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CHAPTER 90: ABANDONED PROPERTY

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GENERAL PROVISIONS

§ 90.01 DISPOSITION OF ABANDONED PROPERTY.

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

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

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

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

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

ABANDONED VEHICLES

§ 90.15 FINDINGS AND PURPOSE.

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

§ 90.16 DEFINITIONS.

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

ABANDONED VEHICLE.

(1) A motor vehicle, as defined in M.S. § 169.011, Subd. 42 as it may be amended from time to time, that:

(a) Has remained illegally:

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

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

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

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

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

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

DEPARTMENT. The Minnesota Department of Public Safety.

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

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

JUNK VEHICLE. A vehicle that:

(1) Is three years old or older;

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

(3) Is apparently inoperable;

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

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

MOTOR VEHICLE or ***VEHICLE.*** Has the meaning given "motor vehicle" in M.S. § 169.011, Subd. 42, as it may be amended from time to time.

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

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

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

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

UNAUTHORIZED VEHICLE. A vehicle that is subject to removal and impoundment pursuant to § 90.18(B), or M.S. § 168B.035 as it may be amended from time to time, but is not a junk vehicle or an abandoned vehicle.

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

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

§ 90.17 VIOLATION TO ABANDON MOTOR VEHICLE.

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

§ 90.18 AUTHORITY TO IMPOUND VEHICLES.

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

(B) *Unauthorized vehicles.* The City Clerk, or his or her designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any unauthorized vehicle under M.S. § 168B.035 as it may be amended from time to time. A vehicle may also be impounded after it has been left unattended in one of the following public or private locations for the indicated period of time:

(1) In a public location not governed by M.S. § 168B.035 as it may be amended from time to time:

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

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

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

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

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

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

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

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

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

(C) If the vehicle is on private property, the City Clerk or his or her designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any abandoned or junk vehicle on private property only with the permission of the owner of the property, a resident, or other person in control of the premises. If permission is denied, the city may declare the existence of the abandoned or junk vehicle to be a nuisance and proceed to abate the nuisance as provided for in §§ 92.15 through 92.21. Once the abatement procedure has been completed, the city may apply for an order from a court of competent jurisdiction authorizing the removal and impoundment of the vehicle and, after the order has been granted, the city may then remove and impound the vehicle.

§ 90.19 SALE; WAITING PERIODS.

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

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

(2) An abandoned vehicle.

(B) *Sale after 45 days.* An impounded vehicle is eligible for disposal or sale under § 90.23, 45 days after notice to the owner, if the vehicle is determined to be an unauthorized vehicle or upon the date of a voluntary written title transfer by the registered owner to the impound lot operator.

§ 90.20 NOTICE OF TAKING AND SALE.

(A) *Contents; notice given within five days.* When an impounded vehicle is taken into custody, the city or impound lot operator taking it into custody shall give notice of the taking to the registered owner and any registered lien holders within five days. The notice shall:

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

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

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

(4) State that the vehicle owner who provides to the impound lot operator documentation from a government or nonprofit agency or legal aid office that the owner is homeless, receives relief based on need, or is eligible for legal aid services, has the unencumbered right to retrieve any and all contents of the vehicle without charge.

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

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

§ 90.21 RIGHT TO RECLAIM.

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

(B) *Lien holders.* Nothing in this chapter shall be construed to impair any lien of a garagekeeper under the laws of this state, or the right of a lien holder to foreclose. For the purposes of this section, ***GARAGEKEEPER*** is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair or maintenance of motor vehicles.

