage at a privately-owned facility.

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(C) *Claim by owner.* The owner may claim the property by exhibiting satisfactory proof of ownership and paying the city any storage or maintenance costs incurred by it. A receipt for the property shall be obtained upon release to the owner.

(D) *Sale.* If the property remains unclaimed in the possession of the city for 60 days, the property shall be sold to the highest bidder at a public auction conducted by the City Administrator or the City Administrator's designee after 2-weeks' published notice setting forth the time and place of the sale and the property to be sold.

(E) *Disposition of proceeds.* The proceeds of the sale shall be placed in the general fund of the city. If the former owner makes application and furnishes satisfactory proof of ownership within 6 months of the sale, the former owner shall be paid the proceeds of the sale of the property less the costs of storage and the proportionate part of the cost of published notice and other costs of the sale.

ABANDONED VEHICLES

§ 90.15 FINDINGS AND PURPOSE.

M.S. Ch. 168B, and Minn. Rules Ch. 7035, as they may be amended from time to time, are hereby adopted by reference. Sections 90.15 through 90.25 of this code are adopted under the authority of M.S. § 168B.09, subd. 2, as it may be amended from time to time. If any of these provisions are less stringent than the provisions of M.S. § 168B or Minn. Rules Ch. 7035, as it may be amended from time to time, the statute or rule shall take precedence.

§ 90.16 DEFINITIONS.

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

ABANDONED VEHICLE.

(1) A motor vehicle, as defined in M.S. § 169.01 as it may be amended from time to time, that:

(a) Has remained illegally:

1. For a period of more than 48 hours on any property owned or controlled by a unit of government, or more than 4 hours on that property when it is properly posted; or

2. On private property for a period of time, as determined under § 90.18(B), without the consent of the person in control of the property; and

(b) Lacks vital component parts or is in an inoperable condition that it has no substantial potential for further use consistent with its usual functions, unless it is kept in an enclosed garage or storage building.

(2) A classic car or pioneer car, as defined in M.S. § 168.10 as it may be amended from time to time, is not considered an abandoned vehicle.

(3) Vehicles on the premises of junk yards and automobile graveyards that are defined, maintained, and licensed in accordance with M.S. § 161.242 as it may be amended from time to time, or that are licensed and maintained in accordance with local laws and zoning regulations, are not considered abandoned vehicles.

(4) A vehicle being held for storage by agreement or being held under police authority or pursuant to a writ or court order is not considered abandoned, nor may it be processed as abandoned while the police hold, writ or court order is in effect.

DEPARTMENT. The Minnesota Department of Public Safety.

IMPOUND. To take and hold a vehicle in legal custody. There are 2 types of impounds: public and nonpublic.

IMPOUND LOT OPERATOR or OPERATOR. A person who engages in impounding or storing, usually temporarily, unauthorized or abandoned vehicles. **OPERATOR** includes an operator of a public or nonpublic impound lot, regardless of whether tow truck service is provided.

JUNK VEHICLE. A vehicle that:

(1) Is 3 years old or older;

(2) Is extensively damaged, with the damage including things as broken or missing wheels, motor, drive train or transmission;

(3) Is apparently inoperable;

(4) Does not have a valid, current registration plate; and

(5) Has an approximate fair market value equal only to the approximate value of the scrap in it.

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MOTOR VEHICLE or **VEHICLE**. Has the meaning given **MOTOR VEHICLE** in M.S. § 169.01, as it may be amended from time to time.

MOTOR VEHICLE WASTE. Solid waste and liquid wastes derived in the operation of or in the recycling of a motor vehicle, including such things as tires and used motor oil, but excluding scrap metal.

MPCA or **AGENCY**. The Minnesota Pollution Control Agency.

NONPUBLIC IMPOUND LOT. An impound lot that is not a public impound lot.

PUBLIC IMPOUND LOT. An impound lot owned by or contracting with a unit of government under § 90.24.

UNAUTHORIZED VEHICLE. A vehicle that is subject to removal and impoundment pursuant to § 90.18(B), or M.S. § 169.041 as it may be amended from time to time, but is not a junk vehicle or an abandoned vehicle.

UNIT OF GOVERNMENT. Includes a state department or agency, a special purpose district, and a county, statutory or home rule charter city, or town.

VITAL COMPONENT PARTS. Those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including such things as the motor, drive train and wheels.

§ 90.17 VIOLATION TO ABANDON MOTOR VEHICLE.

Any person who abandons a motor vehicle on any public or private property, without the consent of the person in control of the property, is guilty of a misdemeanor.
Penalty, see § 10.99

§ 90.18 AUTHORITY TO IMPOUND VEHICLES.

(A) *Abandoned or junk vehicles*. The City Administrator or the City Administrator's designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any abandoned or junk vehicle if the vehicle is on public property. If the abandoned or junk vehicle is located on private property, the vehicle shall not be removed or impounded until the provisions of § 90.18(C) are complied with.

(B) *Unauthorized vehicles.* The City Administrator or the City Administrator's designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any unauthorized vehicle under M.S. § 169.041 as it may be amended from time to time. A vehicle may also be impounded after it has been left unattended in 1 of the following public or private locations for the indicated period of time:

(1) In a public location not governed by M.S. § 169.041 as it may be amended from time to time:

(a) On a highway and properly tagged by a peace officer, 4 hours;

(b) Located so as to constitute an accident or traffic hazard to the traveling public, as determined by a peace officer, immediately; or

(c) That is a parking facility or other public property owned or controlled by a unit of government, properly posted, 4 hours; or

(2) On private property, only with the express permission of the owner of the property, a resident or other person in control of the premises:

(a) That is single-family or duplex residential property, immediately;

(b) That is private, nonresidential property, properly posted, immediately;

(c) That is private, nonresidential property, not posted, 24 hours; or

(d) That is any residential property, properly posted, immediately.

(3) If under division (B)(2) of this section, permission is not granted, then the city shall not remove and impound any vehicle until the procedure established in division (B)(2) of this section have been followed.

(C) If the vehicle is on private property, the City Administrator or the City Administrator's designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any abandoned or junk vehicle on private property only with the permission of the owner of the property, a resident, or other person in control of the premises. If permission is denied, the city may declare the existence of the abandoned or junk vehicle to be a nuisance and proceed to abate the nuisance as provided for in §§ 93.15 through 93.22. Once the abatement procedure has been completed, the city may apply for an order from a court of competent jurisdiction authorizing the removal and impoundment of the vehicle and, after the order has been granted, the city may then remove and impound the vehicle.

§ 90.19 SALE; WAITING PERIODS.

(A) *Sale after 15 days.* An impounded vehicle is eligible for disposal or sale under § 90.23, 15 days after notice to the owner, if the vehicle is determined to be:

(1) A junk vehicle, except that it may have a valid, current registration plate and still be eligible for disposal or sale under this subdivision; or

(2) An abandoned vehicle.

(B) *Sale after 45 days.* An impounded vehicle is eligible for disposal or sale under § 90.23, 45 days after notice to the owner, if the vehicle is determined to be an unauthorized vehicle.

§ 90.20 NOTICE OF TAKING AND SALE.

(A) *Contents; notice given within 5 days.* When an impounded vehicle is taken into custody, the city or impound lot operator taking it into custody shall give notice of the taking within 5 days. The notice shall:

(1) Set forth the date and place of the taking; the year, make, model and serial number of the impounded motor vehicle if the information can be reasonably obtained; and the place where the vehicle is being held;

(2) Inform the owner and any lienholders of their right to reclaim the vehicle under § 90.21; and

(3) State that failure of the owner or lienholders to exercise their right to reclaim the vehicle and contents within the appropriate time allowed under § 90.19 shall be deemed a waiver by them of all right, title and interest in the vehicle and contents, and a consent to the transfer of title to and disposal or sale of the vehicle and contents pursuant to § 90.23.

(B) *Notice by mail or publication.* The notice shall be sent by mail to the registered owner, if any, of an impounded vehicle and to all readily identifiable lienholders of record. The Department makes this information available to impound lot operators for notification purposes. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice shall be published once in a newspaper of general circulation in the area where the motor vehicle was towed from or abandoned. Published notices may be grouped together for convenience and economy.

(C) *Unauthorized vehicles; notice.* If an unauthorized vehicle remains unclaimed after 30 days from the date the notice was sent under division (B) of this section, a second notice shall be sent by certified mail, return receipt requested, to the registered owner, if any, of the unauthorized vehicle and to all readily identifiable lienholders of record.

§ 90.21 RIGHT TO RECLAIM.

(A) *Payment of charges.* The owner or any lienholder of an impounded vehicle shall have a right to reclaim the vehicle from the city or impound lot operator taking it into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within 15 or 45 days, as applicable under § 90.19, after the date of the notice required by § 90.20.

(B) *Lienholders.* Nothing in this chapter shall be construed to impair any lien of a garagekeeper under the laws of this state, or the right of a lienholder to foreclose. For the purposes of this section, **GARAGEKEEPER** 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.

§ 90.22 OPERATOR'S DEFICIENCY CLAIM; CONSENT TO SALE.

(A) *Deficiency claim.* The nonpublic impound lot operator has a deficiency claim against the registered owner of the vehicle for the reasonable costs of services provided in the towing, storage, and inspection of the vehicle minus the proceeds of the sale or auction. The claim for storage costs may not exceed the costs of:

- (1) 25 days storage for a vehicle described in § 90.19(A); and
- (2) 55 days storage for a vehicle described in § 90.19(B).

(B) *Implied consent to sale.* A registered owner who fails to claim the impounded vehicle within the applicable time period allowed under § 90.19 is deemed to waive any right to reclaim the vehicle and consents to the disposal or sale of the vehicle and its contents and transfer of title.

§ 90.23 DISPOSITION BY IMPOUND LOT.

(A) *Auction or sale.*

(1) If an abandoned or unauthorized vehicle and contents taken into custody by the city or any impound lot is not reclaimed under § 90.21, it may be disposed of or sold at auction or sale when eligible pursuant to §§ 90.20 and 90.21.

(2) The purchaser shall be given a receipt in a form prescribed by the Registrar of Motor Vehicles which shall be sufficient title to dispose of the vehicle. The receipt shall also entitle the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. Before a vehicle is issued a new certificate of title, it must receive a motor vehicle safety check.

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(B) *Unsold vehicles.* Abandoned or junk vehicles not sold by the city or public impound lots pursuant to division (A) of this section shall be disposed of in accordance with § 90.24.

(C) *Sale proceeds; public entities.* From the proceeds of a sale under this section by the city or public impound lot of an abandoned 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 in handling the vehicle pursuant to this chapter. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for 90 days and then shall be deposited in the treasury of the city.

(D) *Sale proceeds; nonpublic impound lots.* The operator of a nonpublic impound lot may retain any proceeds derived from a sale conducted under the authority of division (A) of this section. The operator may retain all proceeds from sale of any personal belongings and contents in the vehicle that were not claimed by the owner or the owner's agent before the sale, except that any suspected contraband or other items that likely would be subject to forfeiture in a criminal trial must be turned over to the appropriate law enforcement agency.

§ 90.24 DISPOSAL AUTHORITY.

The city may contract with others or may utilize its own equipment and personnel for the inventory of impounded motor vehicles and abandoned scrap metal and may utilize its own equipment and personnel for the collection, storage, and transportation of these vehicles and abandoned scrap metal.

§ 90.25 CONTRACTS; REIMBURSEMENT BY MPCA.

(A) *MPCA review and approval.* If the city proposes to enter into a contract with a person licensed by the MPCA pursuant to this section or a contract pursuant to § 90.24, the MPCA may review the proposed contract before it is entered into by the city, to determine whether it conforms to the MPCA's plan for solid waste management and is in compliance with MPCA rules. A contract that does so conform may be approved by the MPCA and entered into by the city. Where a contract has been approved, the MPCA may reimburse the city for the costs incurred under the contract that have not been reimbursed under § 90.23. Except as otherwise provided in § 90.24, the MPCA shall not approve any contract that has been entered into without prior notice to and without a request for bids from all persons duly licensed by the MPCA to be a party to a disposal contract pursuant to M.S. § 116.07, as it may be amended from time to time; nor that does not provide for a full performance bond; or does not provide for total collection and transportation of abandoned motor vehicles, except that the MPCA may approve a contract covering solely collection or transportation of abandoned motor vehicles where the MPCA determines total collection and transportation to be impracticable and where all other requirements herein have been met and the unit of government, after proper notice and request for bids, has not received any bid for total collection and transportation of abandoned motor vehicles.

(B) *The city may perform work.* If the city utilizes its own equipment and personnel pursuant to its authority under § 90.24, and the use of the equipment and personnel conforms to the MPCA's plan for solid waste management and is in compliance with MPCA rules, the city may be reimbursed by the MPCA for reasonable costs incurred which are not reimbursed under § 90.23.

(C) *The city required to contract work.* The MPCA may demand that the city contract for the disposal of abandoned motor vehicles and other scrap metal pursuant to the MPCA's plan for solid waste disposal. If the city fails to contract within 180 days of the demand, the MPCA, through the Department of Administration and on behalf of the city, may contract with any person duly licensed by the MPCA for the disposal.

