

## **TITLE IX: GENERAL REGULATIONS**

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## 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, birds (including all fowl and poultry) or other member commonly accepted as a part of the animal kingdom. **ANIMALS** shall be classified as follows.

(1) **DOMESTIC ANIMALS.** Those animals commonly accepted as domesticated household pets. Unless otherwise defined, **DOMESTIC ANIMALS** shall include dogs, cats, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-constricting reptiles or amphibians, and other similar animals.

(2) **FARM ANIMALS.** Those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, **FARM ANIMALS** shall include members of the

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equestrian family (horses, mules and the like), bovine family (cows, bulls, bison and the like), sheep, poultry (chickens, turkeys), fowl (ducks, geese, pheasants and the like), swine (including Vietnamese pot-bellied pigs), goats, bees, mink and other animals associated with a farm, ranch or stable.

(3) ***NON-DOMESTICATED ANIMALS.*** Those animals commonly considered being naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety and welfare of people. Unless otherwise defined, ***NON-DOMESTIC ANIMALS*** shall include:

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

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

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

(d) Any member or relative of the rodent family including any skunk (whether or not de-scented), raccoon, squirrel or ferret, but accepted as domesticated pets;

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

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

***AT LARGE.*** An animal shall be termed ***AT LARGE*** when it is not under restraint, as defined herein.

***AUTHORITIES.*** Any law enforcement officer or any person, firm or agency hired or engaged by the city to assist that authority, person, firm or agency in the performance of their duties.

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

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

***LICENSED VETERINARIAN.*** A person or persons licensed by the state to practice veterinary medicine and/or perform rabies vaccinations in the state in which the animal has been or is to be licensed.

***OWNER.*** Any person, group of persons or legal entity owning, keeping or harboring an animal named herein.

**RESTRAINT.** A dog is under **RESTRAINT** if it is controlled by a leash not exceeding eight feet in length; or is under the voice or signal command of a competent person, providing that the dog will immediately respond to and obey the voice or signal commands of that person; or if it is within the boundaries of the owner's or caretaker's premises. The owner or caretaker shall confine within a building or secure enclosure, any fierce, dangerous or vicious dog, and not permit the animal out of the confinement unless and until it is securely muzzled and in control of a competent person.  
(Ord. passed - -2012)

## § 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, to run at large. A person who owns, harbors or keeps a dog or cat and fails to prevent the dog or cat to run at large may be deemed in violation of this section. The provisions of this chapter shall not apply to dogs of owners or lessees of farm premises located within the city limits when the dog is under the control of the owner or lessee and the dog is within the boundaries of the respective owner's premises.

(B) *Leash law.*

(1) Dogs and 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 reading "dogs and cats prohibited".

(2) The restriction imposed as defined in division (B)(1) above shall not prohibit the appearance of any dog upon streets or public property when the dog is on a leash and/or is kept under the control of the accompanying person as defined in the restraint definition.

(C) *Tag and collar.* All dogs shall be harnessed or collared. A metallic tag must be securely fastened to the animal's harness or collar at all times. This tag is to indicate the veterinarian, the date and registration number for current administered vaccinations.

(D) *Vaccinations.*

(1) It shall be unlawful for any person to own, possess or harbor a dog or cat within the city, if the dog or cat has not been vaccinated at least once every three years by a licensed veterinarian for:

- (a) Rabies, with a live modified vaccine; and
- (b) Distemper.

(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

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and the veterinarian's signature. Upon demand of the City Clerk-Treasurer, Animal Control Officer, police officer or other official appointed by the Mayor, the owner shall present for examination the required certificate(s) of vaccination for the animal(s).

(Ord. passed - -2012) Penalty, see § 91.99

**§ 91.03 NON-DOMESTIC ANIMALS.**

Except as provided in M.S. § 346.155, as it may be amended from time to time, it shall be illegal for any person to own, possess, harbor or offer for sale, any non-domestic animal within the city. Any owner of a non-domestic animal at the time of adoption of this code shall have 30 days in which to remove the animal from the city after which time the city may impound the animal as provided for in the 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 laboratory or licensed show or exhibition.

(Ord. passed - -2012) Penalty, see § 91.99

**§ 91.04 FARM ANIMALS.**

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

(Ord. passed - -2012)

**§ 91.05 IMPOUNDING.**

(A) Any law enforcement person or persons or individual(s) appointed by the Mayor may take and impound any animal which is not being kept, confined or restrained in a manner consistent with the requirements of this chapter. Impoundment will constitute delivery to the Humane Society of the county.

(B) Immediately upon the impounding of the animal every reasonable effort shall be made to notify the owner or caretaker of the impoundment, and of the conditions whereby the owner or caretaker may regain custody of the animal. Any verbal notice shall be immediately confirmed in writing by the city.

(C) Animals having been impounded may be reclaimed after payment of all maintenance costs.

(D) If an animal impounded has not been claimed, the animal will become property of the County Humane Society at no cost. Under state law, any licensed educational or scientific institution may also request the rights to the animal.



(E) If an animal is rabid, or otherwise diseased, vicious or dangerous, and cannot be impounded after a reasonable effort or without serious risk to the impounder or others, the animal may be immediately destroyed.

(Ord. passed - -2012)

**§ 91.06 NUISANCES.**

(A) It shall be the obligation and responsibility of the owner of any animal in the city, whether permanently or temporarily therein, to prevent the animal from committing any act that constitutes a nuisance.

(B) It shall be considered a nuisance for any animal to:

(1) *Habitually or frequently bark or cry.* **HABITUAL BARKING** shall be defined as barking for repeated intervals of at least five minutes with less than one minute of interruption. The barking must also be audible off the owner's or caretaker's premises;

(2) *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;

(3) *Cleaning up litter.* The owner of any animal or person having custody or control of any animal shall be responsible for cleaning up any feces of the animal and disposing of the feces in a sanitary manner whether on their own property, on the property of others or on public property; and/or

(4) *Warrant required.* An Animal Control Officer, police officer or other official appointed by the Mayor shall not enter the property of the owner of an animal described in this section unless having permission of the owner to do so or has obtained a warrant issued by a court of competent jurisdiction, as provided in § 10.20, to search for and seize an animal.

(C) Failure on the part of the owner or caretaker to prevent his or her animals from committing an act of nuisance shall be subject to the penalty hereinafter provided.

(Ord. passed - -2012) Penalty, see § 91.99

**§ 91.07 ANIMALS PRESENTING A DANGER TO HEALTH AND SAFETY OF THE CITY.**

If, in the reasonable belief of any person or the Animal Control Officer, police officer or other official appointed by the Mayor, an animal presents an immediate danger to the health and safety of another person, or the animal is threatening imminent harm to any person, or the animal is in the process of attacking any person, the person or officer may destroy the animal in a proper and humane manner whether or not the animal is on the property of its owner. Otherwise, the person or officer may apprehend the animal and deliver it to the County Humane Society for confinement under § 91.05. If the animal is destroyed, the owner or caretaker of the animal destroyed shall be liable to the city for the cost

of maintaining and disposing of the animal, plus the costs of any veterinarian examination. If the animal is found not to be a danger to health and safety of the city, it may be released to the owner or caretaker in accordance with § 91.05(C).

(Ord. passed - -2012)

#### **§ 91.08 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. A warrant to search for and seize the animal is not required.

(B) *Confinement.* Any animal reasonably suspected of being diseased and presenting a threat to the health and safety of the public, may be apprehended and delivered to the County Humane Society by any person, Animal Control Officer, police officer or any official appointed by the Mayor. The animal shall be examined by a qualified veterinarian. If the animal is found to be diseased in a manner so as to be a danger to the health and safety of the city, the Officer shall cause the animal to be painlessly euthanized and see to the animal's remains being properly disposed of. The owner or caretaker of the animal euthanized under this section shall be liable to the city or County Humane Society for any costs of maintaining or disposing of the animal, plus any veterinarian examinations and charges.

(C) *Release.* If the animal, upon examination, is not found to be diseased, the animal shall be released to the owner or caretaker free of charge.