(C) At any time before the expiration of the waiting periods provided in § 90.21 a registered owner who provides documentation from a government or nonprofit agency or legal aid office that the registered owner is homeless, receives relief based on need, or is eligible for legal aid service, has the unencumbered right to retrieve any and all contents without charge and regardless of whether the registered owner pays incurred charges or fees, transfers title, or reclaims the vehicle. For the purposes of this section:

(1) ***CONTENTS*** does not include any permanently affixed mechanical or nonmechanical automobile parts; automobile body parts; or automobile accessories, including audio or video players; and

(2) ***RELIEF BASED ON NEED*** includes, but is not limited to, receipt of MFIP and Diversionary Work Program, medical assistance, general assistance, general assistance medical care, emergency general assistance, Minnesota supplemental aid, MSA-emergency assistance, MinnesotaCare, Supplemental Security Income, energy assistance, emergency assistance, Supplemental Nutrition Assistance Program, earned income tax credit, or Minnesota working family tax credit. The city or impound lot operator shall establish reasonable procedures for retrieval of vehicle contents under this section, and may establish reasonable procedures to protect the safety and security of the impound lot and its personnel.

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

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

(1) 25 days storage for a vehicle described in § 90.19(A); and

(2) 55 days storage for a vehicle described in § 90.19(B).

(B) *Implied consent to sale.* A registered owner who fails to claim the impounded vehicle within the applicable time period allowed under § 90.19 is deemed to waive any right to reclaim the vehicle and consents to the disposal or sale of the vehicle and its contents and transfer of title. The failure to exercise rights to claim contents under § 90.21(C) constitutes a waiver of all right, title and interest in the contents of the vehicle and a consent to the transfer of title to and disposal or sale of the contents.

§ 90.23 DISPOSITION BY IMPOUND LOT.

(A) *Auction or sale.*

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

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

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

(C) *Sale proceeds; public entities.* From the proceeds of a sale under this section by the city or public impound lot of an abandoned or unauthorized motor vehicle, the city shall reimburse itself for the cost of towing, preserving and storing the vehicle, and all administrative, notice and publication costs incurred in handling the vehicle pursuant to this chapter. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for 90 days and then shall be deposited in the treasury of the city.

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

§ 90.24 DISPOSAL AUTHORITY.

The city may contract with others or may utilize its own equipment and personnel for the inventory of impounded motor vehicles and abandoned scrap metal and may utilize its own equipment and

personnel for the collection, storage and transportation of these vehicles and abandoned scrap metal. The city may utilize its own equipment and personnel only for the collection and storage of not more than five abandoned or unauthorized vehicles without advertising for or receiving bids in any 120-day period.

§ 90.25 CONTRACTS; REIMBURSEMENT BY MPCA.

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

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

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

CITY EMPLOYEE PURCHASE OF ABANDONED PROPERTY OR ABANDONED VEHICLES

§ 90.40 MAY PURCHASE AT AUCTION.

Pursuant to M.S. § 15.054, as it may be amended from time to time, no officer or employee of the city shall sell or procure for sale or possess or control for sale to any other officer or employee of the

city, any property or materials owned by the city except pursuant to conditions provided in this section. Property or materials owned by the city and not needed for public purposes, may be sold to an employee of the city after reasonable public notice at a public auction or by sealed response, if the employee is not directly involved in the auction or process pertaining to the administration and collection of sealed responses. Prior to such auction or collection of sealed responses, public notice of at least one week's published notice must be provided. An employee of the city may purchase no more than one motor vehicle from the city at any one auction. This section shall not apply to the sale of property or materials acquired or produced by the city for sale to the general public in the ordinary course of business. Nothing in this section shall prohibit an employee of the city from selling or possessing for sale public property if the sale or possession for sale is in the ordinary course of business or normal course of the employee's duties.

CHAPTER 91: ANIMALS

Section

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§ 91.01 DEFINITIONS.

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

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

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

(2) ***FARM ANIMALS.*** Those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, farm animals shall include members of the equine family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens, turkeys), fowl (ducks, geese), swine (including Vietnamese pot-bellied pigs), goats, bees, ratitae (ostriches and emus), farm raised cervidae (caribous and mule deer), llamas and alpacas and other animals associated with a farm, ranch, or stable.

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

(a) Any member of the large cat family (family felidae) including lions, tigers, cougars, 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 descented), raccoon, squirrel, or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets.