CHAPTER 91: ANIMALS

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§ 91.01 DEFINITIONS.

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

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

(1) *Domestic.* Domestic animals shall mean those animals commonly accepted as domesticated household pets. Unless otherwise defined, such animals shall include dogs, cats, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, nonpoisonous, nonvenomous and nonconstricting reptiles or amphibians, and other similar animals.

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(2) *Nondomestic.* Nondomestic animals shall mean those animals commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety, and welfare of people. Unless otherwise defined, such animals shall include:

(a) Any member of the large cat family (family felidae) including lions, tigers, cougars, bobcats, leopards, jaguars, cheetahs, ocelots and servals, but excluding commonly accepted domesticated house cats.

(b) Any naturally wild member of the canine family (family canidae) including wolves, foxes, coyotes, dingoes, and jackals, but excluding commonly accepted domesticated dogs.

(c) Any crossbreeds such as the crossbreed between a wolf and a dog, unless the crossbreed is commonly accepted as a domesticated house pet.

(d) Any member or relative of the rodent family, including any skunk (whether or not descended), raccoon, squirrel, or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets.

(e) Any poisonous, venomous, constricting, or inherently dangerous member of the reptile or amphibian families, including rattlesnakes, boa constrictors, pit vipers, crocodiles and alligators.

(f) All nonhuman primates, including but not limited to lemurs, monkeys, chimpanzees, gorillas, orangutans, marmosets, lorises and tamarins.

(g) Any other animal which is not explicitly listed above but which can be reasonably defined by the terms of this division, including but not limited to bears, deer and game fish.

(3) *Farm.* Farm animals shall mean those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, such animals shall include members of the equestrian family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens, turkeys), fowl (ducks, geese), swine (including Vietnamese pot-bellied pigs), goats, bees, and other animals associated with a farm, ranch, or stable.

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

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

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

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

RELEASE PERMIT. A permit issued by the City Clerk for the release of any animal that has been taken to the animal shelter. A **RELEASE PERMIT** may be obtained upon payment of a fee in accordance with the regular license requirement if the animal is unlicensed, payment of a release permit fee, and any maintenance costs incurred in capturing and impounding the animal. The release permit fee shall be as established from time to time by the City Council. For the purpose of a release permit, any change in the registered ownership of an animal subsequent to its impoundment and release shall reset that animal's impoundment count to the beginning of the fee scale.
(Ord. 10-05-2006, passed 10-5-2006)

§ 91.02 DOGS AND CATS.

(A) *Running at large prohibited.* It shall be unlawful for the dog or cat of any person who owns, harbors, or keeps a dog or cat, or the parents or the guardians of any such person under 18 years of age, to run at large. Dogs or cats on a leash and accompanied by a responsible person, or accompanied by and under the control and direction of a responsible person, so as to be effectively restrained by command as by leash, shall be permitted in streets or on public land, unless the city has posted an area with signs prohibiting dogs or cats.

(B) *License required.*

(1) All dogs and cats over the age of 6 months kept, harbored, or maintained by their owners in the city, shall be licensed and registered with the city. Dog and cat licenses shall be issued by the City Clerk upon payment of the license fee. The owner shall state, at the time application is made for the license and upon forms provided for such purpose, his or her name and address and the name, breed, color, and sex of each dog and cat owned or kept by him or her. No license shall be granted for a dog or cat which has not been vaccinated against rabies, as provided in this section. Vaccination shall be performed only by a doctor qualified to practice veterinary medicine in the state in which the dog or cat is vaccinated. A veterinarian who vaccinates a dog or cat to be licensed in the city shall complete a certificate of vaccination. One copy shall be issued to the dog or cat owner for affixing to the license application.

(2) It shall be the duty of each owner of a dog or cat subject to this section to pay to the City Clerk the license fee as imposed by the Council.

(3) Upon payment of the license fee, the City Clerk shall issue to the owner a license certificate and metallic tag for each dog and cat licensed. The tag shall have stamped on it the year for which it is issued and the number corresponding with the number on the certificate. Every owner shall be required to provide each dog and cat with a collar to which the license tag must be affixed, and shall see

that the collar and tag are constantly worn. In case a dog or cat tag is lost or destroyed, a duplicate shall be issued by the City Clerk. A charge, as established from time to time by the City Council, shall be made for each duplicate tag. Dog and cat tags shall not be transferable from one dog or cat to another, and no refunds shall be made on any dog or cat license fee or tag because of the death of a dog or cat or the owner's leaving the city before the expiration of the license period.

(4) The licensing provisions of this division shall not apply to dogs or cats whose owners are nonresidents temporarily within the city for 30 days or less, nor to dogs or cats brought into the city for the purpose of participating in any dog or cat show.

(5) The funds received by the City Clerk from all dog and cat licenses and metallic tags fees shall first be used to defray any costs incidental to the enforcement of this chapter, including but not restricted to the costs of licenses, metallic tags, and impounding and maintenance of dogs and cats.

(C) *Vaccination.*

(1) All dogs and cats kept harbored, maintained, or transported within the city shall be vaccinated at least once every 3 years by a licensed veterinarian for rabies with a live modified vaccine.

(2) A certificate of vaccination must be kept on which is stated the date of vaccination, owner's name and address, the animal's name (if applicable), sex, description and weight, the type of vaccine, and the veterinarian's signature. Upon demand made by the City Clerk, City Animal Control Officer, or a peace officer, the owner shall present for examination the required certificate(s) of vaccination for the animal(s). In cases where certificates are not presented, the owner or keeper of the animal(s) shall have 7 days in which to present the certificate(s) to the City Clerk, City Animal Control Officer, or peace officer. Failure to do so shall be deemed a violation of this section.

(Ord. 10-05-2006, passed 10-5-2006; Am. Ord. 05-17-2007, passed 5-17-2007) Penalty, see § 91.99

§ 91.03 NONDOMESTIC ANIMALS.

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

(Ord. 10-05-2006, passed 10-5-2006) Penalty, see § 91.99

§ 91.04 FARM ANIMALS.

Farm animals shall only be kept in a future development district of the city, or on a residential lot of at least 7.0 acres in size, provided that no structures used to shelter animals shall be within 100 feet of an adjoining piece of property. An exception shall be made to this section for those animals brought into the city as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

(Ord. 10-05-2006, passed 10-5-2006)

§ 91.05 IMPOUNDING.

(A) *Running at large.* Any animal running at large is hereby declared a public nuisance. Any peace officer may impound any dog or cat found unlicensed, or any animal found running at large, and shall give notice of the impounding to the owner of such dog, cat or other animal, if known. In case the owner is unknown, the officer shall post notice at the City Center that if the dog, cat, or other animal is not claimed within the time specified in division (C) below, it will be sold or otherwise disposed of. Except as otherwise provided in this chapter, it shall be unlawful to kill, destroy, or otherwise cause injury to any animal, including dogs and cats, running at large.

(B) *Biting animals.* Any animal that has not been inoculated by a live modified rabies vaccine and which has bitten any person, wherein the skin has been punctured or the services of a doctor are required, shall be confined in the animal shelter designated by the City Council for a period of not less than 10 days, at the expense of the owner. The animal may be released at the end of such time if healthy and free from symptoms of rabies, and by the payment of all costs by the owner. However, if the owner of the animal shall elect immediately upon receipt of notice of need for such confinement by the officer to voluntarily and immediately confine the animal for the required period of time in a veterinary hospital of the owner's choosing, not outside of Stearns County, Minnesota, and provide immediate proof of such confinement in such manner as may be required, the owner may do so. If, however, the animal has been inoculated with a live modified rabies vaccine and the owner has proof of the vaccination by a certificate from a licensed veterinarian, the owner may confine the dog or other animal to the owner's property.

(C) *Reclaiming.* All impounded animals shall be kept, with humane treatment and sufficient food and water for their comfort, at the animal shelter at least 5 regular business days, unless the animal is a dangerous animal as defined under § 91.11, in which case it shall be kept for 7 regular business days or the times specified in § 91.11, and except if the animal is a cruelly-treated animal, in which case it shall be kept for 10 regular business days, unless sooner reclaimed by its owners or keepers as provided by this section. In case the owner or keeper shall desire to reclaim the animal, the following shall be required, unless otherwise provided for in this code:

(1) Payment of the release permit fee specified by § 91.01 and receipt of a release permit from the City Clerk;

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(2) Payment of maintenance costs, as provided by the animal shelter, per day or any part of day while animal is in said animal shelter; and

(3) If a dog or cat is unlicensed, payment of the regular license fee and valid certificate of vaccination for rabies and distemper shots is required.

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

(Ord. 10-05-2006, passed 10-5-2006) Penalty, see § 91.99

§ 91.06 KENNELS.

(A) *Definition of kennel.* The keeping of 4 or more domestic animals, on the same premises, whether owned by the same person or not, and for whatever purpose kept, shall constitute a **KENNEL**, except that a fresh litter of pups, kittens, or other domestic animal may be kept for a period of 3 months before such keeping shall be deemed to be a **KENNEL**.

(B) *Kennel as a nuisance.* Because the keeping of 4 or more domestic animals on the same premises is subject to great abuse, causing discomfort to persons in the area by way of smell, noise, hazard, and general aesthetic depreciation, the keeping of 4 or more domestic animals on the premises is hereby declared to be a nuisance and no person shall keep or maintain a kennel within the city.

(Ord. 10-05-2006, passed 10-5-2006) Penalty, see § 91.99

§ 91.07 NUISANCES.

(A) *Habitual barking.* It shall be unlawful for any person to keep or harbor a dog which habitually barks or cries. **HABITUAL BARKING** shall be defined as barking for repeated intervals of at least 3 minutes with less than 1 minute of interruption. Such barking must also be audible off of the owner's or caretaker's premises.

(B) *Damage to property.* It shall be unlawful for any person's dog or other animal to damage any lawn, garden, or other property, whether or not the owner has knowledge of the damage. Any animal covered by this division may be impounded as provided in § 91.05, or a complaint may be issued by anyone aggrieved by an animal under this division, against the owner of the animal for prosecution under this chapter.

(C) *Cleaning up litter.* The owner of any animal or person having the custody or control of any animal shall be responsible for cleaning up any feces of the animal and disposing of such feces in a sanitary manner, whether on their own property, on the property of others, or on public property. Any person violating this division shall be punishable by a fine as established from time to time by the City Council.

(D) *Other.* Any animals kept contrary to this chapter are subject to impoundment as provided in § 91.05.

(Ord. 10-05-2006, passed 10-5-2006) Penalty, see § 91.99

§ 91.08 SEIZURE OF ANIMALS.

Any peace officer may enter upon private property and seize any animal, provided that the following exist:

(A) There is an identified complainant, other than the peace officer, making a contemporaneous complaint about the animal;

(B) The officer reasonably believes that the animal meets either the barking dog criteria set out in § 91.07(A); the criteria for cruelty set out in § 91.13; the criteria for a nondomestic animal set out in § 91.03; or the criteria for an at-large animal set out in § 91.01;

(C) The officer can demonstrate that there has been at least 1 previous complaint of a barking dog; inhumane treatment of the animal; possession of a nondomestic animal within the city limits; or that the animal was at large at this address on a prior date;

(D) The officer has made a reasonable attempt to contact the owner of the property and those attempts have either failed or have been ignored;

(E) The seizure will not involve the forced entry into a private residence. Use of a pass key obtained from a property manager, landlord, innkeeper, or other authorized person to have such key shall not be considered unauthorized entry; and

(F) Written notice of the seizure is left in a conspicuous place if personal contact with the owner of the dog is not possible.

(Ord. 10-05-2006, passed 10-5-2006)

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

If, in the reasonable belief of any peace officer or the City Animal Control Officer, an animal presents an immediate danger to the health and safety of any person, or the animal is threatening

imminent harm to any person, or the animal is in the process of attacking any person, the officer may destroy the animal in a proper and humane manner. Otherwise the peace officer or City Animal Control Officer may apprehend the animal and deliver it to the animal shelter for confinement under § 91.05. If the animal is destroyed, a charge to dispose of the animal, as established from time to time by the City Council, is payable by the owner of the animal. If the animal is found not to be a danger to the health and safety of the city, it may be released to the owner or keeper in accordance with § 91.05(C). (Ord. 10-05-2006, passed 10-5-2006)

§ 91.10 DISEASED ANIMALS.

(A) *Running at large.* No person shall keep, or allow to be kept, on his or her premises, or on premises occupied by them, nor permit to run at large in the city, any animal which is diseased so as to be a danger to the health and safety of the city, even though the animal be properly licensed under this chapter.