(Ord. passed - -2012) Penalty, see 91.99

#### **§ 91.09 DANGEROUS AND POTENTIALLY DANGEROUS DOGS.**

Except as otherwise provided in this chapter, the regulatory and procedural provisions of M.S. §§ 347.50 to 347.565, as they may be amended from time to time (commonly referred to as the "Dangerous Dog Regulations"), are hereby adopted by reference.

(Ord. passed - -2012)

#### **§ 91.10 DANGEROUS ANIMALS (EXCLUDING DOGS).**

(A) *Attack by an animal.* It shall be unlawful for any person's animal to inflict or attempt to inflict bodily injury to any person or other animal whether or not the owner is present. This section shall not apply to dogs as regulated by § 91.09.

(B) *Destruction of dangerous animal.* The Animal Control Officer, police officer or other official appointed by the Mayor shall have the authority to order the destruction of dangerous animals in accordance with the terms established by this chapter.

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

(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 one or more persons on two or more occasions; or
- (e) Been found to be potentially dangerous and/or the owner has personal knowledge of the same, the animal aggressively bites, attacks or endangers the safety of humans or domestic animals.

(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) Sidewalls shall have a minimum height of five feet and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed two inches, support posts shall be one and one-fourth-inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of 18 inches in the ground;
- (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 sidewalls and shall also have no openings in the wire greater than two inches; and

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

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

(D) *Designation as potentially dangerous animal.* The Animal Control Officer, police officer or other official appointed by the Mayor shall designate any animal as a potentially dangerous animal upon receiving evidence that the potentially dangerous animal has, when unprovoked, then bitten, attacked or threatened the safety of a person or a domestic animal as stated in division (C)(2) above. When an animal is declared potentially dangerous, the Animal Control Officer, police officer or other official appointed by the Mayor shall cause one owner of the potentially dangerous animal to be notified in writing that the animal is potentially dangerous.

(E) *Evidence justifying designation.* The Animal Control Officer, police officer or other official appointed by the Mayor shall have the authority to designate any animal as a dangerous animal upon receiving evidence of the following:

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

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

(F) *Authority to order destruction.* The Animal Control Officer, police officer or other official appointed by the Mayor, upon finding that an animal is dangerous hereunder, is authorized to order, as part of the disposition of the case, that the animal be destroyed based on a written order containing one or more of the following findings of fact:

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

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

(G) *Procedure.* The Animal Control Officer, police officer or other official appointed by the Mayor, after having determined that an animal is dangerous, may proceed in the following manner. The Animal Control Officer, police officer or other official appointed by the Mayor shall cause one owner of the animal to be notified in writing or in person that the animal is dangerous and may order the animal seized or make orders as deemed proper. This owner shall be notified as to dates, times, places and parties bitten, and shall be given 14 days to appeal this order by requesting a hearing before the City Council for a review of this determination.

(1) If no appeal is filed, the Animal Control Officer, police officer or other official appointed by the Mayor shall obtain an order or warrant authorizing the seizure and the destruction of the animal from a court of competent jurisdiction, unless the animal is already in custody or the owner consents to the seizure and destruction of the animal.

(2) If an owner requests a hearing for determination as to the dangerous nature of the animal, the hearing shall be held before the City Council, which shall set a date for hearing not more than three weeks after demand for the hearing. The records of the Animal Control or City Clerk-Treasurer's office shall be admissible for consideration by the Animal Control Officer, police officer or other official appointed by the Mayor without further foundation. After considering all evidence pertaining to the temperament of the animal, the City Council shall make an order as it deems proper. The City Council may order that the Animal Control Officer, police officer or other official appointed by the Mayor take the animal into custody for destruction, if the animal is not currently in custody. If the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the Animal Control Officer, police officer or other official appointed by the Mayor. If the owner does not immediately make the animal available, the Animal Control Officer, police officer or other official appointed by the Mayor shall obtain an order or warrant authorizing the seizure and the destruction of the animal from a court of competent jurisdiction.

(3) No person shall harbor an animal after it has been found to be dangerous and ordered into custody for destruction.

(H) *Stopping an attack.* If any police officer or Animal Control Officer or other official appointed by the Mayor 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 shall notify the Animal Control Officer, police officer or other official appointed by the Mayor in writing if the animal is to be relocated from its current address or given or sold to another person. The notification shall be given in writing at least 14 days prior to the relocation or transfer of ownership. The notification shall include the current owner's name and address, the relocation address and the name of the new owner, if any.

(J) *Dangerous animal requirements.*

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

(a) The owner provide and maintain a proper enclosure for the dangerous animal as specified in division (C)(3) above;

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(b) Post the front and the rear of the premises with clearly visible warning signs, including a warning symbol to inform children, that there is a dangerous animal on the property;

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

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

(e) The animal shall have a microchip implant as provided by M.S. § 347.515, as it may be amended from time to time;

(f) All animals deemed dangerous by the Animal Control Officer, police officer or other official appointed by the Mayor shall be registered with the county within 14 days after the date the animal was so deemed and provide satisfactory proof thereof to the Animal Control Officer, police officer or other official appointed by the Mayor; and

(g) If the animal is a cat or ferret, it must be up to date with rabies vaccination.

(2) *Seizure.* As authorized by M.S. § 347.54, as it may be amended from time to time, the Animal Control Officer, police officer or other official appointed by the Mayor shall immediately seize any dangerous animal if the owner does not meet each of the above requirements within 14 days after the date notice is sent to the owner that the animal is dangerous. Seizure may be appealed to District Court by serving a summons and petition upon the city and filing it with the District Court.

(3) *Reclaiming animals.* A dangerous animal seized under division (J)(2) above may be reclaimed by the owner of the animal upon payment of impounding and boarding fees and presenting proof to Animal Control that each of the requirements under division (J)(1) above is fulfilled. An animal not reclaimed under this section within 14 days may be disposed of as provided under division (F) above, and the owner is liable to the city for costs incurred in confining and impounding the animal.

(K) *Subsequent offenses.* If an owner of an animal has subsequently violated the provisions under this section with the same animal, the animal must be seized by Animal Control. The owner may request a hearing as defined in division (G) above. If the owner is found to have violated the provisions for which the animal was seized, the Animal Control Officer, police officer or other official appointed by the Mayor shall order the animal destroyed in a proper and humane manner and the owner shall pay the costs of confining the animal. If the person is found not to have violated the provisions for which the animal was seized, the owner may reclaim the animal under the provisions of division (J)(3) above. If the animal is not yet reclaimed by the owner within 14 days after the date the owner is notified that the animal may be reclaimed, the animal may be disposed of as provided under division (F) above and the

owner is liable to the Animal Control for the costs incurred in confining, impounding and disposing of the animal.

(Ord. passed - -2012)

**§ 91.11 BREEDING MORATORIUM.**

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

(Ord. passed - -2012)

**§ 91.12 ENFORCING OFFICER.**

The Council is hereby authorized to appoint an Animal Control Officer or other officer or person as appointed by the Mayor to enforce the provisions of this section. In the Officer's duty of enforcing the provisions of this section, he or she may from time to time, with the consent of the City Council, designate assistants.

(Ord. passed - -2012)

**§ 91.13 HUMANE SOCIETY AS POUND.**

The City Council designates the County Humane Society as the official pound for animals which are found in violation of this chapter and shall be taken there for safe treatment.

(Ord. passed - -2012)

**§ 91.14 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 County Humane Society. Nor shall any unauthorized person in any manner interfere with or hinder the Officer in the discharge of his or her duties under this chapter.

(Ord. passed - -2012) Penalty, see § 91.99

**§ 91.15 FIGHTING ANIMALS.**

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

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(B) No person shall:

(1) Promote, engage in or be employed in the activity of cockfighting, dogfighting or violent pitting of one pet or companion animal as defined in M.S. § 346.36, Subd. 6, as it may be amended from time to time, against another of the same or a different kind;

(2) Receive money for the admission of a person to a place used, or about to be used, for that activity;

(3) Willfully permit a person to enter or use for that activity premises of which the permitter is the owner, agent or occupant;

(4) Use, train or possess a dog or other animal for the purpose of participating in, engaging in or promoting that activity; or

(5) Purchase a ticket of admission or otherwise gain admission to the activity of cockfighting, dogfighting or violent pitting of one pet or companion animal against another of the same or a different kind.