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

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

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

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

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

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

RELEASE PERMIT. A permit issued by the Animal Control Officer or other person in charge of the pound for the release of any animal that has been taken to the pound. A release permit may be obtained upon payment of a fee to the City Clerk in accordance with the regular license requirement if the animal is unlicensed, payment of a release fee, and any maintenance costs incurred in capturing and impounding the animal. The release fee shall be as established in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11, as it may be amended from time to time.

§ 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 which runs at large shall be guilty of a misdemeanor. Dogs or cats on a leash and accompanied by a responsible person or accompanied by and under the control and direction of a responsible person, so as to be effectively restrained by command as by leash, shall be permitted in streets or on public land unless the city has posted an area with signs reading "Dogs or Cats Prohibited."

(B) *License required.*

(1) All dogs over the age of six months kept, harbored, or maintained by their owners in the city, shall be licensed and registered with the city. Dog licenses shall be issued by the City Clerk upon payment of the license fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time. The owner shall state, at the time application is made for the license and upon forms provided, his or her name and address and the name, breed, color, and sex of each dog owned or kept by him or her. No license shall be granted for a dog that has not been vaccinated against distemper and rabies, as evidenced by a certificate by a veterinarian qualified to practice in the state in which the dog is vaccinated.

(2) It shall be the duty of each owner of a dog subject to this section to pay to the City Clerk the license fee established in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11, as it may be amended from time to time.

(3) Upon payment of the license fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, the Clerk shall issue to the owner a license certificate and metallic tag for each dog licensed. The tag shall have stamped on it the year for which it is issued and the number corresponding with the number on the certificate. Every owner shall be required to provide each dog with a collar to which the license tag must be affixed, and shall see that the collar and tag are constantly worn. In case a dog tag is lost or destroyed, a duplicate shall be issued by the City Clerk. A charge shall be made for each duplicate tag in an amount established in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11, as it may be amended from time to time. Dog tags shall not be transferable from one dog to another and no refunds shall be made on any dog license fee or tag because of death of a dog or the owner's leaving the city before the expiration of the license period.

(4) The licensing provisions of this division (B) shall not apply to dogs whose owners are nonresidents temporarily within the city, nor to dogs brought into the city for the purpose of participating in any dog show. Service animals do not require a license.

(5) The funds received by the City Clerk from all dog licenses and metallic tags fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, shall first be used to defray any costs incidental to the enforcement of this chapter; including, but not restricted to, the costs of licenses, metallic tags, and impounding and maintenance of the dogs.

(C) *Cats.* Cats shall be included as controlled by this division insofar as running-at-large, pickup, impounding, boarding, licensing and proof of anti-rabies vaccine is concerned. All other provisions of this section shall also apply to cats unless otherwise provided.

(D) *Vaccination.*

(1) All dogs and cats kept harbored, maintained, or transported within the city shall be vaccinated at least once every three years by a licensed veterinarian for:

(a) Rabies of the modified live vaccine type; and

(b) Distemper.

(2) A certificate of vaccination must be kept stating the date of vaccination, owner's name and address, the animal's name (if applicable), sex, description and weight, the type of vaccine, and the veterinarian's signature. Upon demand made by the City Clerk, the Animal Control Officer or a police officer, the owner shall present for examination the required certificate(s) of vaccination for the animal(s). In cases where certificates are not presented, the owner or keeper of the animal(s) shall have seven days in which to present the certificate(s) to the City Clerk or officer. Failure to do so shall be deemed a violation of this section.
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 this section. An exception shall be made to this prohibition for animals specifically trained for and actually providing assistance to the handicapped or disabled, and for those animals brought into the city

as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.
Penalty, see § 91.99

§ 91.04 FARM ANIMALS.

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

§ 91.05 IMPOUNDING.