(B) *Confinement.* Any animal reasonably suspected of being diseased and presenting a threat to the health and safety of the public may be apprehended and confined in an animal shelter by any peace officer or the City Animal Control Officer. The City Animal Control Officer shall have a qualified veterinarian examine the animal. If the animal is found to be diseased in such a manner so as to be a danger to the health and safety of the city, the City Animal Control Officer shall cause such animal to be painlessly killed and shall properly dispose of the remains. The owner or keeper of the animal killed under this section shall be liable for the cost, as established from time to time by the City Council, of maintaining and disposing of the animal, plus the costs of any veterinarian examinations.

(C) *Release.* If the animal, upon examination, is not found to be diseased within the meaning of this section, the animal shall be released to the owner or keeper free of charge. (Ord. 10-05-2006, passed 10-5-2006) Penalty, see § 91.99

§ 91.11 DANGEROUS ANIMALS.

(A) *Attack by an animal.* It shall be unlawful for any person's animal to inflict or attempt to inflict bodily injury to any person or other animal whether or not the owner is present. This section shall not apply to an attack by a dog under the control of an on-duty law enforcement officer or to an attack upon an uninvited intruder who has entered the owner's home with criminal intent.

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

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

(1) **DANGEROUS ANIMAL.** An animal which has:

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

(2) **POTENTIALLY DANGEROUS ANIMAL.** An animal which has:

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

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

- (a) Have a minimum overall floor size of 32 square feet.
- (b) Side walls shall have a minimum height of 5 feet and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed 2 inches, support posts shall be 1-1/4 inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the side walls shall be buried a minimum of 18 inches in the ground.
- (c) A cover over the entire pen or kennel shall be provided. The cover shall be constructed of the same gauge wire or heavier as the side walls and shall also have no openings in the wire greater than 2 inches.

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(d) An entrance/exit gate shall be provided and be constructed of the same material as the side walls and shall also have no openings in the wire greater than 2 inches. The gate shall be equipped with a device capable of being locked and shall be locked at all times when the animal is in the pen or kennel.

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

(D) *Designation as potentially dangerous animal.* The City Animal Control Officer shall designate any animal as a potentially dangerous animal upon receiving evidence that the potentially dangerous animal has, when unprovoked, bitten, attacked, or threatened the safety of a person or a domestic animal as stated in division (C)(2) of this section. When an animal is declared potentially dangerous, the City Animal Control Officer shall cause 1 owner of the potentially dangerous animal to be notified in writing that such animal is potentially dangerous.

(E) *Evidence justifying designation.* The City Animal Control Officer shall have the authority to designate any animal as a dangerous animal upon receiving evidence of the following:

(1) That the animal has, when unprovoked, bitten, attacked, or threatened the safety of a person or domestic animal as stated in division (C)(1) above.

(2) That the animal has been declared potentially dangerous and such animal has then bitten, attacked or threatened the safety of a person or domestic animal as stated in division (C)(1) above.

(F) *Authority to order destruction.* The City Animal Control Officer, upon finding that an animal is dangerous, is authorized to order, as part of the disposition of the case, that the animal be destroyed based on a written order containing 1 or more of the following findings of fact:

(1) The animal is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning or multiple attacks; or

(2) The owner of the animal has demonstrated an inability or unwillingness to control the animal in order to prevent injury to persons or other animals.

(G) *Procedure.* The City Animal Control Officer, after having determined that an animal is dangerous, may proceed in the following manner:

(1) The City Animal Control Officer shall cause 1 owner of the animal to be notified in writing or in person that the animal is dangerous and may order the animal seized or make such orders as deemed proper. This owner shall be notified as to dates, times, places and parties bitten, and shall be given 14 days to appeal this order by requesting a hearing before the City Council for a review of this determination.

(2) (a) If no appeal is filed, the orders issued will stand or the City Animal Control Officer may order the animal destroyed.

(b) If an owner requests a hearing for determination as to the dangerous nature of the animal, the hearing shall be held before the City Council, which shall set a date for hearing not more than 3 weeks after demand for the hearing. The records of the Police Department, City Animal Control Officer, and City Clerk shall be admissible for consideration by the City Council without further foundation. After considering all evidence pertaining to the temperament of the animal, the City Council shall make an order as it deems proper. The City Council may order that the City Animal Control Officer take the animal into custody for destruction, if such animal is not currently in custody. If the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the City Animal Control Officer.

(c) No person shall harbor an animal after it has been determined by the City Animal Control Officer to be dangerous and ordered into custody for destruction.

(H) *Stopping an attack.* If any peace officer is witness to an attack by an animal upon a person or another animal, the officer may take whatever means the officer deems appropriate to bring the attack to an end and prevent further injury to the victim.

(I) *Notification of new address.* The owner of an animal which has been identified as dangerous or potentially dangerous must notify the City Clerk in writing if the animal is to be relocated from its current address or given or sold to another person. The notification must be given in writing at least 14 days prior to the relocation or transfer of ownership. The notification must include the current owner's name and address, the relocation address, and the name of the new owner, if any.
(Ord. 10-05-2006, passed 10-5-2006)

§ 91.12 DANGEROUS ANIMAL REQUIREMENTS.

(A) *Requirements.* If the City Council does not order the destruction of an animal that has been declared dangerous, the City Council may, as an alternative, order any or all of the following:

(1) That the owner provide and maintain a proper enclosure for the dangerous animal as specified in § 91.11(C)(3);

(2) Post the front and the rear of the premises with clearly visible warning signs, including a warning symbol to inform children that there is a dangerous animal on the property, as specified in M.S. § 347.51, as it may be amended from time to time;

(3) Provide and show proof annually of public liability insurance in the minimum amount of \$300,000;

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(4) If the animal is a dog and is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash (not to exceed 6 feet in length) and under the physical restraint of a person 16 years of age or older. The muzzle must be of such design as to prevent the dog from biting any person or animal, but will not cause injury to the dog or interfere with its vision or respiration;

(5) If the animal is a dog, it must have an easily identifiable, standardized tag identifying the dog as dangerous affixed to its collar at all times, as specified in M.S. § 347.51, as it may be amended from time to time;

(6) All animals deemed dangerous by the City Animal Control Officer shall be registered with Stearns County within 14 days after the date the animal was so deemed and provide satisfactory proof thereof to the City Clerk; and

(7) If the animal is a dog or cat, the animal must be licensed and up to date on distemper and rabies vaccinations.

(B) *Seizure.* A peace officer shall immediately seize any dangerous animal if the owner does not meet each of the above requirements within 14 days after the date notice is sent to the owner, that the animal is dangerous. Seizure may be appealed to District Court by serving a summons and petition upon the city and filing it with the District Court.

(C) *Reclaiming animals.* A dangerous animal seized under division (B) above may be reclaimed by the owner of the animal upon payment of impounding and boarding fees, and presenting proof to the City Clerk that each of the requirements under division (A) above is fulfilled. An animal not reclaimed within 14 days may be disposed of as provided under § 91.11(F), and the owner is liable for costs incurred in confining the animal.

(D) *Subsequent offenses.* If an owner of an animal has subsequently violated the provisions under § 91.11 with the same animal, the animal must be seized by a peace officer. The owner may request a hearing as defined in § 91.11(G). If the owner is found to have violated the provisions for which the animal was seized, the City Animal Control Officer shall order the animal destroyed in a proper and humane manner and the owner shall pay the costs of confining the animal. If the owner is found not to have violated the provisions for which the animal was seized, the owner may reclaim the animal under the provisions of division (C) above. If the animal is not reclaimed by the owner within 14 days after the date the owner is notified that the animal may be reclaimed, the animal may be disposed of as provided under § 91.11(F), and the owner is liable for the costs incurred in confining, impounding and disposing of the animal.

(Ord. 10-05-2006, passed 10-5-2006) Penalty, see § 91.99

§ 91.13 BASIC CARE.

All animals shall receive from their owners or keepers kind treatment, housing in the winter, and sufficient food and water for their comfort. Any person not treating their pet in such a humane manner will be subject to the penalties provided in this chapter.

(Ord. 10-05-2006, passed 10-5-2006) Penalty, see § 91.99

§ 91.14 BREEDING MORATORIUM.

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

(Ord. 10-05-2006, passed 10-5-2006)

§ 91.15 ENFORCING OFFICER.

The Council is hereby authorized to appoint an Animal Control officer(s) to enforce the provisions of this chapter. The City Animal Control Officer may, with the consent of the Council, designate assistants.

(Ord. 10-05-2006, passed 10-5-2006)

§ 91.16 ANIMAL SHELTER.

The City Council shall designate an official animal shelter to which animals found in violation of this chapter shall be taken for safe treatment, and if necessary, for destruction.

(Ord. 10-05-2006, passed 10-5-2006)

§ 91.17 INTERFERENCE WITH OFFICERS.

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

(Ord. 10-05-2006, passed 10-5-2006) Penalty, see § 91.99

§ 91.99 PENALTY.

Unless otherwise provided, violation of this chapter shall constitute a misdemeanor. Each day a violation of this chapter is committed or permitted to continue shall constitute a separate offense and shall be punishable as such under this chapter.

(Ord. 10-05-2006, passed 10-5-2006) General penalty, see § 10.99

CHAPTER 92: STREETS AND SIDEWALKS

Section

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Cross-reference:

Assessable current services, see § 93.01

GENERAL PROVISIONS

§ 92.01 UNLOADING ON STREET OR SIDEWALK.

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

(Am. Ord. 1-4-2007-1, passed 1-4-2007) Penalty, see § 92.99

§ 92.02 STREET AND SIDEWALK OBSTRUCTION.

(A) No person shall obstruct any street, alley, sidewalk, or other public way within the city by erecting thereon any fence or building, or permitting any fence or building to remain thereon without first obtaining an obstruction permit. Each day that any fence or building is permitted to remain upon the public way in violation of this section shall constitute a separate offense.

(B) No person shall encumber any street or sidewalk. No owner, occupant, or person having the care of any building or lot of land, bordering on any street or sidewalk, shall permit it to be encumbered with dumpsters, demolition or building materials, barrels, boxes, cans, articles, or substances of any kind, so as to interfere with the free and unobstructed use thereof without first obtaining an obstruction permit.

(Ord. 1-4-2007-1, passed 1-4-2007) Penalty, see § 92.99

§ 92.03 CURB CUTS.

(A) It is unlawful for any person to build, erect or maintain any curb cut or other structure in, over, or upon any public street or sidewalk without first obtaining an excavation permit pursuant to this

chapter. The City Administrator, Public Works Director or other person designated by the City Council may grant an excavation permit for:

- (1) A curb cut to allow driveway construction for access to a public street when the proposed curb cut is in conformity with city curb cut standards; or
 - (2) A curb cut to widen or reconstruct an existing curb cut which widening or reconstruction meets city curb cut standards.
- (B) For residential properties, the maximum allowable curb cut is 30 feet.
 - (C) For commercial and industrial properties, the maximum allowable curb cut is 46 feet.
 - (D) All curb cuts shall include at least a 3-foot taper at both ends and a 6-foot apron.
 - (E) The permittee is responsible for replacing any curb section measuring 2 feet or less as a result of a curb cut.
 - (F) It is unlawful for any person to remove or cause to be removed any public curb from the position of the curb abutting upon the roadway to any other position without first obtaining an excavation permit pursuant to this chapter.
 - (G) No excavation permit shall be granted until the applicant and the owner of the real property abutting the proposed curb cut or curb relocation, if other than the applicant, shall have executed an agreement with the city.
(Ord. 1-4-2007-1, passed 1-4-2007) Penalty, see § 92.99

§ 92.04 SIDEWALK MAINTENANCE AND REPAIR.

- (A) *Duty of owners and occupants.* The owner and the occupant of any property adjacent to a public sidewalk shall use diligence to keep the walk safe for pedestrians in accordance with this chapter and the city's sidewalk improvement program. No owner or occupant shall allow snow, ice, dirt, or rubbish to remain on the walk longer than 24 hours after its deposit thereon.
- (B) *Duty of owner.* The owner of any property within the city abutting a public sidewalk shall keep the sidewalk in repair and safe for pedestrians. Repairs shall be made in accordance with the standard specifications established by the city's sidewalk improvement program.
- (C) *Snow, ice, dirt, and rubbish.* The Public Works Director or other person designated by the City Council may cause removal from all public sidewalks of all snow, ice, dirt, and rubbish as soon as possible beginning 24 hours after any matter has been deposited thereon or after the snow has ceased to

fall. The Public Works Director or other designated person shall, when required by the city's sidewalk improvement program, keep a record showing the cost of removal adjacent to each separate lot and parcel.

(D) *Repair of sidewalks.*

(1) *Inspections.* The Public Works Director or its designee shall make inspections as are necessary to determine that public sidewalks within the city are kept in repair and safe for pedestrians. If it is found that any sidewalk abutting on private property is unsafe and in need of repairs, these repairs shall be made in accordance with the city's sidewalk improvement program.