(Ord. passed - -2012)

**§ 91.16 FEEDING STRAY CATS AND DOGS.**

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

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

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

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

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



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

(Ord. passed - -2012)

**§ 91.99 PENALTY.**

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

(B) *Administrative penalty.* Violations of §§ 91.02, 91.06 and 91.10 shall be punishable as provided in § 10.98.

(C) *Petty misdemeanor.* Repeated violations of §§ 91.02, 91.06 and 91.10 will require violators to be punished as provided in § 10.99.

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

(Ord. passed - -2012)



## CHAPTER 92: HEALTH AND SAFETY; NUISANCES

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**GENERAL PROVISIONS****§ 92.01 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 they may amended from time to time; installation or repair of water service lines; 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.

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

(1) *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. No owner or occupant shall allow snow, ice, dirt or rubbish to remain on the walk longer than 24 hours after its deposit thereon. Failure to comply with this section shall constitute a violation.

(2) *Removal by city.* The City Clerk-Treasurer 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 City Clerk-Treasurer or other designated person shall keep a record showing the cost of removal adjacent to each separate lot and parcel.

(C) *Public health and safety hazards.* When the city removes or eliminates public health or safety hazards from private property under the following provisions of this chapter, the administrative officer responsible for doing the work shall keep a record of the cost of the removal or elimination against each parcel of property affected and annually deliver that information to the City Clerk-Treasurer.

(D) *Installation and repair of water service lines.* Whenever the city installs or repairs water service lines serving private property under Chapter 51 of this code of ordinances, the City Clerk-Treasurer shall keep a record of the total cost of the installation or repair against the property.

(E) *Repair of sidewalks and alleys.*

(1) *Duty of owner.* The owner of any property within the city abutting a public sidewalk or alley shall keep the sidewalk or alley in repair and safe for pedestrians. Repairs shall be made in accordance with the standard specifications approved by the City Council and on file in the office of the City Clerk-Treasurer.

(2) *Inspections; notice.* The City Council or its designee may make inspections as are necessary to determine that public sidewalks and alleys within the city are kept in repair and safe for pedestrians or vehicles. If it is found that any sidewalk or alley abutting on private property is unsafe and in need of repairs, the City Council may 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 or alley is not repaired within 30 days after receipt of the notice, the City Clerk-Treasurer may report the facts to the City Council and the City Council may by resolution order the work done by contract in accordance with law. No person shall enter private property to repair a sidewalk, except with the permission of the owner or after obtaining an administrative warrant. The City Clerk-Treasurer shall keep a record of the total cost of the repair attributable to each lot or parcel of property.

(F) *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 Clerk-Treasurer, or other designated official, shall prepare a bill and mail it to the owner and thereupon the amount shall be immediately due and payable at the office of the City Clerk-Treasurer. If the bill remains unpaid, after notice and hearing as provided in M.S. § 429.061, as it may be amended from time to time, the City Clerk-Treasurer may list the total unpaid charges along with all other charges as well as other charges for current services to be assessed under M.S. § 429.101, 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 certify the charges against the property under that statute and other pertinent statutes to the County Auditor for collection along with current taxes the following year or in annual installments as the City Council may determine in each case.

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(G) *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 or object or contrivance; or as a result of operating, driving or moving any vehicle, equipment, object or contrivance weighing in excess of the maximum weight permitted by statute or this code. When the driver is not the owner of the vehicle, equipment, object or contrivance, but is operating, driving or moving it with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any damage. Any person who willfully acts or fails to exercise due care and by that act damages any public property shall be liable for the amount thereof, which amount shall be collectable by action or as a lien.

(H) *Assessment.* On or before October 31 of each year, the City Clerk-Treasurer shall list the total unpaid charges for each type of current service and charges under this section against each separate lot or parcel to which they are attributable under this section. The City Council may then spread the charges against property benefitted as a special assessment under the authority of M.S. § 429.101, as it may be amended from time to time, and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case.

Penalty, see § 92.99

**§ 92.02 TREE DISEASES AND SHADE TREE PEST CONTROL.**

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

(B) *Jurisdiction.* The city shall have control of all street trees, shrubs and other plantings now or hereafter in any street, park, public right-of-way or easement, or other public place within the city limits, and shall have the power to plant, care for, maintain, remove and replace those trees, shrubs and other plantings.

(C) *Declaration of a shade tree pest.* The Council may declare any vertebrate or invertebrate animal, plant pathogen or plant threatening to cause significant damage to a shade tree or community forest in the community, to be a shade tree pest and prescribe control measures to effectively eradicate, control or manage the shade tree pest including necessary timelines for action.

(D) *Public nuisances declared.* A shade tree pest declared by Council occurring within a declared control zone is a public nuisance.

(E) *Shade tree pest nuisances are unlawful.* It is unlawful for any person to permit any public nuisance as defined in this section to remain on any premises the person owns or controls within the city. The nuisance may be abated as provided in this section.

(F) *Definition of control areas.* Upon declaring a shade tree pest, the Council may define one or more locations within the geographic boundaries of the city to be within a shade tree pest control area, provided the locations are characterized by biologic, composition, environmental and size factors favorable to successful application of the control measures prescribed by Council.

(G) *Tree Inspector.* The Council may appoint a Tree Inspector to coordinate the activities of the city relating to the control and prevention of damage by shade tree pests. The Tree Inspector will recommend to the Council the details of any program for the declaration, control and prevention of shade tree pests. The Tree Inspector is authorized to enforce or cause to be enforced the duties incident to a program adopted by the Council. The term **TREE INSPECTOR** includes any person designated by Council or the Tree Inspector to carry out activities authorized in this section.

(H) *Abatement of shade tree pest nuisances.*

(1) In abating a nuisance declared by ordinance under divisions (C) and (D) above, the organism, condition or plant and any tree, wood or material identified as injurious to the health of shade trees shall be removed or effectively treated so as to destroy and prevent as fully as possible the spread of the shade tree pest. The abatement procedures shall be carried out in accordance with the control measures and areas prescribed by ordinance according to divisions (C) above and (K) and (O) below.

(2) In addition, should the appropriate abatement procedure be removal and the tree(s) and/or hedge(s) are within the limits of a highway in a rural area within the city's jurisdiction, M.S. § 160.22, as it may be amended from time to time, shall be complied with as necessary.

(I) *Reporting discovery of shade tree pest.* Any owner or occupier of land or any person engaged in tree trimming or removal who becomes aware of the existence of public nuisance caused by a shade tree pest as defined under division (C) above shall report the same to the city.

(J) *Registration of tree care firms.* Any person, firm or corporation that provides tree care, tree trimming or removal of trees, limbs, branches, brush or shrubs for hire must be registered with the State Commissioner of Agriculture under M.S. § 18G.07, as it may be amended from time to time.

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

(1) The Tree Inspector is authorized to cause premises and places within the city to be inspected to determine whether shade tree pests exist thereon and to investigate all reported incidents of shade tree pests. The Tree Inspector shall have the power to take all reasonable precautions to prevent the maintenance of public nuisances and may enforce the provisions relating to abatement in this section. Diagnosis of shade tree pests may be by the presence of commonly recognized symptoms or by tests as may be recommended by the Commissioner of the State Department of Agriculture or the Commissioner of the State Department of Natural Resources.

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(2) Except in situations of imminent danger to human life and safety, the Tree Inspector shall not enter private property for the purpose of inspecting or preventing maintenance of public nuisances without the permission of the owner, resident or other person in control of the property, unless the Tree Inspector has obtained a warrant or order from a court of competent jurisdiction authorizing the entry.

(3) No person, firm or corporation shall interfere with the Tree Inspector acting under his or her authority while engaged in activities authorized by this section.