(A) *Running at large.* Any unlicensed animal running at large is hereby declared a public nuisance. Any Animal Control Officer or police officer may impound any dog or other animal found unlicensed or any animal found running at large and shall give notice of the impounding to the owner of the dog or other animal, if known. The Animal Control Officer or police officer shall not enter the property of the owner of an animal found running at large or the owner of an unlicensed animal unless the officer has first obtained the permission of the owner to do so or has obtained a warrant issued by a court of competent jurisdiction, as provided for in § 10.20, to search for and seize the animal. In case the owner is unknown, the officer shall post notice at the city office that if the dog or other animal is not claimed within the time specified in division (C) of this section, it will be sold or otherwise disposed of. Except as otherwise provided in this section, it shall be unlawful to kill, destroy, or otherwise cause injury to any animal, including dogs and cats running at large.

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

(C) *Reclaiming.* For the purposes of this section regular business day means a day during which the establishment having custody of the animal is open to the public at least four consecutive hours between 8:00 a.m. and 7:00 p.m. All animals conveyed to the pound shall be kept, with humane treatment and sufficient food and water for their comfort, at least five regular business days, unless the animal is a dangerous animal as defined under § 91.11 in which case it shall be kept for seven regular

business days or the times specified in § 91.11, and except if the animal is a cruelly-treated animal in which case it shall be kept for ten regular business days, unless sooner reclaimed by their owners or keepers as provided by this section. In case the owner or keeper shall desire to reclaim the animal from the pound, the following shall be required, unless otherwise provided for in this code or established from time to time by resolution of the City Council:

(1) Payment of the release fee and receipt of a release permit as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time.

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

(3) If a dog is unlicensed, payment of a regular license fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, and valid certificate of vaccination for rabies and distemper shots is required.

(D) *Unclaimed animals.* At the expiration of the times established in division (C) of this section, if the animal has not been reclaimed in accordance with the provisions of this section, the officer appointed to enforce this section may dispose of the unclaimed animal in a manner permitted by law. Any money collected under this section shall be payable to the City Clerk.
Penalty, see § 91.99

§ 91.06 KENNELS.

(A) *Definition of kennel.* The keeping of three or more dogs on the same premises, whether owned by the same person or not and for whatever purpose kept, shall constitute a "kennel"; except that a fresh litter of pups may be kept for a period of three months before that keeping shall be deemed to be a "kennel."

(B) *Kennel as a nuisance.* Because the keeping of three or more dogs on the same premises is subject to great abuse, causing discomfort to persons in the area by way of smell, noise, hazard, and general aesthetic depreciation, the keeping of three or more dogs on the premises is hereby declared to be a nuisance and no person shall keep or maintain a kennel within the city.
Penalty, see § 91.99

§ 91.07 NUISANCES.

(A) *Habitual barking.* It shall be unlawful for any person to keep or harbor a dog which habitually barks or cries. Habitual barking shall be defined as barking for repeated intervals of at least five minutes

with less than one minute of interruption. The barking must also be audible off of the owner's or caretaker's premises.

(B) *Damage to property.* It shall be unlawful for any person's dog or other animal to damage any lawn, garden, or other property, whether or not the owner has knowledge of the damage.

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

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

§ 91.08 SEIZURE OF ANIMALS.

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

(A) There is an identified complainant other than the police officer or Animal Control Officer making a contemporaneous complaint about the animal;

(B) The officer reasonably believes that the animal meets either the barking dog criteria set out in § 91.07(A); the criteria for cruelty set out in § 91.13; or the criteria for an at large animal set out in § 91.02(A);

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

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

(E) The Animal Control Officer or police officer shall not enter the property of the owner of an animal described in this section unless the officer has first obtained the permission of the owner to do so or has obtained a warrant issued by a court of competent jurisdiction, as provided for in § 10.20, to search for and seize the animal. If the officer has the permission of the owner, a property manager, landlord, innkeeper, or other authorized person to enter the property or has obtained a pass key from

a property manager, landlord, innkeeper, or other authorized person to have that key shall not be considered unauthorized entry, and a warrant to search for and seize the animal need not be obtained; and

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

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

If, in the reasonable belief of any person or the Animal Control Officer or police officer, an animal presents an immediate danger to the health and safety of any person, or the animal is threatening imminent harm to any person, or the animal is in the process of attacking any person, the person or 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 pound for confinement under § 91.05. If the animal is destroyed, the owner or keeper of the animal destroyed shall be liable to the city for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examination. If the animal is found not to be a danger to the health and safety of the city, it may be released to the owner or keeper in accordance with § 91.05(C).