(2) *Notice.* If it is determined that the repair is the responsibility of the property owner, the Public Works Director or its designee shall give written notice to the record owner of the property directing the owner to have the sidewalk or alley repaired and made safe within 30 days and stating that if the owner fails to do so, the city will do so and that the expense thereof must be paid by the owner, and if unpaid it will be made a special assessment against the property concerned. If the repair is not made within 30 days of the date of the notice from the Public Works Director, the City Council shall cause a notice to be served, by registered or certified mail or by personal service, upon the record owner of the property, ordering the owner to have the sidewalk or alley repaired and made safe within 30 days and stating that if the owner fails to do so, the city will do so and that the expense thereof must be paid by the owner, and if unpaid it will be made a special assessment against the property concerned.

(3) *Repair by city.* If the sidewalk repair is determined to be the responsibility of the property owner and is not repaired within 30 days after receipt of the notice, the City Administrator shall report the fact to the City Council and the City Council shall by resolution order the work done by contract in accordance with law. The City Administrator shall keep a record of the total cost of the repair attributable to each lot or parcel of property.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.05 MAILBOXES AND NEWSPAPER BOXES.

(A) Mailboxes and newspaper boxes are permitted within boulevards if they do not interfere with, obstruct, or render the street dangerous for passage.

(B) All mailboxes in new residential subdivisions shall be clustered units with locale individual boxes that meet United States Postal Service Standards. In residential areas served by clustered, neighborhood mailboxes, newspaper delivery receptacles shall also be clustered alongside or in the immediate vicinity of the mailboxes.

(C) All curbside mailboxes installed in existing residential areas on or after February 1, 2007 shall be clustered. Clusters of curbside mailboxes shall be established at intervals of not more than 1 every 500 feet or not more than 1 per block, whichever is less.

(D) All newspaper delivery receptacles installed in existing residential areas on or after February 1, 2007 shall be clustered. Clusters of newspaper delivery receptacles shall be established at intervals of not more than 1 every 500 feet or not more than 1 per block, whichever is less. In residential areas served by clustered, curbside mailboxes, newspaper delivery receptacles may also be clustered alongside or in the immediate vicinity of the mailboxes.

(E) The city shall be free from liability and claims for damages by reason of injuries occurring to any persons or property arising out of any mailbox or newspaper box located on public property. The owner of any mailbox or newspaper box located on public property shall defend and indemnify the city from all liability, loss, costs and obligations, including reasonable attorneys' fees, on account of or arising out of any such injuries.

(F) The city shall be free from liability and claims for damages by reason of injuries occurring to any mailbox or newspaper box located on public property. The owner of any mailbox or newspaper box located on public property shall defend and indemnify the city from all liability, loss, costs and obligations, including reasonable attorneys' fees, on account of or arising out of any such injuries.
(Ord. 1-4-2007-1, passed 1-4-2007)

RIGHT-OF-WAY MANAGEMENT REGULATIONS

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

In accordance with the authority granted to the city under state and federal statutory, administrative, and common law, the city hereby elects pursuant to this chapter to manage rights-of-way within its jurisdiction.
(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.21 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.

Minn. Rules Ch. 7819 (public rights-of-way standards), as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code as if set out in full. The definitions included in M.S. § 237.162 (public rights-of-way, telecommunications), Minn. Rules part 7819.0100 subpts. 1 through 23, and Minn. Rules part 7560.0100 subpts. 1 through 12 (excavation notice; pipeline safety), as they may be amended from time to time, are hereby adopted by reference and are incorporated into this chapter as if set out in full.
(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.22 PERMIT REQUIREMENT.

(A) *Permit required.* Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the city.

(1) *Excavation permit.* An excavation permit is required to excavate that part of the right-of-way described in the permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein. An excavation permit may not be granted between November 1 and April 1 except under emergency situations.

(2) *Obstruction permit.* An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing materials as described in § 92.02 of this code 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) *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.

(C) *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.

(D) *Delay penalty.* In accordance with Minn. Rules part 7819.1000 subpt. 3, as it may be amended from time to time, and notwithstanding subdivision (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established by the City Council.

(E) *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 City Administrator, Public Works Director or other person designated by the City Council.
(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.23 PERMIT APPLICATIONS.

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

(A) Submission of a completed permit application form, including all required attachments, 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, 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 permittee by an insurance company licensed to do business in the state, or a form of self-insurance acceptable to the City Administrator, Public Works Director or other person designated by the City Council;
 - (b) Verifying that the permittee 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 permittee, its officers, agents, employees, and permittees, and placement and use of facilities and equipment in the right-of-way by the permittee, its officers, agents, employees, and permittees, including but not limited to protection against liability arising from completed operations, damage of underground facilities, and collapse of property;
 - (c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all coverages;
 - (d) Requiring that the City Administrator, Public Works Director or other person designated by the City Council be notified 30 days in advance of cancellation of the policy or material modification of a coverage term; and
 - (e) Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the City Administrator, Public Works Director or other person designated by the City Council in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.
- (4) The city may require a copy of the actual insurance policies;
- (5) If the person is a corporation, a copy of the certificate required to be filed under M.S. § 300.06, as it may be amended from time to time, as recorded and certified to by the Secretary of State; and

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

(B) Payment of money due the city for:

(1) Permit fees as established by City Council resolution, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

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

(4) Franchise fees or other charges as established by City Council resolution, as it may be amended from time to time, if applicable.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.24 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the City Administrator, Public Works Director or other person designated by the City Council shall issue a permit.

(B) *Conditions.* The City Administrator, Public Works Director or other person designated by the City Council may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the public 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.01-09 (Gopher One Call Excavation Notice System) and Minn. Rules Ch. 7560, as they may be amended from time to time.

(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 requirement set forth in M.S. Ch. 216D and Minn. Rules Ch. 7560, as they may be amended from time to time, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the city.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.25 PERMIT FEES.

Permit fees shall be in an amount established by the City Council.

(A) *Excavation permit fee.* The city shall establish an excavation permit fee 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 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 the excavation or obstruction permit fees. The city may allow an applicant to pay those fees within 30 days of billing.

(D) *Nonrefundable.* Permit fees that were paid for a permit that the City Administrator, Public Works Director or other person designated by the City Council has revoked for a breach as stated in § 92.33 are not refundable.

(E) *Application to franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

(F) *State law.* All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.1000, as it may be amended from time to time.
(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.26 RIGHT-OF-WAY PATCHING AND RESTORATION.

(A) *Patch and restoration.* 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 the city restores the right-of-way, the permittee may be required to post a deposit to ensure payment of the costs thereof. If, following the restoration, the pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.

(2) *Permittee restoration.* If the permittee restores the right-of-way itself, it may be required at the time of application for an excavation permit to post a construction performance bond or a deposit in accordance with the provisions of Minn. Rules part 7819.3000, as it may be amended from time to time. The permittee shall guarantee its own work for 12 months following completion of the work.

(B) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules part 7819.1100, as it may be amended from time to time. The City Administrator, Public Works Director or other person designated by the City 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.

(C) *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 City Administrator, Public Works Director or other person designated by the City Council, shall correct all restoration work to the extent necessary, using the method required by the city. The work shall be completed within 5 calendar days of the receipt of the notice from the city, 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.

(D) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city 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.

(E) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee as established by the City Council. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.27 SUPPLEMENTARY APPLICATIONS.

(A) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee who determines that an area greater than that specified in the permit must be obstructed or excavated, must, before working in that greater area, make application for a permit extension and pay any additional fees required thereby, and be granted a new permit or permit extension.

(B) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.28 DENIAL OF PERMIT.

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

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.29 INSTALLATION REQUIREMENTS.

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

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.30 INSPECTION.

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

(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 city.*

(1) At the time of inspection, the City Administrator, Public Works Director or other person designated by the City Council may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.

(2) The City Administrator, Public Works Director or other person designated by the City 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 10 days after issuance of the order, the permittee shall present proof to the city that the violation has been corrected. If proof has not been presented within the required time, the city may revoke the permit pursuant to § 92.33.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.31 WORK DONE WITHOUT A PERMIT.*(A) Emergency situations.*

(1) Each person with facilities in the right-of-way shall immediately notify the city of any event regarding the facilities that 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 2 business days after the occurrence of the emergency, the owner shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

(2) If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

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

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.32 SUPPLEMENTARY NOTIFICATION.

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

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.33 REVOCATION OF PERMITS.

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

(1) The violation of any material provision of the right-of-way permit;

(2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;

(3) Any material misrepresentation of fact in the application for a right-of-way permit;

(4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or

(5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 92.30.

(B) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, code, 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 attorneys' fees incurred in connection with the revocation.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.34 MAPPING DATA; INFORMATION REQUIRED.

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

(B) *Service laterals.* All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. Rules part 7560.0150 subpt. 2, as it may be amended from time to time, 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. Permittees or their 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 both: 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; and 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. 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.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.35 LOCATION OF FACILITIES.

(A) *Compliance required.* Placement, location, and relocation of facilities must comply with applicable laws, and with Minn. Rules parts 7819.3100, 7819.5000 and 7819.5100, as they may be amended from time to time, to the extent the rules do not limit authority otherwise available to cities.

(B) *Corridors.* The city may assign specific corridors within the right-of-way, or any particular segment thereof, as may be necessary for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

(C) *Limitation of space.* To protect the public health, safety, and welfare or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the City Administrator, Public Works Director or other person designated by the City Council shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects that have been determined to be in the public interest.

(D) *Undergrounding.* Unless otherwise agreed in a franchise between the applicable right-of-way user and the city, facilities in the right-of-way must be located or relocated and maintained underground in accordance with §§ 92.60 through 96.68 of the city code.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.36 DAMAGE TO OTHER FACILITIES.

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

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.37 RIGHT-OF-WAY VACATION.

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

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.38 INDEMNIFICATION AND LIABILITY.

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

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.39 ABANDONED FACILITIES; REMOVAL.

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 city.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.40 APPEAL.

A right-of-way user that has been denied a permit; has had a permit revoked; or believes that the fees imposed are invalid; or disputes a determination of the city regarding § 92.34(B) of this code, may have the denial, revocation, fee imposition, or decision 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 imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.41 RESERVATION OF REGULATORY AND POLICE POWERS.

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

(Ord. 1-4-2007-1, passed 1-4-2007)

UNDERGROUND FACILITIES REGULATIONS**§ 92.60 PURPOSE.**

The purpose of this subchapter is to promote the health, safety and general welfare of the public and is intended to foster safe travel over the right-of-way, nontravel-related safety around homes and buildings where overhead feeds are connected, and orderly development in the city. Location and relocation, installation and reinstallation of facilities in the right-of-way must be made in accordance with §§ 92.60 through 92.68 of this code.
(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.61 DEFINITIONS.

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

COMMISSION. The Minnesota Public Utilities Commission.

FACILITY. Tangible asset in the public right-of-way required to provide utility service. The term does not include ***FACILITIES*** to the extent the location and relocation of such facilities are preempted by M.S. § 161.45, as it may be amended from time to time, governing utility facility placement in state trunk highways. ***FACILITY*** does not mean electric transmission lines, as distinguished from electric distribution lines.

PUBLIC RIGHT-OF-WAY. The meaning given it in M.S. § 237.162, subd. 3, as it may be amended from time to time.

RIGHT-OF-WAY USER. Means:

(1) A telecommunications right-of-way user as defined by M.S. § 237.162, subd. 4, as it may be amended from time to time; or

(2) A person owning or controlling a facility, in the right-of-way, that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

UTILITY SERVICE. Means and includes:

(1) Service provided by a public utility as defined in M.S. § 216B.02, subs. 4 and 6, as may be amended from time to time;

(2) Services of a telecommunications right-of-way user, including the transporting of voice or data information;

(3) Services provided by a cable communications system, as defined in M.S. § 238.02, subd. 3, as it may be amended from time to time;

(4) Natural gas or electric energy or telecommunications services provided by a local government unity;

(5) Services provided by a cooperative electric association organized under M.S. Ch. 308A, as it may be amended from time to time; and

(6) Water, sewer, steam, cooling or heating services.
(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.62 UNDERGROUNDING OF FACILITIES.

Facilities placed in the public right-of-way must be located, relocated, and maintained underground pursuant to the terms and conditions of §§ 92.60 through 92.68 of this code and in accordance with applicable construction standards. This section is intended to be enforced consistently with state and federal law regulating right-of-way users, specifically including but not limited to M.S. §§ 161.45, 237.162, 237.163, 300.03, 222.37, 238.084, and 216B.36, as they may be amended from time to time, and the Telecommunication Act of 1996, 47 U.S.C. § 253.
(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.63 UNDERGROUNDING OF NEW FACILITIES.

A new facility or a permanent extension of facilities must be installed and maintained underground when supplied to:

(A) A new installation of buildings, signs, streetlights, or other structures;

(B) A new subdivision of land; or

(C) A new development or industrial park containing new commercial or industrial buildings.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.64 RETIREMENT OF OVERHEAD FACILITIES.

The City Council may determine whether it is in the public interest that all facilities within the city, or within certain districts designated by the city, be permanently placed and maintained underground by

a date certain or target date, independently of undergrounding required pursuant to § 92.63 of this chapter. The decision to underground must be preceded by a public hearing, after 2 weeks' published notice and 30 days' written notice to the utilities affected. At the hearing the Council must consider items (A)(1) through (4) in § 92.66 of this chapter and make findings. Undergrounding may not take place until City Council has, after hearing and notice, adopted a plan containing items (A)(1) through (6) of § 92.67 of this chapter.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.65 PUBLIC HEARINGS.