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

(1) The Tree Inspector will notify in writing the owner of record or occupant of the premises of that fact and order that the nuisance be terminated or abated. The notice must be given in person or by mail. Failure of any party to receive the mail does not invalidate the service of the notice. A copy of the notice shall be filed with the City Clerk-Treasurer.

(2) The notice of abatement shall state that unless the public nuisance is abated by the owner or occupant, it will be abated by the city at the expense of the owner or occupant. The notice shall specify the control measures to be taken to abate the nuisance, and provide a reasonable amount of time to abate the nuisance. The notice will also state that the owner or occupant has the right to appeal the determination that a public nuisance exists by submitting a request in writing to the City Clerk-Treasurer within seven days after service of the notice, or before the date by which abatement must be completed, whichever comes first.

(3) If no timely appeal is submitted, and the notice of abatement and its prescribed control measures are not complied with within the time provided by the notice or any additional time granted, the Tree Inspector or designated person shall have the authority to obtain permission or an administrative search warrant, enter the property and carry out abatement in accordance with the notice of abatement.

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

(N) *Appeal procedure.* If the City Clerk-Treasurer receives a written request for a hearing on the question of whether a public nuisance in fact exists, the City Council shall hold a hearing within seven calendar days following receipt by the Clerk-Treasurer of the written request. At least three days' notice shall be given to the individual who made the written request for the hearing. The Council may modify the abatement notice or extend the time by which abatement must be completed. Each owner, agent of the owner, occupant and lienholder of the subject property or properties in attendance, if any, shall be given the opportunity to present evidence at the hearing. After holding the hearing, the City Council may issue an order requiring abatement of the nuisance.



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

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

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

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

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

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

(Q) *Penalty.*

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

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

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

(4) In addition to any penalties provided for in this section, if any person, firm or corporation fails to comply with any provision of this section, the City Council or any official designated by it may institute appropriate proceedings at law or at equity to restrain, correct or abate the violation.

**Ottertail - General Regulations****(R) Declared shade tree pests, control measures and control areas.**

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

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

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

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

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

(e) *Control area.* The **CONTROL AREA** for oak wilt disease is defined as all lands within the boundaries of the city.

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

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

(b) *Definition of control areas.* The **CONTROL AREA** for emerald ash borer is defined as all lands within the boundaries of the city.

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

(a) Control measures prescribed for abating Dutch elm disease are:

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

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

(b) *Definition of control areas.* The **CONTROL AREA** for Dutch elm disease is defined as all lands within the boundaries of the city.

## ***NUISANCES***

### **§ 92.15 PUBLIC NUISANCE.**

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

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

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

(C) Is guilty of any other act or omission declared by law or §§ 92.16, 92.17 or 92.18, or any other part of this code to be a public nuisance and for which no sentence is specifically provided.  
Penalty, see § 92.99

**§ 92.16 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 sewage, industrial waste or other substances;

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

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

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

(K) Any offensive trade or business as defined by statute not operating under a required local license; and

(L) All unnecessary and annoying vibrations.

Penalty, see § 92.99

**§ 92.17 PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.**

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

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

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

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

(D) All places where intoxicating liquor is manufactured or disposed of in violation of law or where, in violation of law, people are permitted to resort for the purpose of drinking intoxicating liquor, or where intoxicating liquor is kept for sale or other disposition in violation of law, and all liquor and other property used for maintaining that place. For the purposes of this section **INTOXICATING LIQUOR** shall mean any ethyl alcohol, distilled, fermented, spirituous, vinous or malt beverage containing more than 0.5% alcohol by volume; and

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

Penalty, see § 92.99

**§ 92.18 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.**

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

(A) All snow and ice not removed from public sidewalks 24 hours after the snow or other precipitation causing the condition has ceased to fall;

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

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

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

(E) The discharging of the exhaust or permitting the discharging of the exhaust of any stationary internal combustion engine, motor boat, motor vehicle, motorcycle, all-terrain 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;

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(F) The using or operation or permitting the using or operation of any radio receiving set, musical instrument, phonograph, paging system, machine or other device for producing or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet and comfort of any person nearby. Operation of any device referred to above between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building, shall be prima facie evidence of violation of this section;

(G) No person shall participate in any party or other gathering of people giving rise to noise, unreasonably disturbing the peace, quiet or repose of another person. When a 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;

(H) 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;

(I) Radio aerials or television antennas erected or maintained in a dangerous manner;

(J) 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;

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

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

(M) Any barbed wire fence less than six feet above the ground and within three feet of a public sidewalk or way;

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

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

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

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

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

(S) The placing or throwing on any street, sidewalk or other public property of any glass, tacks, nails, bottles or other substance which may injure any person or animal or damage any pneumatic tire when passing over the substance;

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

(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 their property's value. This general prohibition is not limited by the specific restrictions of this section.

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

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

(d) *Radios, phonographs, paging systems and the like.* No person shall use or operate or permit the use or operation of any radio receiving set, music devices, phonograph, paging system, machine or other device for the production or reproduction of sound in a distinct and loudly audible manner as to unreasonably disturb the peace, quiet and comfort of any person nearby. Operation of any set, instrument, phonograph, machine or other device between the hours of 10:00 p.m. and 7:00 a.m. in a manner as to be plainly audible at the property line of the structure or building in which it is located, in the hallway or apartment adjacent, or at a distance of 50 feet if the source is located outside a structure or building, shall be prima facie evidence of a violation of this section.

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

## Ottertail - General Regulations

### (2) *Hourly restriction of certain operations.*

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

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

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

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

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

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

Penalty, see § 92.99

## § 92.19 NUISANCE PARKING AND STORAGE.

(A) *Declaration of nuisance.* The outside parking and storage on residentially-zoned property of large numbers of vehicles and vehicles, materials, supplies or equipment not customarily used for residential purposes in violation of the requirements set forth below is declared to be a public nuisance because it (a) obstructs views on streets and private property, (b) creates cluttered and otherwise unsightly areas, (c) prevents the full use of residential streets for residential parking, (d) introduces commercial advertising signs into areas where commercial advertising signs are otherwise prohibited, (e) decreases adjoining landowners' and occupants' enjoyment of their property and neighborhood, and (f) otherwise adversely affects property values and neighborhood patterns.



*(B) Unlawful parking and storage.*

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

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

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

(a) No more than four vehicles per lawful dwelling unit may be parked or stored anywhere outside on residential property, except as otherwise permitted or required by the city because of non-residential 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. Penalty, see § 92.99

**§ 92.20 INOPERABLE MOTOR VEHICLES.**

(A) It shall be unlawful to keep, park, store or abandon any motor vehicle which is not in operating condition, partially dismantled, used for repair of parts or as a source of repair or replacement parts for other vehicles, kept for scrapping, dismantling or salvage of any kind, or which is not properly licensed for operation with the state, pursuant to M.S. § 168B.011, Subd. 3, as it may be amended from time to time.

(B) This section does not apply to a motor vehicle enclosed in a building and/or kept out of view from any street, road or alley, and which does not foster complaint from a resident of the city. A privacy fence is permissible.

(C) Any motor vehicles described in this section constitute a hazard to the health and welfare of the residents of the community in that those vehicles can harbor noxious diseases, furnish a shelter and

breeding place for vermin and present physical danger to the safety and well-being of children and citizens; and vehicles containing fluids which, if released into the environment, can and do cause significant health risks to the community.

Penalty, see § 92.99

### § 92.21 BUILDING MAINTENANCE AND APPEARANCE.

(A) *Declaration of nuisance.* Buildings, fences and other structures that have been so poorly maintained that their physical condition and appearance detract from the surrounding neighborhood are declared to be public nuisances because they (a) are unsightly, (b) decrease adjoining landowners and occupants' enjoyment of their property and neighborhood, and (c) adversely affect property values and neighborhood patterns.

(B) *Standards.* A building, fence or other structure is a public nuisance if it does not comply with the following requirements.

(1) No part of any exterior surface may have deterioration, holes, breaks, gaps, loose or rotting boards or timbers.

(2) Every exterior surface that has had a surface finish such as paint applied must be maintained to avoid noticeable deterioration of the finish. No wall or other exterior surface may have peeling, cracked, chipped or otherwise deteriorated surface finish on more than 20% of:

(a) Any one wall or other flat surface; or

(b) All door and window moldings, eaves, gutters and similar projections on any one side or surface.