§ 91.10 DISEASED ANIMALS.

(A) *Running at large.* No person shall keep or allow to be kept on his or her premises, or on premises occupied by them, nor permit to run at large in the city, any animal which is diseased so as to be a danger to the health and safety of the city, even though the animal be properly licensed under this section, and a warrant to search for and seize the animal is not required.

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

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

Penalty, see § 91.99

§ 91.11 DANGEROUS AND POTENTIALLY DANGEROUS DOGS.

(A) *Adoption by reference.* Except as otherwise provided in this section, the regulatory and procedural provisions of M.S. §§ 347.50 to 347.565 (commonly referred to as the "Dangerous Dog Regulations"), are adopted by reference.

(B) *Definitions.* Definitions in this section shall have the following meanings:

(1) ***DANGEROUS DOG.*** A dog that:

(a) Has when unprovoked, inflicted substantial bodily harm on a human being on public or private property;

(b) Has killed a domestic animal when unprovoked while off the owner's property;

(c) Has attacked one or more persons on two or more occasions; or

(d) Has been found to be potentially dangerous and after the owner has notice of the same, the dog aggressively bites, attacks or endangers the safety of humans or domestic animals.

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

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

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

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

(6) ***POTENTIALLY DANGEROUS DOG.*** A dog that:

(a) Has when unprovoked, inflicted a bite on a human or domestic animal on public or private property;

(b) Has when unprovoked, chased or approached a person, including a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the owner's property, in an apparent attitude of attack; or

(c) Has a known propensity, tendency or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

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

(a) 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 post shall be one and one-fourth inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of 18 inches in the ground.

(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 openings in the wire shall not exceed two inches.

(d) An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and openings in the wire shall not exceed two inches. The gate shall be self-closing and self-locking. The gate shall be locked at all times when the dog is in the pen or kennel.

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

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

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

(1) A police officer, community service officer, animal control officer or other authorized city employee may declare a dog to be dangerous or potentially dangerous when the officer has probable cause to believe that a dog is dangerous or potentially dangerous. The following factors will be considered in determining a dangerous or potentially dangerous dog:

(a) Whether any injury or damage to a person by the dog was caused while the dog was protecting or defending a person or the dog's offspring within the immediate vicinity of the dog from an unjustified attack or assault.

(b) The size and strength of the dog, including jaw strength, and the animal's propensity to bite humans or other domestic animals.

(c) Whether the dog has wounds, scarring, is observed in a fight, or has other indications that the dog has been or will be used, trained or encouraged to fight with another animal or whose owner is in possession of any training apparatus, paraphernalia or drugs used to prepare such dogs to fight with other animals.

(2) Beginning six months after a dog is declared dangerous or potentially dangerous, an owner may request annually that the city review the designation. The owner must provide evidence that the dog's behavior has changed due to the dog's age, neutering, environment, completion of obedience training or other factors. If enough evidence is provided, the city may rescind the designation.

(3) *Exceptions.*

(a) The provisions of this section do not apply to dogs used by law enforcement.

(b) Dogs may not be declared dangerous or potentially dangerous if the threat, injury, or danger was sustained by a person who was:

1. Committing a willful trespass or other tort upon the premises occupied by the owner of the dog;

2. Provoking, tormenting, abusing or assaulting the dog, or who can be shown to have a history of repeatedly provoking, tormenting, abusing, or assaulting the dog; or

3. Committing or attempting to commit a crime.

(D) *License required.* The owner must annually license dangerous and potentially dangerous dogs with the city and must license a newly declared dangerous or potentially dangerous dog within 14 days after notice that a dog has been declared dangerous or potentially dangerous. Regardless of any appeal that may be requested, the owner must comply with the requirements of M.S. § 347.52 (a) and (c) regarding proper enclosures and notification to the city upon transfer or death of the dog, until and unless a hearing officer or court of law reverses the declaration.