A hearing must be open to the public and may be continued from time to time. At each hearing, any person interested must be given an opportunity to be heard. The subject of the public hearings shall be the issue of whether facilities in the right-of-way in the city, or located within a certain district, shall all be located underground by a date certain. Hearings are not necessary for the undergrounding required under § 92.63 of this chapter.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.66 PUBLIC HEARING ISSUES.

(A) The issues to be addressed at the public hearings include but are not limited to:

(1) The costs and benefits to the public of requiring the undergrounding of all facilities in the right-of-way;

(2) The feasibility and cost of undergrounding all facilities by a date certain as determined by the city and the affected utilities;

(3) The tariff requirements, procedure, and rate design for recovery or intended recovery of incremental costs for undergrounding by the utilities from ratepayers within the city; and

(4) Alternative financing options available if the city deems it in the public interest to require undergrounding by a date certain and deems it appropriate to participate in the cost otherwise borne by the ratepayers.

(B) Upon completion of the hearing or hearings, the City Council must take written findings on whether it is in the public interest to establish a plan under which all facilities will be underground, either citywide or within districts designated by the city.

(Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.67 UNDERGROUNDING PLAN.

(A) If the Council finds that it is in the public interest to underground all or substantially all facilities in the public right-of-way, the Council must establish a plan for such undergrounding.

(B) The plan for undergrounding must include at least the following elements:

- (1) Timetable for the undergrounding;
 - (2) Designation of districts for the undergrounding unless undergrounding plan is citywide;
 - (3) Exceptions to the undergrounding requirement and procedure for establishing such exceptions;
 - (4) Procedures for the undergrounding process, including but not limited to coordination with city projects and provisions to ensure compliance with nondiscrimination requirements under the law;
 - (5) A financing plan for funding of the incremental costs if the city determines that it will finance some of the undergrounding costs, and a determination and verification of the claimed additional costs to underground incurred by the utility; and
 - (6) Penalties or other remedies for failure to comply with the undergrounding.
- (Ord. 1-4-2007-1, passed 1-4-2007)

§ 92.99 PENALTY.

Unless otherwise provided, violation of this chapter shall constitute a misdemeanor. Each day a violation of this chapter is committed or permitted to continue shall constitute a separate offense and shall be punishable as such under this chapter.

(Ord. 1-4-2007-1, passed 1-4-2007) General penalty, see § 10.99

CHAPTER 93: ASSESSABLE SERVICES; NUISANCES

Section

General Provisions

93.01 Assessable current services

Nuisances

- 93.15 Public nuisance
- 93.16 Public nuisances affecting health
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- 93.99 Penalty

Cross-reference:

Trees; weeds, see Chapter 95 of this code of ordinances

GENERAL PROVISIONS

§ 93.01 ASSESSABLE CURRENT SERVICES.

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

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

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(B) *Public health and safety hazards.* Whenever the city provides a current service to a private property under the provisions of this code and the city's sidewalk improvement program, the administrative officer responsible for doing the work shall keep a record of the cost of the removal or elimination against each parcel of property affected and deliver that information to the City Administration Office.

(C) *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 the service. As soon as the service has been completed and the cost determined, the City Administration Office shall prepare a bill and mail it to the owner, and thereupon the amount shall be immediately due and payable at the City Administration Office.

(D) *Damage to public property.* Any person driving any vehicle, equipment, object, or contrivance upon any street, road, highway, or structure shall be liable for all damages which the surface or structure thereof may sustain as a result of any illegal operation, or driving or moving of the vehicle, equipment, object, or contrivance; or as a result of operating, driving, or moving any vehicle, equipment, object, or contrivance weighing in excess of the maximum weight permitted by statute or this code. When the driver is not the owner of the vehicle, equipment, object, or contrivance, but is operating, driving, or moving it with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any such damage. Any person who willfully acts or fails to exercise due care and by that act damages any public property shall be liable for the amount thereof, which amount shall be collectable by action or as a lien under M.S. § 514.67, as it may be amended from time to time.

(E) *Assessment.* On or before September 1 of each year, the City Administrator shall list the total unpaid charges for each type of current service and charges under this section against each separate lot or parcel to which they are attributable under this section. The City Council may then spread the charges against property benefited as a special assessment under the authority of M.S. § 429.101, as it may be amended from time to time, and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding 10, as the City Council may determine in each case.
(Ord. 1-4-2007-2, passed 1-4-2007)

NUISANCES

§ 93.15 PUBLIC NUISANCE.

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

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

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

(C) Is guilty of any other act or omission declared by law or §§ 93.16, 93.17, or 93.18, or any other part of this code, to be a public nuisance and for which no sentence is specifically provided. (Ord. 1-4-2007-2, passed 1-4-2007) Penalty, see § 93.99

§ 93.16 PUBLIC NUISANCES AFFECTING HEALTH.

The following are hereby declared to be nuisances affecting health:

(A) Exposed accumulation of decayed or unwholesome food or vegetable matter;

(B) All diseased animals running at large;

(C) All ponds or pools of stagnant water;

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

(E) Accumulations of manure, refuse, or other debris;

(F) Privy vaults and garbage cans which are not rodent-free or fly-tight or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;

(G) The pollution of any public well or cistern, stream or lake, canal, or body of water by wastewater, industrial waste, or other substances;

(H) All noxious weeds and other rank growths of vegetation upon public or private property;

(I) Dense smoke, noxious fumes, gas, and soot, or cinders, in unreasonable quantities;

(J) All public exposure of people having a contagious disease; and

(K) Any offensive trade or business as defined by statute not operating under local license. (Ord. 1-4-2007-2, passed 1-4-2007)

§ 93.17 PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.

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

(A) All gambling devices, slot machines, and punch boards, except as otherwise authorized by federal, state, or local law;

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(B) Betting, bookmaking, and all apparatus used in those occupations;

(C) All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame, and bawdy houses;

(D) All places where intoxicating liquor is manufactured or disposed of in violation of law or where, in violation of law, people are permitted to resort for the purpose of drinking intoxicating liquor, or where intoxicating liquor is kept for sale or other disposition in violation of law, and all liquor and other property used for maintaining that place; and

(E) Any vehicle used for the unlawful transportation of intoxicating liquor, or for promiscuous sexual intercourse, or any other immoral or illegal purpose.

(Ord. 1-4-2007-2, passed 1-4-2007)

§ 93.18 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

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

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

(B) All wires and limbs of trees which are so close to the surface of a sidewalk or street as to constitute a danger to pedestrians or vehicles;

(C) All obnoxious noises in violation of Minn. Rules Ch. 7030, as it may be amended from time to time, which is hereby incorporated by reference into this code;

(D) The discharging of the exhaust or permitting the discharging of the exhaust of any stationary internal combustion engine, motor boat, motor vehicle, motorcycle, all terrain vehicle, snowmobile, or any recreational device except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws and regulations;

(E) No person shall participate in any party or other gathering of people giving rise to noise, unreasonably disturbing the peace, quiet, or repose of another person. When a police officer determines that a gathering is creating a noise disturbance, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave after being ordered by a police officer to do so. Every owner or tenant of the premises who has knowledge of the disturbance shall make every reasonable effort to see that the disturbance is stopped;

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

(G) Radio aerials or television antennae erected or maintained in a dangerous manner;

(H) Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk which causes large crowds of people to gather, obstructing traffic and the free use of the street or sidewalk;

(I) All hanging signs, awnings, and other similar structures over streets and sidewalks, so situated as to endanger public safety, or not constructed and maintained as provided by ordinance;

(J) The allowing of rainwater, ice, or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk;

(K) Any barbed wire fence less than 6 feet above the ground and within 3 feet of a public sidewalk or way;

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

(M) Wastewater cast upon or permitted to flow upon streets or other public properties;

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

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

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

(Q) 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 the substance;

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

(S) The allowing of building materials, construction debris, garbage, refuse, or similar items to fall from any building or structure upon a public right-of-way or adjacent private property;

(T) Permitting building materials, construction debris, garbage, refuse, or similar items to blow or otherwise go on to a public right-of-way or the land of another;

(U) All other conditions or things which are likely to cause injury to the person or property of anyone;

(V) (1) *Noises prohibited.*

(a) *General prohibition.* No person shall make or cause to be made any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare of any person or precludes their enjoyment of property or affects the property's value. This general prohibition is not limited by the specific restrictions of this section.

(b) *Defective vehicles or loads.* No person shall use any vehicle so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling, or other noise.

(c) *Loading, unloading, unpacking.* No person shall create loud or excessive noise in loading, unloading, or unpacking any vehicle.

(d) *Radios, phonographs, paging systems, and the like.* No person shall use or operate or permit the use or operation of any radio receiving set, musical instrument, phonograph, paging system, machine, or other device for the production or reproduction of sound in a distinct and loudly audible manner so as to unreasonably disturb the peace, quiet, and comfort of any person nearby. Operation of any such set, instrument, phonograph, machine, or other device 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, in the hallway or apartment adjacent, or at a distance of 50 feet if the source is located outside a structure or building, shall be prima facie evidence of a violation of this section.

(e) *Schools, churches, hospitals, and the like.* No person shall create any excessive noise on a street, alley, or public grounds adjacent to any school, institution of learning, church, or hospital when the noise unreasonably interferes with the working of the institution or disturbs or unduly annoys its occupants or residents and when conspicuous signs indicate the presence of the institution.

(2) *Hourly restriction of certain operations.*

(a) *Domestic power equipment.* No person shall operate a power lawn mower, power hedge clipper, chain saw, mulcher, garden tiller, edger, drill, leaf blower, or other similar domestic power maintenance equipment except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday. Snow removal equipment is exempt from this provision.

(b) *Refuse hauling.* No person shall collect or remove garbage or refuse in any residential district except between the hours of 6:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend.

(c) *Construction activities.* No person shall engage in or permit construction activities involving the use of any kind of electric, diesel, or gas-powered machine or other power equipment except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 8:00 a.m. and 9:00 p.m. on any weekend or holiday.

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

(W) Reflected glare or light from private exterior lighting exceeding 0.5 foot-candles as measured on the property line of the property where the lighting is located when abutting any residential parcel, and 1 foot-candle when abutting any commercial or industrial parcel.

(Ord. 1-4-2007-2, passed 1-4-2007) Penalty, see § 93.99

§ 93.19 NUISANCE PARKING AND STORAGE.

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

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

(B) *Unlawful parking and storage.*

(1) A person must not place, store, or allow the placement or storage of ice fish houses, skateboard ramps, playhouses, or other similar nonpermanent structures outside continuously for longer than 24 hours in the front yard area of residential property, unless more than 100 feet back from the front property line.

(2) A person must not place, store, or allow the placement or storage of pipe, lumber, forms, steel, machinery, or similar materials, including all materials used in connection with a business, outside on residential property, unless shielded from public view by an opaque cover or fence.

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(3) A person must not cause, undertake, permit, or allow the outside parking and storage of vehicles on residential property unless it complies with the following requirements.

(a) No more than 4 vehicles per lawful dwelling unit may be parked or stored anywhere outside on residential property, except as otherwise permitted or required by the city because of nonresidential characteristics of the property. This maximum number does not include vehicles of occasional guests who do not reside on the property.

(b) Vehicles that are parked or stored outside in the front yard area must be on a paved or graveled parking or driveway area.

(c) Vehicles, watercraft, and other articles stored outside on residential property must be owned by a person who resides on that property. Students who are away at school for periods of time but still claim the property as their legal residence will be considered residents on the property. (Ord. 1-4-2007-2, passed 1-4-2007) Penalty, see § 93.99

§ 93.20 DUTIES OF CITY OFFICERS.

The Police Department shall enforce the provisions relating to nuisances. Any police officer shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances. Except in emergency situations of imminent danger to human life and safety, no police officer shall enter private property for the purpose of inspecting or preventing public nuisances without the permission of the owner, resident, or other person in control of the property, unless the officer has obtained a warrant or order from a court of competent jurisdiction authorizing the entry, as provided in § 10.20.

(Ord. 1-4-2007-2, passed 1-4-2007)

§ 93.21 ABATEMENT.

(A) *Notice.* Written notice of violation; notice of the time, date, place, and subject of any hearing before the City Council; notice of City Council order; and notice of motion for summary enforcement hearing shall be given as set forth in this section.

(1) *Notice of violation.* Written notice of violation shall be served by a police officer on the owner of record or occupant of the premises either in person or by certified or registered mail. If the premises are not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of violation, notice of violation shall be served by posting it on the premises.

(2) *Notice of City Council hearing.* Written notice of any City Council hearing to determine or abate a nuisance shall be served on the owner of record and occupant of the premises, either in person or by certified or registered mail. If the premises are not occupied, the owner of record is unknown,

or the owner of record or occupant refuses to accept notice of the City Council hearing, notice of the City Council hearing shall be served by posting it on the premises.