(3) No glass, including windows and exterior light fixtures, may be broken or cracked, and no screens may be torn or separated from moldings.

(4) Exterior doors and shutters must be hung properly and have an operable mechanism to keep them securely shut or in place.

(5) Cornices, moldings, lintels, sills, bay or dormer windows and similar projections must be kept in good repair and free from cracks and defects that make them hazardous or unsightly.

(6) Roof surfaces must be tight and have no defects that admit water. All roof drainage systems must be secured and hung properly.

(7) Chimneys, antennas, air vents and other similar projections must be structurally sound and in good repair. These projections must be secured properly, where applicable, to an exterior wall or exterior roof.

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

Penalty, see § 92.99

### § 92.22 DUTIES OF CITY OFFICERS.

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

### § 92.23 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 peace officer or designated person on the owner of record or occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of violation, notice of violation shall be served by posting it on the premises.

(2) *Notice of City Council 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 is 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 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 (Hazardous and Substandard Building Act), 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 (Hazardous and Substandard Building Act), as it may be amended from time to time.

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(B) *Procedure.* Whenever a peace officer or designated person determines that a public nuisance is being maintained or exists on the premises in the city, the officer or person designated may notify in writing the owner of record or occupant of the premises of the fact and order that the nuisance be terminated or abated. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated. If the notice of violation is not complied with within the time specified, the officer or designated person 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 or obtain an administrative search and seizure warrant and abate the nuisance.

(C) *Emergency procedure; summary enforcement.* In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in divisions (A) and (B) above will permit a continuing nuisance to unreasonably endanger public health safety or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the officer or designated person shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare. The officer or designated person 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) above, 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.  
Penalty, see § 92.99

**§ 92.24 RECOVERY OF COST.**

(A) *Personal liability.* The owner of premises on which a nuisance has been abated by the city or a person who has caused a public nuisance on a property not owned by that person shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Clerk-Treasurer or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk-Treasurer.

(B) *Assessment.* After notice and hearing as provided in M.S. § 429.061, as it may be amended from time to time, if the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect-infected trees, the City Clerk-Treasurer shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other charges as well as other charges for current services to be assessed under M.S. § 429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case.  
Penalty, see § 92.99

## ***WEEDS***

### **§ 92.35 SHORT TITLE.**

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

### **§ 92.36 JURISDICTION.**

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

### **§ 92.37 DEFINITIONS; EXCLUSIONS.**

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

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

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

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

**Ottertail - General Regulations**

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

- (a) All weeds as defined by state statute, as may be amended from time to time;
- (b) Grapevines when growing in groups of 100 or more and not pruned, sprayed, cultivated, or otherwise maintained for two consecutive years;
- (c) Bushes of the species of tall, common or European barberry, further known as berberis vulgaris or its horticultural varieties;
- (d) The term ***WEEDS*** does not include shrubs, trees, cultivated plants or crops; and
- (e) Any other weed designated by M.S. § 18.77, Subd. 8, as it may be amended from time to time, as noxious.

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

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

(A) All property owners shall be responsible for the removal, cutting or disposal and elimination of weeds, grasses and rank vegetation or other uncontrolled plant growth on their property.

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

(1) The prior vegetation is eliminated and the meadow vegetation is planted through transplanting or seed by human or mechanical means; and

(2) A sign is posted on the property in a location likely to be seen by the public, advising that a meadow or prairie is being established. This sign must be no smaller than ten inches square, no larger than one square foot, and no higher than three feet tall.

Penalty, see § 92.99

**§ 92.39 FILING COMPLAINT.**

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

**§ 92.40 NOTICE OF VIOLATIONS.**

(A) Upon receiving notice of the probable existence of weeds in violation of this subchapter, a person designated by the City Council shall make an inspection and prepare a written report to the City 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 Clerk-Treasurer or any other city agency. The notice shall be served in writing by certified mail. The notice shall provide that within ten regular business days after the receipt of the notice that the designated violation shall be removed by the property owner or person occupying the property.

(B) (1) All notices are to be in writing and all filings are to be with the City Clerk-Treasurer.

(2) Certified mailing to the City Clerk-Treasurer or others is deemed filed on the date of posting to the United States Postal Service.

**§ 92.41 APPEALS.**

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

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

**§ 92.42 ABATEMENT BY CITY.**

(A) *Control or eradication by inspector.* If a person does not comply with an individual notice served on the person or an individual notice cannot be served, the weed inspector having jurisdiction shall have the noxious weeds controlled or eradicated within the time and in the manner the weed inspector designates.

(B) *Control or eradication by inspector in growing crop.* A weed inspector may consider it necessary to control or eradicate noxious weeds along with all or a part of a growing crop to prevent the maturation and spread of noxious weeds within the inspector’s jurisdiction. If this situation exists, the weed inspector may have the noxious weeds controlled or eradicated together with the crop after the Appeal Committee has reviewed the matter as outlined in § 92.41 and reported back agreement with the order.

(C) *Authorization for person hired to enter upon land.* The weed inspector may hire a person to control or eradicate noxious weeds if the person who owns the land, the person who occupies the land, or the person responsible for the maintenance of public land has failed to comply with an individual notice or with the published general notice when an individual notice cannot be served. The person hired must have authorization, in writing, from the weed inspector to enter upon the land.

#### § 92.43 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 which may be used.

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

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

### ***OPEN BURNING***

#### § 92.55 DEFINITIONS.

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

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

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

***RECREATIONAL FIRE.*** A fire set with approved starter fuel no more than three feet in height, contained within the border of a "recreational fire site" using dry, clean wood; producing little detectable



smoke, odor or soot beyond the property line; conducted with an adult tending the fire at all times; for recreational, ceremonial, food preparation for social purposes; extinguished completely before quitting the occasion; and respecting weather conditions, neighbors, burning bans and air quality so that nuisance, health or safety hazards will not be created. No more than one **RECREATIONAL FIRE** is allowed on any property at one time.

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

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

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

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

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

#### § 92.56 PROHIBITED MATERIALS.

(A) No person shall conduct, cause or permit open burning of 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.

**Ottertail - General Regulations**

(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.

**§ 92.57 PERMIT REQUIRED FOR OPEN BURNING.**

No person shall start or allow any open burning on any property in the city without first having obtained an open burn permit, except that a permit is not required for any fire which is a recreational fire as defined in § 92.55.

Penalty, see § 92.99

**§ 92.58 PURPOSES ALLOWED FOR OPEN BURNING.**

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

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

(2) Ground thawing for utility repair and construction;

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

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

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

(6) Running fires.

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

(C) Permits for the operation of permanent tree and brush burning sites may only be issued by the State Department of Natural Resources (DNR) or one of its trained agents.

Penalty, see § 92.99

**§ 92.59 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).

(B) An open burning permit shall require the payment of a fee. Permit fees shall be in the amount established in the ordinance establishing fees and charges, authorized by § 11.01, as it may be amended from time to time.

Penalty, see § 92.99

**§ 92.60 RESERVED.**

**§ 92.61 PERMIT HOLDER RESPONSIBILITY.**

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

(B) The open burn fire shall be completely extinguished before the permit holder or his or her representative leaves the site. No fire may be allowed to smolder with no person present. It is the responsibility of the permit holder to have a valid permit, as required by this subchapter, available for inspection on the site by the 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 § 92.99

**§ 92.62 REVOCATION OF OPEN BURNING PERMIT.**

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

Penalty, see § 92.99

**§ 92.63 DENIAL OF OPEN BURNING PERMIT.**

If established criteria for the issuance of an open burning permit are not met during review of the application, it is determined that a practical alternative method for disposal of the material exists, or a

pollution or nuisance condition would result, or if a burn event safety plan cannot be drafted to the satisfaction of the Fire Chief, Fire Marshal or Assistant Fire Marshals, these officers may deny the application for the open burn permit.