(1) *Process for dangerous dogs.* The city will issue a license to the owner of a dangerous dog if the owner presents sufficient evidence that:

(a) There is a proper enclosure;

(b) Written proof that there is a surety bond by a surety company authorized to conduct business in Minnesota in the sum of at least $300,000, payable to any person injured by a dangerous dog, or receipt of a copy of a policy of liability insurance issued by an insurance company authorized to do business in Minnesota in the amount of at least $300,000, insuring the owner for any personal injuries

inflicted by the dangerous dog. Such surety bond or insurance policy shall provide that no cancellation of the bond or policy will be made unless the city is notified in writing by the surety company or the insurance company at least ten days prior to such cancellation;

(c) The owner has paid the annual license fee for dangerous dogs as established in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this Code.

(d) The owner has had a microchip identification implanted in the dangerous dog. The name of the microchip manufacturer and identification number of the microchip must be provided to the city. If the microchip is not implanted by the owner, it may be implanted by the city at the owner's expense; and

(e) The owner provides proof that the dog has been sterilized. If the owner does not sterilize the dog within 30 days, the city may seize the dog and sterilize it at the owner's expense.

(2) *Process for potentially dangerous dogs.* The city will issue a license to the owner of a potentially dangerous dog if the owner presents sufficient evidence that:

(a) There is a proper enclosure;

(b) The owner has paid the annual license fee;

(c) The owner has had a microchip identification implanted in the potentially dangerous dog. The name of the microchip manufacturer and identification number of the microchip must be provided to the city. If the microchip is not implanted by the owner, it may be implanted by the city at the owner's expense.

(3) *Inspection.* A pre-license inspection of the premises to insure compliance with the city code is required. If the city issues a license to the owner of a dangerous or potentially dangerous dog, the city shall be allowed at any reasonable time to inspect the dog, the proper enclosure and all places where the animal is kept.

(4) *Warning symbol.* The owner of a dangerous dog licensed under this section must post a sign with the uniform dangerous dog warning symbol on the property in order to inform children that there is a dangerous dog on the property. The sign will be provided by the city upon issuance of the license.

(5) *Tags.* A dangerous dog licensed under this section must wear a standardized, easily identifiable tag at all times that contains the uniform dangerous dog symbol, identifying the dog as dangerous. The tag shall be provided by the city upon issuance of the license.

(6) *License fee.* The city will charge the owner an annual license fee for a dangerous or potentially dangerous dog as established in the Ordinance to Establish Fees and Charges as it may be amended from time to time.

(E) *Properly restrained in proper enclosure or outside of proper enclosure.* While on the owner's property, an owner of a dangerous or potentially dangerous dog must keep it in a proper enclosure. Inside a residential home, there must be a secured area maintained where the dog will stay when persons other than family members are present. If the dog is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash no longer than four feet and under the physical restraint of an adult. The muzzle must be made in a manner that will prevent the dog from biting any person or animal but that will not cause injury to the dog or interfere with its vision or respiration.

(F) *Notification requirements to city.*

(1) *Relocation or death.* The owner of a dog that has been declared dangerous or potentially dangerous must notify the City Clerk in writing if the dog is to be relocated from its current address or if the dog has died. The notification must be given in writing within 30 days of the relocation or death. The notification must include the current owner's name and address, and the new owner's name and the relocation address. If the relocation address is outside of the city, the city may notify the local law enforcement agency of the transfer of the dog into its jurisdiction.

(2) *Renter's obligations.* A person who owns or possess a dangerous or potentially dangerous dog and who will rent property from another where the dog will reside must disclose to the property owner prior to entering the lease agreement and at the time of any lease renewal periods that the person owns or possesses a dangerous or potentially dangerous dog that will reside at the property. A dog owner, who is currently renting property, must notify the property owner within 14 days of city notification if the owned dog is newly declared as dangerous or potentially dangerous and the owner keeps the dog on the property.