(3) *Notice of City Council order.* Except for those cases determined by the city to require summary enforcement, written notice of any City Council order shall be made as provided in M.S. § 463.17, as it may be amended from time to time.

(4) *Notice of motion for summary enforcement.* Written notice of any motion for summary enforcement shall be made as provided for in M.S. § 463.17, as it may be amended from time to time.

(B) *Procedure.* Whenever a police officer determines that a public nuisance is being maintained or exists on the premises in the city, the officer shall notify in writing the owner of record or occupant of the premises of that fact and order that the nuisance be terminated or abated. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated. If the notice of violation is not complied with within the time specified, the police officer shall report that fact forthwith to the City Council. Thereafter, the City Council may, after notice to the owner or occupant and an opportunity to be heard, determine that the condition identified in the notice of violation is a nuisance and further order that if the nuisance is not abated within the time prescribed by the City Council, the city may seek injunctive relief by serving a copy of the City Council order and notice of motion for summary enforcement.

(C) *Emergency procedure; summary enforcement.* In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in divisions (A) and (B) of this section will permit a continuing nuisance to unreasonably endanger public health, safety, or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the police officer 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 police 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 City Council meeting to consider the question of summary enforcement. The City Council shall determine whether or not the condition identified in the notice to the owner 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 division (A) of this section, and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

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

(Ord. 1-4-2007-2, passed 1-4-2007)

§ 93.22 RECOVERY OF COST.

(A) *Personal liability.* The owner of premises on which a nuisance has been abated by the city shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Administration Office shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Administration Office.

(B) *Assessment.* After notice and hearing as provided in M.S. § 429.061, as it may be amended from time to time, if the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect-infected trees, the City Administrator shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other the charges as well as other charges for current services to be assessed under M.S. § 429.101, as it may be amended from time to time, against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding 10, as the City Council may determine in each case.

(Ord. 1-4-2007-2, passed 1-4-2007)

§ 93.99 PENALTY.

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

(Ord. 1-4-2007-2, passed 1-4-2007)

CHAPTER 94: FIRE PREVENTION

Section

Open Burning

- 94.01 Definitions
- 94.02 Prohibited materials
- 94.03 Permit required for open burning
- 94.04 Purposes allowed for open burning
- 94.05 Permit application for open burning; permit fees
- 94.06 Permit process for open burning
- 94.07 Permit holder responsibility
- 94.08 Revocation of open burning permit
- 94.09 Denial of open burning permit
- 94.10 Burning ban or air quality alert
- 94.11 Rules and laws adopted by reference

OPEN BURNING

§ 94.01 DEFINITIONS.

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

FIRE CHIEF and ***ASSISTANT FIRE CHIEFS***. The Fire Chief and Assistant Fire Chiefs of the Fire Department which provides fire protection services to the city.

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

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RECREATIONAL FIRE. A fire set with approved starter fuel no more than 3 feet in height, contained within the border of a recreational fire site, using dry, clean wood; producing little detectable smoke, odor, or soot beyond the property line; conducted with an adult tending the fire at all times; for recreational, ceremonial, food preparation for social purposes; extinguished completely before quitting the occasion; and respecting weather conditions, neighbors, burning bans, and air quality so that nuisance, health, or safety hazards will not be created. No more than 1 **RECREATIONAL FIRE** is allowed on any property at 1 time.

RECREATIONAL FIRE SITE. An area of no more than a 3-foot diameter circle (measured from the inside of the fire ring or border); completely surrounded by non-combustible and non-smoke or odor producing material, either of natural rock, cement, brick, tile, or blocks, or ferrous metal only and which area is depressed below ground, on the ground, or on a raised bed. Included are permanent outdoor wood burning fireplaces. Burning barrels are not a **RECREATIONAL FIRE SITE** as defined herein. **RECREATIONAL FIRE SITES** shall not be located closer than 25 feet to any structure.

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

WOOD. Dry, clean fuel only such as twigs, branches, limbs, presto logs, charcoal, cord wood, or untreated dimensional lumber. The term does not include wood that is green with leaves or needles, rotten, wet, oil soaked, or treated with paint, glue, or preservatives. Clean pallets may be used for recreational fires when cut into 3-foot lengths.

§ 94.02 PROHIBITED MATERIALS.

(A) No person shall conduct, cause, or permit open burning oils, petro fuels, rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke such as tires, railroad ties, treated, painted, or glued wood composite shingles, tar paper, insulation, composition board, sheet rock, wiring, paint, or paint fillers.

(B) No person shall conduct, cause, or permit open burning of hazardous waste or salvage operations, open burning of solid waste generated from an industrial or manufacturing process or from a service or commercial establishment, or building material generated from demolition of commercial or institutional structures.

(C) No person shall conduct, cause, or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving, or consumption of food.

(D) No person shall conduct, cause, or permit open burning of any leaves or grass clippings.
Penalty, see § 10.99

§ 94.03 PERMIT REQUIRED FOR OPEN BURNING.

No person shall start or allow any open burning on any property in the city without first having obtained an open burn permit, except that a permit is not required for any fire which is a recreational fire as defined in § 94.01.

Penalty, see § 10.99

§ 94.04 PURPOSES ALLOWED FOR OPEN BURNING.

(A) Open burn permits may be issued only for the following purposes:

(1) Elimination of fire or health hazard that cannot be abated by other practical means;

(2) Ground thawing for utility repair and construction;

(3) Disposal of vegetative matter for managing forest, prairie, or wildlife habitat, and in the development and maintenance of land and rights-of-way where chipping, composting, landspreading, or other alternative methods are not practical;

(4) Disposal of diseased trees generated on site, diseased or infected nursery stock, diseased bee hives; or

(5) Disposal of unpainted, untreated, non-glued lumber and wood shakes generated from construction, where recycling, reuse, removal, or other alternative disposal methods are not practical.

(B) Fire training permits can only issued by the State Department of Natural Resources.

Penalty, see § 10.99

§ 94.05 PERMIT APPLICATION FOR OPEN BURNING; PERMIT FEES.

(A) Open burning permits shall be obtained by making application on a form prescribed the Department of Natural Resources (DNR) and adopted by the city's Fire Department. The permit application shall be presented to the Fire Chief and Assistant Fire Chiefs for reviewing and processing those applications.

(B) An open burning permit shall require the payment of a fee. Permit fees shall be in the amount established by the City Council and payment shall be made to the city.

Penalty, see § 10.99

§ 94.06 PERMIT PROCESS FOR OPEN BURNING.

Upon receipt of the completed open burning permit application and permit fee, the Fire Chief or Assistant Fire Chiefs shall schedule a preliminary site inspection to locate the proposed burn site, note special conditions, and set dates and time of permitted burn, and review fire safety considerations.

§ 94.07 PERMIT HOLDER RESPONSIBILITY.

(A) Prior to starting an open burn, the permit holder shall be responsible for confirming that no burning ban or air quality alert is in effect. Every open burn event shall be constantly attended by the permit holder or their competent representative. The open burning site shall have available, appropriate communication and fire suppression equipment as set out in the fire safety plan.

(B) The open burn fire shall be completely extinguished before the permit holder or their representative leaves the site. No fire may be allowed to smolder with no person present. It is the responsibility of the permit holder to have a valid permit, as required by this subchapter, available for inspection on the site by the Police Department, Fire Department, MPCA representative, or DNR forest officer.

(C) The permit holder is responsible for compliance and implementation of all general conditions, special conditions, and the burn event safety plan as established in the permit issued. The permit holder shall be responsible for all costs incurred as a result of the burn, including but not limited to fire suppression and administrative fees.

Penalty, see § 10.99

§ 94.08 REVOCATION OF OPEN BURNING PERMIT.

The open burning permit is subject to revocation at the discretion of the DNR forest officer, the Fire Chief or Assistant Fire Chiefs. Reasons for revocation include but are not limited to a fire hazard existing or developing during the course of the burn, any of the conditions of the permit being violated during the course of the burn, pollution or nuisance conditions developing during the course of the burn, or a fire smoldering with no flame present.

Penalty, see § 10.99

§ 94.09 DENIAL OF OPEN BURNING PERMIT.

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

§ 94.10 BURNING BAN OR AIR QUALITY ALERT.

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

Penalty, see § 10.99

§ 94.11 RULES AND LAWS ADOPTED BY REFERENCE.

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

CHAPTER 95: TREES, SHRUBS, LANDSCAPING, WEEDS AND OTHER PLANTS

Section

General Provisions

- 95.01 Purpose
- 95.02 Definitions

Trees

- 95.10 Tree care and protection
- 95.11 Tree diseases
- 95.12 Shade tree pest and disease control program
- 95.13 Abuse or mutilation of trees
- 95.14 Topping
- 95.15 Stockpiling wood
- 95.16 Building operations
- 95.17 Interference unlawful

Landscape Improvements

- 95.20 Boulevard landscaping
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Weeds

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- 95.38 Owners responsible for trimming, removal, and the like
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GENERAL PROVISIONS**§ 95.01 PURPOSE.**

It is the purpose of this chapter to promote and protect the public health, safety and general welfare by providing for the regulation of the maintenance and removal of trees, shrubs and other plants within the City of Melrose, Minnesota.
(Ord. 1-18-2007, passed 1-18-2007)

§ 95.02 DEFINITIONS.

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

BOULEVARD. The area between the curb and the private property line that is public property.

CITY. The City of Melrose, Minnesota as represented by the City Council or any designated agent acting within the scope of its jurisdiction.

CITY FORESTER. The city official charged by the City Council with the administration and enforcement of these regulations.

HAZARDOUS TREES. Any public or private tree, or part thereof which:

- (1) Has an infectious or destructive disease, insect problem, or other pestilence which endangers the growth, health, life or well-being of trees in the city, or that threatens to or is capable of causing the spread of disease, pestilence, or insect infestation;
- (2) Is dead, dying, broken or decayed;
- (3) Constitutes a public nuisance as defined in § 95.11;
- (4) Obstructs street lights, traffic signs, or the view of any street intersection or street sign;
- (5) Obstructs the free passage of pedestrians or vehicles;
- (6) Overhangs a public right-of-way so that the clear space above the public right-of-way is less than 12 feet;
- (7) Is causing the surface of a public right-of-way to be upheaved or otherwise disturbed;

(8) Injures or poses an imminent threat of injury to a public utility or other public improvement; or

(9) Constitutes an imminent danger to the health, safety, or well-being of the general public.

PRIVATE TREES. All trees growing on private property within the City of Melrose.

PUBLIC PROPERTY. Any real property or structure owned by the City of Melrose, including but not limited to: boulevards, parks, playgrounds, dikes, parkways, streets, trails, pathways, sidewalks, alleys and public parking lots.

PUBLIC RIGHT-OF-WAY. Property reserved for public use and accepted for such use by the city, including but not limited to: streets, boulevards, alleys, sidewalks, easements for public utilities, and drainage and slope easements.

PUBLIC TREES. All trees growing on any public property or public right-of-way owned by the city.

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

TOPPING. The severe cutting back of limbs to stubs larger than 3 inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

TREES. A woody perennial grown primarily for aesthetic or environmental purposes. (Ord. 1-18-2007, passed 1-18-2007)

TREES

§ 95.10 TREE CARE AND PROTECTION.

(A) The City Forester has the authority to enter onto private property upon which there is located a hazardous tree or a tree that is suspected of being a hazardous tree. Before making any inspection on private property within the city, the City Forester shall give notice of said inspection to affected residents and property owners orally, by written notice, or by posting said notice in 3 public places.

(B) Upon the discovery of any hazardous tree, the City Forester shall serve a written notice on the owner of the property upon which the tree is situated. The notice shall require the property owner to eradicate, remove, or otherwise control such condition not less than 20 days from the date of the notice.

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It shall be unlawful for an owner of property receiving such an order to fail to comply with the order in the time specified. The notice shall also state that it is in effect for the entire growing season, meaning that if any time after the issuance of the notice the hazard reoccurs, the city shall abate the hazard without further notification to the property owner.

(C) If the required action is not taken by the property owner within the specified time, the city may cause the tree to be trimmed or treated, with the expense charged to the property owner. Each charge levied pursuant to this chapter, together with all costs of collection, including attorney's fees, is hereby made a lien upon the corresponding premises. If so directed by the city, all such charges that are, on September 30 of each year, more than 30 days past due shall be certified by the City Clerk to the County Auditor between October 1 and 10 of each year. The City Clerk in certifying the charges to the County Auditor shall specify the amount, the description of the premises served, and the name of the owner of the premises. The amounts certified shall be extended by the County Auditor on the tax rolls against such premises in the manner of other taxes, collected by the County Treasurer, and paid to the City Treasurer, along with other taxes.

(Ord. 1-18-2007, passed 1-18-2007) Penalty, see § 95.99

§ 95.11 TREE DISEASES.