#### § 92.64 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 § 92.99

#### § 92.65 RULES AND LAWS ADOPTED BY REFERENCE.

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

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

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

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

(2) **PERSON.** An individual, partnership, corporation, company or other association.

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

(B) *Requirements for operation.*

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

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

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

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

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

(C) *Fuels.*

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

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

**§ 92.99 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.



## CHAPTER 93: STREETS AND SIDEWALKS

### Section

#### *General Provisions*

- 93.01 Unloading on street or sidewalk
- 93.02 Street and sidewalk obstruction
- 93.03 Materials on street or sidewalk

#### *Right-Of-Way Construction Regulations*

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- 93.16 Administration
- 93.17 Election to manage the public right-of-way
- 93.18 Definitions and adoption of rules by reference
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- 93.39 Appeal
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#### ***Cross-reference:***

*Assessable current services, see § 92.01*

**GENERAL PROVISIONS****§ 93.01 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.

Penalty, see § 10.98

**§ 93.02 STREET AND SIDEWALK OBSTRUCTION.**

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. Each day that any fence or building is permitted to remain upon the public way shall constitute a separate offense.

Penalty, see § 10.98

**§ 93.03 MATERIALS ON STREET OR SIDEWALK.**

(A) No person shall encumber any street, sidewalk or right-of-way. No owner, occupant or person having the care of any building or lot of land, bordering on any street, sidewalk or right-of-way shall permit it to be encumbered with barrels, boxes, cans, articles or substances of any kind, so as to interfere with the free and unobstructed use thereof.

(B) Except for the actions of the city employees and contractors carrying out their duties, no person shall:

- (1) Obstruct any street or sidewalk by depositing snow or ice thereon;
- (2) Dig any holes in any street, sidewalk or right-of-way;
- (3) Remove any earth, gravel or rock from any street, sidewalk or right-of-way;
- (4) Obstruct any ditch draining any street or drain any noisome materials into any ditch;
- (5) Deface, mar, damage or tamper with any structure, work, material, equipment, tools, signs, markers, signals, paving, guardrails, drains or any other highway appurtenance on or along any street, sidewalk or right-of-way;
- (6) Remove, injure, displace or destroy right-of-way markers, or reference or witness monuments, or markers placed to preserve section or quarter-section corners; and/or



(7) Drive over, through or around any barricade, fence or obstruction erected for the purpose of preventing traffic from passing over a portion of a street or sidewalk closed to public travel or to remove, deface or damage any barricade, fence or obstruction.

Penalty, see § 10.98

***RIGHT-OF-WAY CONSTRUCTION REGULATIONS***

**§ 93.15 FINDINGS, PURPOSE AND INTENT.**

(A) To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

(B) Accordingly, the city hereby amends this chapter of the code relating to right-of-way permits and administration. This chapter imposes reasonable regulation on facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating and obstructing the rights-of-way will bear financial responsibility for persons using the public rights-of-way.

(C) This chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in M.S. §§ 237.16, 237.162, 237.163, 237.79, 237.81 and 238.086 (the "Act") and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050-7819.9950 and Minnesota Rules 7560 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances as necessary to protect the health, safety and welfare of the public.

(Ord. 2017-03, passed 8-17-2017)

**§ 93.16 ADMINISTRATION.**

The City Council of Ottertail is responsible for the administration of the rights-of-way, right-of-way permits and the ordinances related hereto. The city may by resolution delegate any or all of the duties described hereunder.

(Ord. 2017-03, passed 8-17-2017)

**§ 93.17 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.

(Am. Ord. 2017-03, passed 8-17-2017)

**§ 93.18 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.**

Minn. Rules Ch. 7819, as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code as if set out in full. The definitions included in M.S. § 237.162, Minn. Rules 7819.0100, Subps. 1 through 23 and Minn. Rules 7560.0100, Subps. 1 through 12, 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.

(Am. Ord. 2017-03, passed 8-17-2017)

**§ 93.19 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.**

(A) *Registration.* Each person who occupies or uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city and consisting of application information.

(B) *Registration prior to work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, in any right-of-way without first being registered with the city.

(C) *Exceptions.* Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb (if one exists). Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter. However, nothing herein relieves a person from complying with the provisions of the M.S. § 216D Gopher One Call law.

(Am. Ord. 2017-03, passed 8-17-2017)

**§ 93.20 REGISTRATION INFORMATION.**

The information provided to the city at the time shall include but not be limited to:

(A) *Permit application.* Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:

(1) Each permittee's name, gopher one-call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers;

(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration;

(3) Certificate of insurance or self-insurance, certifying a policy has been issued by an insurance company licensed in Minnesota or self-insurance acceptable to the city;

(a) Verifying the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the:

1. Use and occupancy of the right-of-way by the registrant, agents, employees and permittees; and

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

(b) 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 such coverages.

(c) Requiring the city to be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;

(d) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

(e) The city may require a copy of the actual insurance policy;

(f) If the person is a corporation, a copy of the certificate is required to be filed under MN Statute § 300.06 as recorded and certified to by the Secretary of State.

(g) 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 such certificate from said Commission or other state or Federal agency.

(Am. Ord. 2017-03, passed 8-17-2017)

**§ 93.21 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 right-of-way permit from the city to do so.

(1) *Excavation permit.* An excavation permit is required to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

(2) *Obstruction permit.* An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

(B) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless:

(1) Such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and

(2) A new permit or permit extension is granted.

(C) *Delay penalty.* In accordance with Minn. Rule 7819.1000 subp. 3 and notwithstanding subd. 2 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 in an amount established by ordinance adopted pursuant to § 11.01 as it by be amended from time to time.

(D) *Permit display.* Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

(Am. Ord. 2017-03, passed 8-17-2017) Penalty, see § 10.98

**§ 93.22 PERMIT APPLICATIONS.**

The information provided to the city at the time shall include but not be limited to:

(A) *Permit application.* Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:

(1) Each permittee's name, gopher one-call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers;

(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration;

(3) Certificate of insurance or self-insurance, certifying a policy has been issued by an insurance company licensed in Minnesota or self-insurance acceptable to the city;

(a) Verifying the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the:

1. Use and occupancy of the right-of-way by the registrant, agents, employees and permittees; and

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

(b) 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 such coverages.

(c) Requiring the city to be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;

(d) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

(e) The city may require a copy of the actual insurance policy;

(f) If the person is a corporation, a copy of the certificate is required to be filed under M.S. § 300.06 as recorded and certified to by the Secretary of State.

(g) 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 such certificate from said Commission or other state or Federal agency.  
(Am. Ord. 2017-03, passed 8-17-2017)

**§ 93.23 ISSUANCE OF PERMIT; CONDITIONS.**

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.

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

(C) *Trenchless excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to horizontal directional drilling, shall follow all requirements set forth in M.S. Ch. 216D and Minn. Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating as determined by the city. (Am. Ord. 2017-03, passed 8-17-2017)

### § 93.24 PERMIT FEES.

Permit fees shall be in an amount established by ordinance adopted pursuant to § 11.01 of this Code as it by be amended from time to time.

(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;
- (2) Degradation costs, if applicable.

(B) *Obstruction permit fee.* The city shall establish the obstruction permit fee and shall be in an amount sufficient to recover the city management costs.

(C) *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees within 30 days of billing.

(D) *Non-refundable.* Permit fees that were paid for a permit that the city has revoked for a breach as stated in § 93.30 of this code are non-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) *Inconsistent fees.* All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.00, as they may be amended from time to time.

(G) *Joint applications.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

(1) Registrants, who apply for permits for the same obstruction or excavation which the city does not perform, may share in the payment of the permit fee. In order to obtain a joint permit, registrants must agree among themselves to the portion each will pay.

(2) Registrants, who join in a scheduled or excavation performed by the city, whether or not it is a joint application by two or more registrants or single application, are not required to pay the permit fee, but a permit is still required.

(Am. Ord. 2017-03, passed 8-17-2017) Penalty, see § 10.98

### **§ 93.25 RIGHT-OF-WAY PATCHING AND RESTORATION.**

(A) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under this subchapter.

(B) *Patch and restoration.* The permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

(1) *City restoration.* If the city restores the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If following the restoration, the pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.

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

(C) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules part 7819.1100, as it may be amended from time to time. The Clerk-Treasurer, Utilities Superintendent or other person designated by the Council shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.

(D) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by the permittee or its agents. The permittee upon notification from the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council, shall correct all restoration work to the extent necessary, using the method required by the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council. The work shall be completed within five calendar days of the receipt of the

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

(E) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council, or fails to satisfactorily and timely complete all restoration required by the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council, the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council at his or her option may do the work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(F) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee as established by the ordinance establishing fees and charges adopted pursuant to § 11.01 of this code, as that ordinance may be amended from time to time. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

(Am. Ord. 2017-03, passed 8-17-2017)

### § 93.26 SUPPLEMENTARY APPLICATIONS.

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

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

(Am. Ord. 2017-03, passed 8-17-2017)

### § 93.27 DENIAL OF PERMIT.

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

(Am. Ord. 2017-03, passed 8-17-2017)



**§ 93.28 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.  
(Am. Ord. 2017-03, passed 8-17-2017)

**§ 93.29 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 Clerk-Treasurer, Utilities Superintendent or other person designated by the Council.*

(1) At the time of inspection, the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

(2) The Clerk-Treasurer, Utilities Superintendent or other person designated by the Council may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council that the violation has been corrected. If proof has not been presented within the required time, the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council may revoke the permit pursuant to § 93.32.

(Am. Ord. 2017-03, passed 8-17-2017)

**§ 93.30 WORK DONE WITHOUT A PERMIT.**

(A) *Emergency situations.*

(1) Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the

occurrence of the emergency, the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

(2) If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency.

In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

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

(Am. Ord. 2017-03, passed 8-17-2017)

### § 93.31 SUPPLEMENTARY NOTIFICATION.

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

(Am. Ord. 2017-03, passed 8-17-2017)

### § 93.32 REVOCATION OF PERMITS.

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

- (1) The violation of any material provision of the right-of-way permit;
- (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 § 93.29 of this Code.

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

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

(D) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with the revocation.  
(Am. Ord. 2017-03, passed 8-17-2017)

### **§ 93.33 MAPPING DATA; INFORMATION REQUIRED.**

(A) *Information required.* Each registrant and permittee shall provide mapping information required by the city in accordance with Minn. Rules 7819.4000 and 7819.4100 as it may be amended from time to time. Within 90 days following completion of any work pursuant to a permit, the permittee shall provide the city accurate maps and drawings certifying the “as-built” location of all equipment installed, owned and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the city's electronic mapping system, when practical, or as a condition imposed by the city. Failure to provide maps and drawing pursuant to this subsection shall be grounds for revoking the permit holder's registration or permit.

(B) *Service laterals.*

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

(a) Payments to contractors working on a public improvement project including those under M.S. Ch. 429, as it may be amended from time to time; and

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

(2) The city shall reasonably determine the appropriate method of providing that 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.

(Am. Ord. 2017-03, passed 8-17-2017)

### § 93.34 DAMAGE TO OTHER FACILITIES.

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

(Am. Ord. 2017-03, passed 8-17-2017)

### § 93.35 LOCATION OF FACILITIES.

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

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

(C) *Limitation of space.* To protect the health, safety and welfare or when necessary to protect the right-of-way and its current use, the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the Clerk-Treasurer, Utilities Superintendent or other person designated by the Council shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year

with respect to essential utilities, the protection of existing facilities in the right-of-way and future city plans for public improvements and development projects which have been determined to be in the public interest.

(D) *Pre-excavation facilities location.* In addition to comply with the requirements of M.S. §§ 216D.01 through 216D.09 (“One Call Excavation Notice System”) before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation. (Am. Ord. 2017-03, passed 8-17-2017)

### **§ 93.36 RIGHT-OF-WAY VACATION.**

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

(Am. Ord. 2017-03, passed 8-17-2017)

### **§ 93.37 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 7819.1250, as it may be amended from time to time.

(Am. Ord. 2017-03, passed 8-17-2017)

### **§ 93.38 ABANDONED FACILITIES; REMOVAL OF ABANDONED FACILITIES.**

(A) *Discontinued operations.* A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant.

(B) *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.

(Am. Ord. 2017-03, passed 8-17-2017)

### **§ 93.39 APPEAL.**

(A) A right-of-way user that:

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- (1) Has been denied registration;
- (2) Has been denied a permit;
- (3) Has had a permit revoked;

(4) Believes that the fees imposed are not in conformity with M.S. § 237.163, Subd. 6, as amended from time to time; or

(5) Disputes a determination of the city regarding § 11.01 of this subchapter may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council.

(B) 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.

(Am. Ord. 2017-03, passed 8-17-2017)

**§ 93.40 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 ordinances necessary to protect the health, safety and welfare of the public.

(Am. Ord. 2017-03, passed 8-17-2017)

## CHAPTER 94: E-911 UNIFORM ADDRESSING

### Section

- 94.01 Purpose
- 94.02 Definitions
- 94.03 Uniform addressing system requirements
- 94.04 Multiple dwelling/business numbering
- 94.05 Exceptions and practical alternatives
- 94.06 Maintenance of numbers
- 94.07 Compliance
- 94.08 Tampering with E-911 emergency sign
  
- 94.99 Penalty

### § 94.01 PURPOSE.

The purpose of this chapter is to provide a system by which the owners of all primary structures located in the city shall be required to maintain the address number assigned to his, her or their primary structure in specified locations in accordance with this section. This chapter shall be intended to promote the public health, safety and general welfare and to further the implementation of the Emergency Telephone Services Act, M.S. Ch. 403, as it may be amended from time to time. (Ord. 2011-02, passed 4-21-2011)

### § 94.02 DEFINITIONS.

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

**ADDRESS NUMBER.** The number for each primary structure as assigned by the city.

**ADDRESS SIGN.** A two-sided blue sign measuring six inches high by 15 inches wide which contains an address number in reflective white letters and/or numbers on both sides that are at least four inches tall and that are positioned horizontally on the sign.

**DRIVEWAY.** A private road serving only one primary structure.

**PRIMARY STRUCTURE.** A building which shall be used for the principal lot or parcel in which it is located.

**PRIVATE DRIVE.** A private road serving more than one primary structure.

**ROAD.** A public or private way, no matter how designated, which affords primary means of access by vehicles to adjacent property. A public or private way which is accessible only by foot or off-road vehicle shall not be a **ROAD**, as defined in this section.

**SIGNPOST.** A post, permanently affixed in the ground, used solely for display of an address number or an address sign.  
(Ord. 2011-02, passed 4-21-2011)

### § 94.03 UNIFORM ADDRESSING SYSTEM REQUIREMENTS.

(A) Each primary structure located inside the corporate limits of the city shall be assigned an address number.

(B) The owner of each primary structure shall purchase a signpost and address number for the primary structure from the city. The price of an address number and signpost, which shall include a reasonable charge for installing the signpost and address number by the city, shall be set from time to time by resolution of the City Council. No building permit may be obtained for a primary structure unless the applicant for the building permit purchases a signpost and an address number for the primary structure from the city. All owners of the primary structures shall cause the address number assigned to his, her or their primary structure to continuously be displayed in conformity with the following standards.

(1) *Display.* All owners of primary structures shall display the address number assigned to his, her or their primary structure on a signpost. The signpost shall conform to the following standards.

(a) The signpost shall be located within five feet of the driveway, at a location which shall be clearly visible year round from the road. The signpost shall be placed in a location which is at least five feet from the edge of the surface of the road and not farther from the road than the outward edge of the right-of-way.

(b) In the event there is no driveway, the signpost shall be located in the public right-of-way in front of the primary structure to clearly indicate the location of the primary structure, no farther from the public road than the outward edge of the right-of-way.

(c) An address sign with the address number assigned to the primary structure shall be placed on the signpost. The address sign shall be placed perpendicular to the road. The bottom of the address sign shall be placed at a height which shall be no less than four feet above the level of the surface of the road.