(A) *Trees constituting nuisance declared.* The following are public nuisances whenever they may be found within the city:

- (1) Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm disease fungus *Ceratocystis ulmi* (Buisman) Moreau or which harbors any of the elm bark beetles *Scolytus multistriatus* (Eichh.) or *Hylurgopinus rufipes* (Marsh);
- (2) Any living or standing oak tree or part thereof infected to any degree with the Oak Wilt fungus *Ceratocystis fagacearum*;
- (3) Any living or standing ash tree or part thereof infected to any degree with the emerald ash borer, *Agrillus planipennis* fairmaire;
- (4) Any dead ash, elm, or oak tree or part thereof which in the opinion of the City Forester constitutes a hazard, including but not limited to logs, branches, stumps, roots, firewood, or other ash, elm, or oak material which has not been stripped of its bark and burned or sprayed with an effective fungicide and or insecticide; and
- (5) Any other shade tree with an epidemic disease.

(B) *Diseased tree testing.* If a tree appears to have Dutch Elm disease, oak wilt fungus, emerald ash borer disease or any other epidemic disease the City Forester may take a sample of that tree and forward it to the proper agency or an approved laboratory for analysis. The cost of the analysis shall be borne by the property owner of record.

(C) *Positive analysis.* If the analysis confirms that a tree is infested with Dutch Elm disease, oak wilt fungus, or emerald ash borer disease or other epidemic disease, the City Forester shall inform the owner of such tree of the analysis report and notify the owner of their duties and obligations. Such notice may be either in person or by certified mail, however, in each case written documentation of notice shall be made.

(Ord. 1-18-2007, passed 1-18-2007, Ord. 7-23-2009-1, passed 7-23-2009)

§ 95.12 SHADE TREE PEST AND DISEASE CONTROL PROGRAM.

(A) It is the intention of the city to conduct an approved pest control program pursuant to M.S. § 18G.16, as it may be amended from time to time, together with any amendments thereto. This program shall be directed specifically at the control and elimination of shade tree pests and diseases and shall be undertaken as recommended by the Minnesota Commissioner of Agriculture. The City Forester shall act as a coordinator between the Minnesota Commissioner of Agriculture and the city in the conduct of this program.

(B) Except where the city's ordinances are more stringent than Rules announced officially by the Commissioner of Agriculture, the city adopts and by reference makes a part hereof the Rules of the Commissioner of Agriculture on shade tree pest and disease control found at Minn. Rules parts 1505.0010 to 1505.0600, together with any amendments thereto.

(Ord. 1-18-2007, passed 1-18-2007)

§ 95.13 ABUSE OR MUTILATION OF TREES.

No person shall:

(A) Intentionally damage, cut, carve, transplant, or remove a public tree;

(B) Attach any rope, wire, nails, advertising poster, or other contrivances to a public tree;

(C) Permit any harmful liquid or other substance to come into contact with a public tree;

(D) Set any fire or permit any fire to burn when such fire or the heat thereof will injure a public tree; or

(E) Direct or authorize another to engage in such actions.

(Ord. 1-18-2007, passed 1-18-2007)

§ 95.14 TOPPING.

It shall be unlawful for any person or firm to top any public tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this chapter at the determination of the City Forester. (Ord. 1-18-2007, passed 1-18-2007) Penalty, see § 95.99

§ 95.15 STOCKPILING WOOD.

(A) It is unlawful to stockpile elm wood, ash wood, or diseased oak wood in the City of Melrose. Stockpiling of other wood shall be permitted when such wood is being retained for firewood purposes.

(B) All firewood stockpiled outside shall be stored as follows:

- (1) the firewood shall be cut, split and neatly stacked,
- (2) the firewood shall be stored on a secure base, raised at least four inches off the ground, and
- (3) the firewood shall be stockpiled inconspicuously in the rear yard of the property.

(Ord. 1-18-2007, passed 1-18-2007, Ord. 7-23-2009-1, passed 7-23-2009) Penalty, see § 95.99

§ 95.16 BUILDING OPERATIONS.

Any person receiving from the city any permit or permission to use or occupy any part of any public street, park, or other property owned by the city, incidental to the construction, installation, maintenance, moving, or repair of any building or structure, utility connection or line, or any public improvement shall conduct any such activity in such a manner as not to injure, deface, or destroy any trees on any public right-of-way or other public property owned by the city. (Ord. 1-18-2007, passed 1-18-2007)

§ 95.17 INTERFERENCE UNLAWFUL.

It is unlawful for any person to obstruct or interfere with any city employees or agents while engaged in or about the planting, cultivating, fertilizing, mulching, pruning, spraying, or removing of any tree as authorized in this code. (Ord. 1-18-2007, passed 1-18-2007) Penalty, see § 95.99

LANDSCAPE IMPROVEMENTS

§ 95.20 BOULEVARD LANDSCAPING.

(A) No shrub, bush, hedge, tree, vine, or plant shall be planted or sown upon any boulevard, provided that grass or flowers may be planted upon any boulevard.

(B) No person shall build, erect, maintain or install any sprinklers, rocks, or other landscape improvements upon any public property without first obtaining a permit pursuant to Chapter 92 of this code.

(Ord. 1-18-2007, passed 1-18-2007)

§ 95.21 LIABILITY.

(A) The city shall be free from liability and claims for damages by reason of injuries occurring to any persons or property arising out of a violation of this subchapter. The owner of any landscape improvements located on public property shall defend and indemnify the city from all liability, loss, costs and obligations, including reasonable attorneys' fees, on account of or arising out of any such injuries.

(B) The city shall be free from liability and claims for damages by reason of injuries occurring to any landscape improvements located on public property. The owner of any landscape improvements located on public property shall defend and indemnify the city from all liability, loss, costs and obligations, including reasonable attorneys' fees, on account of or arising out of any such injuries.

(Ord. 1-18-2007, passed 1-18-2007)

WEEDS

§ 95.35 SHORT TITLE.

This subchapter shall be cited as the weed ordinance.

(Ord. 1-18-2007, passed 1-18-2007)

§ 95.36 JURISDICTION.

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

(Ord. 1-18-2007, passed 1-18-2007)

§ 95.37 DEFINITIONS; EXCLUSIONS.

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

DESTRUCTION ORDER. The notice served by the City Council or designated city official, in cases of appeal, on the property owner of the ordinance violation.

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

WEEDS, GRASSES, and RANK VEGETATION. Include but are not limited to the following:

(a) **NOXIOUS WEEDS** and **RANK VEGETATION** shall include but not be limited to the plants on the State Noxious Weed List and the Stearns County Prohibited Noxious Weeds List, as published in the Rules of the Commissioner of Agriculture on Noxious Plants of Minnesota, found at Minn. Rules parts 1505.0730 to 1505.0750, together with any amendments thereto;

(b) Grapevines when growing in groups of 100 or more and not pruned, sprayed, cultivated, or otherwise maintained for 2 consecutive years;

(c) Bushes of the species of tall, common, or European barberry, further known as *Berberis vulgaris* or its horticultural varieties;

(d) Any weeds, grass, or plants, other than trees, bushes, flowers, or other ornamental plants, growing to a height exceeding 10 inches;

(e) **RANK VEGETATION** includes the uncontrolled, uncultivated growth of annuals and perennial plants; and

(f) The term **WEEDS** does not include shrubs, trees, cultivated plants, or crops.

(B) In no event shall cultivated plants or crops include plants that have been defined by state statute or administrative rule as being noxious or detrimental plants.
(Ord. 1-18-2007, passed 1-18-2007)

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

All property owners shall be responsible for the removal, cutting, or disposal and elimination of weeds, grasses, and rank vegetation or other uncontrolled plant growth on their property that, at the time of notice, is in excess of 10 inches in height.

(Ord. 1-18-2007, passed 1-18-2007)

§ 95.39 FILING COMPLAINT.

Any person, including the city, who believes there is property located within the corporate limits of the city that has growing plant matter in violation of this subchapter shall make a written complaint signed, dated, and filed with the City Administrator. If the city makes the complaint, an employee, officer, or Council Member of the city shall file the complaint in all respects as set out above. (Ord. 1-18-2007, passed 1-18-2007)

§ 95.40 NOTICE OF VIOLATIONS.

(A) Upon receiving notice of the probable existence of weeds in violation of this subchapter, a person designated by the City Council shall make an inspection and prepare a written report to the City Council regarding the condition. The City Council, upon concluding that there is a probable belief that this subchapter has been violated, shall forward written notification in the form of a destruction order to the property owner or the person occupying the property as that information is contained within the records of the city. The notice shall be served in writing by certified mail. The notice shall provide that, within 7 regular business days after the receipt of the notice, the designated violation shall be removed by the property owner or person occupying the property. The notice shall also state that it is in effect for the entire growing season, meaning that if any time after the issuance of the notice a violation reoccurs, the city shall abate the weeds without further notification to the property owner.

(B) All notices are to be in writing and all filings are to be with the City Administrator. Certified mailing by the City Administrator or others is deemed filed on the date of posting to the U.S. Postal Service. (Ord. 1-18-2007, passed 1-18-2007)

§ 95.41 APPEALS.

(A) The property owner may appeal by filing written notice of objections with the City Administrator within 48 hours of the notice, excluding weekends and holidays, if the property owner contests the finding of the City Council. It is the property owner's responsibility to demonstrate that the matter in question is shrubs, trees, cultivated plants, or crops, or is not otherwise in violation of this subchapter, and should not be subject to destruction under the subchapter.

(B) An appeal by the property owner shall be brought before the City Council and shall be decided by a majority vote of the Council Members in attendance and being at a regularly scheduled or special meeting of the City Council. (Ord. 1-18-2007, passed 1-18-2007)

§ 95.42 ABATEMENT BY CITY.

In the event that the property owner shall fail to comply with the destruction order within 7 regular business days and has not filed a notice within 48 hours to the City Administrator of an intent to appeal, the City Council may employ the services of city employees or outside contractors and remove the weeds to conform to this subchapter by all lawful means.

(Ord. 1-18-2007, passed 1-18-2007)

§ 95.43 LIABILITY.

(A) The property owner is liable for all costs of removal, cutting, or destruction of weeds as defined by this subchapter.

(B) The property owner is responsible for all collection costs associated with weed destruction, including but not limited to court costs, attorney's fees, and interest on any unpaid amounts incurred by the city. If the city uses municipal employees, it shall set and assign an appropriate per hour rate for employees, equipment, supplies, and chemicals that may be used.

(C) All sums payable by the property owner are to be paid to the City Administrator and to be deposited in a general fund as compensation for expenses and costs incurred by the city.

(D) All sums payable by the property owner may be collected as a special assessment as provided by M.S. § 429.101, as it may be amended from time to time.

(Ord. 1-18-2007, passed 1-18-2007)

§ 95.99 PENALTY.

Any person, firm or corporation who violates any provision of this chapter shall be guilty of a misdemeanor and may be punished by a fine of not more than \$1,000 or imprisonment for not more than 90 days, or both. In addition thereto, the costs of prosecution may be imposed upon the defendant, and the court may order restitution to the city for damage to any public trees and public property.

(Ord. 1-18-2007, passed 1-18-2007)

CHAPTER 96: PUBLIC PARKS AND PUBLIC GROUNDS

Section

- 96.01 Removing, defacing, or destroying property
- 96.02 Littering
- 96.03 Glass containers
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§ 96.01 REMOVING, DEFACING, OR DESTROYING PROPERTY.

No person shall remove, deface, diminish, or impair the value of public property located on or within any public park or public grounds, including buildings, structures, trees, shrubs, grass, vegetation, signs, tables, benches, fireplaces, grills, trash receptacles, notices or placards, boundary markers or fences, or any other public property, either real or personal.

(Ord. 7-19-2007, passed 7-19-2007) Penalty, see § 96.99

§ 96.02 LITTERING.

No person shall litter or cast any rubbish or trash of any kind or nature in or about any public park or public grounds.

(Ord. 7-19-2007, passed 7-19-2007) Penalty, see § 96.99

§ 96.03 GLASS CONTAINERS.

The use of glass containers in public parks and on public grounds shall be prohibited.

(Ord. 7-19-2007, passed 7-19-2007) Penalty, see § 96.99

§ 96.04 VEHICLE TRAFFIC.

Vehicles shall be driven or parked only in designated areas and roadways in public parks or public grounds and shall be driven therein at a maximum speed of 10 miles per hour. Parking in designated areas shall be allowed only for vehicles whose owners or occupants are currently using public parks and public grounds.

(Ord. 7-19-2007, passed 7-19-2007) Penalty, see § 96.99

§ 96.05 FIRE.

No person shall build a fire in a public park or on public grounds except in fireplaces or receptacles provided by the city.

(Ord. 7-19-2007, passed 7-19-2007) Penalty, see § 96.99

§ 96.06 WASTEWATER DUMPING.

There shall be no drain water or other wastewater dumping in public parks or upon public grounds, except in those locations in the Sauk River Park designated by the city.

(Ord. 7-19-2007, passed 7-19-2007) Penalty, see § 96.99

§ 96.07 PUBLIC SALES.