(2) *Multiple houses or primary structures.* If multiple houses or primary structures are located on a private drive, identification signs will be required on the public roadway entrance and on individual



premises where the major structure is located. The identification on the signpost will indicate the number of primary structures with the far left primary structure on the bottom of the signpost.

(3) *E-911 address change.* Following the adoption by the city of an E-911 addressing system, the Address Coordinator will notify residents and/or owners of any address change. It is the responsibility of the owner/occupant to notify the United States Postal Service of his or her address change.

(Ord. 2011-02, passed 4-21-2011)

**§ 94.04 MULTIPLE DWELLING/BUSINESS NUMBERING.**

(A) Structures with more than one dwelling unit or more than one business (apartments, retail centers and the like) shall be assigned one address number for each building and shall use unit, suite or apartment numbers for each residential or business tenant.

(B) It shall be the duty of the owner of every building containing more than one dwelling unit or more than one business and the owner or occupant of every individually owned dwelling unit or business in any multiple-unit building to properly identify each dwelling unit or business by attaching identification numbers on or adjacent to each entrance and to provide signs, including directional arrows, easily identifying the location of each dwelling unit or business in the building which is accessed from that entrance. The signs shall be placed in an obvious location inside each entrance to the building as approved by the Fire Chief.

(Ord. 2011-02, passed 4-21-2011)

**§ 94.05 EXCEPTIONS AND PRACTICAL ALTERNATIVES.**

(A) If the locatable primary structure is in or within five feet of the road right-of-way, such as in a commercial district, the assigned address number shall be displayed on the outside of the primary structure, near the front door, for emergency purposes. The address number must face the public road, be clearly visible and shall be no smaller than four inches tall, high contrast to the primary structure. No self-adhesive number appliques shall be used.

(B) Practical alternatives to the application of the provisions of this chapter may be granted by the Council where following the applications create undue difficulties created by the characteristics of the property.

(Ord. 2011-02, passed 4-21-2011)

**§ 94.06 MAINTENANCE OF NUMBERS.**

The owner of the locatable primary structure shall be responsible for keeping his, her or their E-911 address in good repair and clear of snow, dirt, debris or other obstructions.

(Ord. 2011-02, passed 4-21-2011)

**§ 94.07 COMPLIANCE.**

All owners of primary structures in the city shall comply with this chapter after its passage and publication. It is at the discretion of the city as to when installation shall be made.  
(Ord. 2011-02, passed 4-21-2011)

**§ 94.08 TAMPERING WITH E-911 EMERGENCY SIGN.**

It shall be unlawful for any person to tamper, remove or reposition a blue E-911 Emergency sign for any purpose unless authorized by the City Council.  
(Ord. 2013-05, passed 10-17-2013)

**§ 94.99 PENALTY.**

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

(B) *Administrative penalty.* Violations of §§ 91.02, 91.06 and 91.10 shall be punishable as provided in § 10.98.

(C) *Petty misdemeanor.* Repeated violations of §§ 91.02, 91.06 and 91.10 will require violators to be punished as provided in § 10.99.

(D) *Misdemeanor.* Unless otherwise provided, violation of this chapter shall constitute a misdemeanor punishable as provided in § 10.99.  
(Ord. 2013-05, passed 10-17-2013)

## CHAPTER 95: RECREATIONAL AREAS

### Section

- 95.01 Private docks on public property
- 95.02 Pelican Bay; surface use
  
- 95.99 Penalty

### § 95.01 PRIVATE DOCKS ON PUBLIC PROPERTY.

(A) *Permit required.* No person shall construct, install or maintain a boat lift, dock, wharf or similar structures on public property or upon public waters abutting public property without first obtaining a permit for the dock and/or boat lift from the city. The permit area shall not exceed 25 feet in width per lot owned in Lakeview Heights, Lots 1-9, Block 1. No dock/lift shall be closer than 25 feet from the center of the landing access.

(B) *Application.* An application for a permit for a dock or boat lift may be submitted by the fee owners of Lots 1-9, Block 1, Lakeview Heights. The application shall be submitted in writing to the City Clerk-Treasurer on a form prescribed by the city. The fee established in § 11.01 Fee Schedule shall be submitted with each application and annually thereafter with approved permit. The application shall also include proof of liability insurance as required by this section.

(C) *Term.* Permits shall be issued on an annual basis and shall expire on December 31 of each year. All docks and lifts shall be subject to an annual inspection by the city and if the dock does not meet the minimum criteria established by the city, it shall immediately be brought into compliance by the permit holder or the permit shall be revoked.

(D) *Conditions and restrictions.* The permit holder must at all times during the period of the permit maintain in force liability insurance naming the city as a co-insured in a minimum amount of \$300,000. The permit holder must notify the city immediately if the insurance is cancelled or lapses for any reason. Failure to maintain insurance shall result in automatic revocation of the permit. The dock shall be posted with a sign both in written English and universal symbols indicating “No Swimming and No Diving”. Sign placement must be approved by a duly designated city representative. The permit holder shall maintain the dock in good repair during the term of the permit. The permit holder shall also agree in writing, to indemnify the city from any liability for injuries to persons or property which may arise from the use of the dock.

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(E) *Removal of dock if permit violated.* Notwithstanding any other penalties herein, in the event any person, including a permit holder, refuses to remove a dock or other personal property from the lake or public right-of-way, then upon failure to comply following written notice to the owner, the city shall be entitled to remove the offending property, storing and selling the same in accordance with state statutes. In the event the city suffers a cost of storage and/or sale which is not recovered from the sale, the city shall be entitled to maintain a cause of action against the owner of the dock and/or property to recover the remaining balance.

(F) *Docks; size.* No dock shall extend more than 32 feet from shore nor shall it be more than four feet wide.

(G) *Docks; placement.* All docks shall be placed perpendicular to the shore line and shall extend in a straight line. Cross sections, T-sections and L-sections are allowed only when a minimum of two lots have been leased. These sections cannot exceed 12 feet in width including width of the dock.

(H) *Docks; installation; removal.* All docks shall be removed no later than October 15 of each year. No dock shall be installed before April 15, or before all ice is out of the lake each spring, whichever is later.

(Ord. 2006-01, passed 2-2-2006)

**§ 95.02 PELICAN BAY; SURFACE USE.**

(A) *Purpose, intent and application.* As authorized by M.S. §§ 86B.201, 86B.205 and 459.20, as they may be amended from time to time and Minn. Rules 6110.3000 through 6110.3800 as now in effect and as hereafter amended, this section is enacted for the purpose and with the intent to control and regulate the use of the waters of Pelican Bay in the city, those bodies of water being located entirely within the boundaries of the city, to promote its fullest use and enjoyment by the public in general and the citizens the city in particular; to harmonize and integrate the varying uses of the waters; and to promote the general health, safety and welfare of the citizens of the city.

(B) *Surface zoning of Pelican Bay by restricting speeds at all times.* All watercraft must be operated in a manner defined as follows:

***SLOW-NO WAKE.*** Operation of a watercraft at the slowest possible speed necessary to maintain steerage and in no case greater than five mph.

(C) *Enforcement.* The enforcement of this section shall be the primary responsibility of the County Sheriffs' Department. Other licensed peace officers including Conservation Officers of the Department of Natural Resources of the state are also authorized to enforce this section.

(D) *Exemptions.* All authorized resource management, emergency and enforcement personnel, while acting in the performance of their assigned duties are exempt from the foregoing restrictions.

(E) *Notification.* It shall be the responsibility of the city to provide for adequate notification of the public, which shall include placement of a sign at each public watercraft landing facility outlining essential elements of the section, as well as the placement of necessary buoys and signs.

(F) *Effective date.* This section shall be in effect from and after the date of its passage and publication.  
(Ord. passed 10-19-2000)

**§ 95.99 PENALTY.**

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

(B) A violation of any provision of § 95.02 shall be a misdemeanor offense for each violation including penalties and/or incarceration up the limits allowable by state statute together with payment of all costs of persecution payable to the City Clerk-Treasurer for deposit into the city's general fund.  
(Ord. passed 10-19-2000)