No person shall sell, solicit, or carry on any business, commercial enterprise, or service in or about any public park or public grounds unless authorized by the Parks and Recreation Board or its authorized representative.

(Ord. 7-19-2007, passed 7-19-2007) Penalty, see § 96.99

§ 96.08 ASSEMBLIES.

No person shall distribute or disseminate leaflets, pamphlets, written, or printed material, nor shall any person conduct public meetings, rallies, or assemblies in or about any public park or public grounds unless authorized by the Parks and Recreation Board or its authorized representative. (Ord. 7-19-2007, passed 7-19-2007) Penalty, see § 96.99

§ 96.09 SIGNS AND ADVERTISEMENT.

No person shall paste, glue, tack, or otherwise post any sign, placard, advertisement, or inscription whatsoever, nor shall any person erect or cause to be erected any sign whatsoever in or about any public park or public grounds unless authorized by the Parks and Recreation Board or its authorized representative. (Ord. 7-19-2007, passed 7-19-2007) Penalty, see § 96.99

§ 96.10 AUDIO DEVICES.

No person shall use or operate any radio receiving set, musical instrument, phonograph, paging system, machine, or other device for the production or reproduction of sound in any public park or public grounds in a distinct and loudly audible manner so as to unreasonably disturb the peace, quiet, and comfort of any person nearby unless authorized by the Parks and Recreation Board or its authorized representative. (Ord. 7-19-2007, passed 7-19-2007) Penalty, see § 96.99

§ 96.11 GROUP ACTIVITIES.

(A) Any group, association, or organization that desires to use a public park or public grounds for a sports tournament, community festival, public meeting, rally, or other assembly shall first obtain a permit from the City Administrator.

(B) (1) The representative of a group, association, or organization seeking a permit shall file an application with the city. The application shall state:

- (a) The type of activity or use;
- (b) The name and address of the applicant;
- (c) The name and address of the group, association, or organization sponsoring the activity, if different from the applicant;
- (d) The days and hours for which the permit is desired;

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(e) The public park, public grounds, or portions thereof, for which the permit is desired;

(f) Estimated attendance at the proposed activity or use; and

(g) Any other information that the city finds reasonably necessary to determine whether to issue a permit.

(2) The permit application may also contain a requirement for public liability insurance or an indemnity bond to protect the city from any liability of any kind or character and to protect the city from property damage.

(C) The City Administrator shall grant the permit if it appears that:

(1) The proposed activity or use will not unreasonably interfere with the general use and enjoyment of the public park or public grounds;

(2) The proposed activity or use will not unreasonably interfere with the public health, welfare, safety, and recreation;

(3) The proposed activity or use is not reasonably anticipated to incite violence, crime, or disorderly conduct;

(4) The proposed activity or use will not involve unusual, extraordinary, or burdensome expenses or police operations by the city;

(5) The group, association, or organization meets all other conditions contained in the permit application; and

(6) The public park or public grounds requested have not been reserved for another activity or use.

(D) The City Administrator's decision to grant or deny an application may be appealed to the Parks and Recreation Board. The request must be in writing, state the address to which notice of the hearing is to be sent, and filed with the City Clerk within 5 business days after service of notice of the City Administrator's decision. The Parks and Recreation Board shall hold a hearing not later than 30 days from the date of filing the request for appeal. The Parks and Recreation Board may affirm or modify the City Administrator's decision based on the hearing, which shall be informal.

(E) This section shall not apply to groups of 30 or less seeking to reserve only the Sauk River Park Pavilion, Jaycee Park Shelter, or to persons seeking to reserve a Sauk River Park campsite. Nothing in this section shall be construed as limiting the Parks and Recreation Board's authority to adopt, with the approval of the City Council, rules and regulations governing the reservation and use of the Sauk River Park Pavilion, Jaycee Park Shelter, or Sauk River Park campsites.

(F) This section shall not apply to youth groups seeking to use playing fields for practices. Nothing in this section shall be construed as limiting the Parks and Recreation Board's authority to adopt, with the approval of the City Council, rules and regulations governing the reservation and use of the playing fields in public parks or public grounds.
(Ord. 7-19-2007, passed 7-19-2007)

§ 96.12 ADDITIONAL RULES AND REGULATIONS.

The Parks and Recreation Board may, subject to the approval of the City Council, adopt additional rules and regulations not contrary to the provisions of this chapter governing the use and enjoyment of public parks and public grounds within the city.
(Ord. 7-19-2007, passed 7-19-2007)

§ 96.13 CAMPSITES.

Camping shall be limited to the Sauk River Park. There shall be a limit of 1 unit per campsite. A unit shall be limited to camping for 7 consecutive days. However, extensions may be granted by making application at the administrative office in the City Center, showing good cause and receiving approval from the Chief of Police.
(Res. 07-034, passed 7-19-2007; Am. Res. 07-042, passed 9-6-2007) Penalty, see § 96.99

§ 96.14 PARK SEASON.

The Sauk River Park camping area and all park restroom facilities shall be open between May 1 and October 1 of each year.
(Res. 07-034, passed 7-19-2007; Am. Res. 07-042, passed 9-6-2007)

§ 96.15 PARK HOURS.

(A) The Meadowlark Park and the Jaycee Park shall be open between the hours of 7:00 a.m. and 11:00 p.m.

(B) The Sauk River Park shall be open between the hours of 7:00 a.m. and 11:00 p.m.
(Res. 07-034, passed 7-19-2007; Am. Res. 07-042, passed 9-6-2007)

§ 96.16 FEES.

The fees for use of park facilities shall be as established from time to time by the City Council and the Parks and Recreation Board.
(Res. 07-034, passed 7-19-2007; Am. Res. 07-042, passed 9-6-2007)

§ 96.17 PARK RESERVATIONS.

(A) Reservations are taken only for the current and following calendar year.

(B) If the requested shelter is available, the applicable fee must be paid within 7 days to hold the reservation.

(C) Persons making the reservation must supply city staff with their name and telephone number.

(D) Park rental fees will be refunded if cancellation notice is received 60 days prior to the event.

(E) Keys to the shelters will be made available the business day prior to the date of reservation. The person making the reservation must check out the key and pay the clean up and key deposit.

(F) When checking out the key, the person making the reservation will receive a copy of the park rules, rules for using the shelter, and list of clean up requirements. Receipt of these forms must be acknowledged to receive the key (see Appendices A and B at the end of this chapter).

(G) The person making the reservation is responsible for returning the key within 48 hours of the date of reservation. Upon return of the key and confirmation from the Parks Department that the clean up rules were complied with, the key and clean up deposit will be refunded.

(Res. 07-034, passed 7-19-2007; Am. Res. 07-042, passed 9-6-2007)

§ 96.18 SUSPENSION OF PARK PRIVILEGES.

(A) The Chief of Police may suspend a person's, group's, association's, or organization's privilege to use a public park or public grounds whenever there is reasonable cause to believe that the person, group, association, or organization has disrupted the orderly operation of the public park or public grounds by violating any state statute, section of the city code, or any rule promulgated by the Parks and Recreation Board.

(B) Whenever a peace officer or other city employee has reason to believe that a person, group, association, or organization has disrupted the orderly operation of a public park or public grounds, the employee may, as soon as reasonably possible, submit a written report to the Chief of Police recommending suspension of their privilege to use the public park or public grounds. The report shall contain the following:

(1) The name, address and telephone number, if available, of the person, group, association, or organization whose privileges to use a public park or public grounds are to be suspended; and

(2) A statement of the facts giving rise to the recommendation that the privileges be suspended.

(C) If the Chief of Police, upon reviewing the report, finds there is reasonable cause to believe that the person, group, association, or organization has disrupted the orderly operation of a public park or public grounds, the Chief of Police may suspend their privilege to use the public park or public grounds. Written confirmation of the Chief of Police's action taken shall be entered on the report.

(D) The privilege to use a public park or public grounds may be suspended for a period of time determined by the Chief of Police, but in no event shall the suspension be for longer than 6 months. In determining the length of time to suspend use privileges, the Chief of Police shall consider:

(1) The seriousness of the offense;

(2) The nature and extent of the disruption;

(3) Any prior occasions on which the person, group, association, or organization has engaged in prohibited acts;

(4) Any prior occasions on which the person, group, association, or organization has been ordered to leave by a peace officer; and

(5) Any prior occasions on which the person, group, association, or organization has had privileges to use a public park or public grounds suspended.

(E) The Chief of Police shall notify the person, group, association, or organization when their privileges to use a public park or public grounds are suspended. The notice shall be in writing and a copy kept with the City Administrator and Chief of Police. The notice shall specify the basis for the determination that the person, group, association, or organization has disrupted the orderly operation of the park or public grounds, and the period of time for which the suspension is effective.

(F) A person, group, association, or organization whose privileges to use a public park or public grounds is suspended may appeal the decision of the Chief of Police to the Parks and Recreation Board. The request must be in writing, state the address to which notice of the hearing is to be sent, and filed with the City Clerk within 5 business days after service of the notice of suspension. The Parks and Recreation Board shall hold a hearing not later than 30 days from the date of filing the request for appeal. The Parks and Recreation Board may affirm or modify the suspension of privileges based on the hearing, which shall be informal.

(G) The Chief of Police, whenever there is reason to believe that the presence of the person, group, association, or organization will not constitute a threat to the orderly operation of the public parks and public grounds may lift the suspension, subject to such terms and conditions as the Chief of Police deems necessary to protect the general use and enjoyment of the public parks and public grounds.

(Res. 07-034, passed 7-19-2007; Am. Res. 07-042, passed 9-6-2007)

§ 96.99 PENALTY.

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

(B) Any peace officer who observes or has probable cause to believe that a person is violating or has violated any state statute, section of the city code, or any rules promulgated under §§ 96.01 through 96.12 may order that person to refrain from doing the proscribed conduct. If the person to whom the order is directed refuses to obey the order, the officer may order the person to leave the public park or public grounds for the remainder of that calendar day. Alternatively, the officer may order the person to leave without having first ordered the person to desist. Any person who refuses to leave after being ordered to do so is guilty of a misdemeanor.

(C) Any person who has left a public park or public grounds after being ordered to leave by a peace officer shall not return to the public park or public grounds during the same calendar day. Any person who violates this provision by returning to the public park or public grounds on the same day is guilty of a misdemeanor.

(D) Any person who violates a provision of §§ 96.01 through 96.12, or any rules promulgated under it, is guilty of a misdemeanor.
(Ord. 7-19-2007, passed 7-19-2007)

APPENDIX A: SAUK RIVER PARK RULES

1. The park is open 7:00 a.m. — 11:00 p.m.
2. **NO GLASS BOTTLES OR CONTAINERS ALLOWED IN THE PARK**
3. Park vehicles in parking lots only — STAY OFF THE GRASS
4. Maximum speed of 10 miles per hour in the Park

USE OF SAUK RIVER PARK PAVILION

1. You are permitted to drive up to the Pavilion to drop off food or supplies with a light truck or car. The sign is posted to prevent other traffic from driving on this path.
2. Picnic tables must stay in the Pavilion — DO NOT MOVE
3. NO GLASS BOTTLES OR CONTAINERS ALLOWED

CLEAN UP AFTER USE (must provide own cleaning supplies)

1. Put all garbage in trash receptacles
2. Wash off all counter surfaces and picnic tables after use
3. Refrigerator must be completely emptied, and wiped clean
4. Sweep the floor (broom is provided and located behind door in activity area)
5. Lock the door when leaving

*****THE CLEAN UP AND KEY DEPOSIT WILL NOT BE REFUNDED IF THE PAVILION IS NOT CLEANED SATISFACTORY UPON INSPECTION, OR IF THE KEY HAS BEEN LOST

I have received a copy of these rules and expectations.

Signature: _____ Date: _____
(Res. 07-034, passed 7-19-2007; Am. Res. 07-042, passed 9-6-2007)

Melrose - General Regulations**APPENDIX B: JAYCEE PARK RULES**

1. The park is open from 7:00 a.m. — 11:00 p.m.
2. **NO GLASS BOTTLES OR CONTAINERS ALLOWED IN THE PARK**
3. Park vehicles on west side of shelter — STAY OFF THE GRASS

USE OF JAYCEE PARK SHELTER

1. Picnic tables must stay in the shelter — DO NOT MOVE
2. NO GLASS BOTTLES OR CONTAINERS ALLOWED

CLEAN UP AFTER USE (must provide own cleaning supplies)

1. Put all garbage in trash receptacles
2. Wash off all counter surfaces and picnic tables after use
3. Refrigerator must be completely emptied, and wiped clean
4. Clean off stove top and oven spills
5. Sweep the floor (broom is provided in the kitchen area)
6. Lock the door when leaving

***** THE CLEAN UP AND KEY DEPOSIT WILL NOT BE REFUNDED IF THE PAVILION IS NOT CLEANED SATISFACTORY UPON INSPECTION, OR IF THE KEY HAS BEEN LOST.

I have received a copy of these rules and expectations.

Signature: _____

Date:

(Res. 07-034, passed 7-19-2007; Am. Res. 07-042, passed 9-6-2007)