(3) *Transfer of ownership into the city.* No dog that has been previously determined to be dangerous or potentially dangerous by another jurisdiction shall be kept, owned or harbored in the city unless the dog's owner complies with the requirements of this section prior to bringing the dog into the city. Dogs in violation of this division are subject to impoundment and destruction.

(G) *Seizure.* Animal control may immediately seize any dangerous or potentially dangerous dog if:

(1) After 14 days after the owner has notice that the dog is declared dangerous or potentially dangerous, the dog is not validly licensed and no appeal has been filed;

(2) After 14 days after the owner has notice that the dog is dangerous, the owner does not secure the proper liability insurance or surety coverage as required or such required insurance is cancelled;

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

(4) The dog is outside the proper enclosure and not under proper restraint, as required by § 91.11(E);

(5) After 30 days after the owner has notice that the dog is dangerous, the dog is not sterilized, as required by § 91.11(D)(1)(e);

(6) The dog's microchip has been removed.

(H) *Reclamation.* A dog seized under § 91.11(G) may be reclaimed by the owner of the dog upon payment of maintenance costs, and presenting proof to animal control that the requirements of this section have been met. A dog not reclaimed under this division within seven days may be disposed of and the owner will be liable to the city for maintenance costs. A person claiming an interest in a seized dog may prevent disposition of the dog by posting a security in an amount sufficient to provide for the dog's maintenance costs. The security must be posted with the city within seven days of the seizure inclusive of the date seized.

(I) *Subsequent offenses: seizure.* If a person has been convicted of violating a provision of this section, and the person is charged with a subsequent violation relating to the same dog, the dog may be seized. If the owner is convicted of the crime for which the dog was seized, the court may order that the dog be destroyed in a proper and humane manner and the owner pay the maintenance costs. If the owner is not convicted and the dog is not reclaimed by the owner within seven days after the owner has been notified that the dog may be reclaimed, the dog may be disposed of in manner permitted by law.

(J) *Notice, hearings.*

(1) *Notice.* After a dog has been declared dangerous or potentially dangerous or has been seized for destruction, the city shall give notice by delivering or mailing it to the owner of the dog, or by posting a copy of it at the place where the dog is kept, or by delivering it to a person residing on the property, and telephoning, if possible. The notice shall include:

(a) A description of the seized dog; the authority for and purpose of the declaration and seizure; the time, place, and circumstances under which the dog was declared; and the telephone number and contact person where the dog is kept;

(b) A statement that the owner of the dog may request a hearing concerning the declaration and that failure to do so within 14 days of the date of the notice will terminate the owner's right to a hearing;

(c) A statement that if an appeal request is made within 14 days of the notice, the owner must immediately comply with the requirements of M.S. § 347.52, paragraphs (a) and (c) regarding proper enclosures and notification to the city upon transfer or death of the dog, until such time as the hearing officer issues an opinion;

(d) A statement that if the hearing officer affirms the dangerous dog declaration, the owner will have 14 days from receipt of that decision to comply with all other requirements of M.S. § 347.51, 347.515, and 347.52;

(e) A form to request a hearing; and

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

(2) *Right to hearing.*

(a) After a dog has been declared dangerous, potentially dangerous or has been seized for destruction, the owner may appeal in writing to the city within 14 days after notice of the declaration or seizure. Failure to do so within 14 days of the date of the notice will terminate the owner's right to a hearing. The owner must pay a $100 fee for an appeal hearing.

(b) The appeal hearing will be held within 14 days of the request. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(c) If the declaration or destruction is upheld by the hearing officer, actual expenses of the hearing up to a maximum of $1,000, as well as all maintenance costs, will be the responsibility of the dog's owner. The hearing officer shall issue a decision on the matter within ten days after the hearing. The decision shall be delivered to the dog's owner by hand delivery or registered mail as soon as practical and a copy shall be provided to the city. The decision of the hearing officer is final.

(K) *Destruction of certain dogs.* The Police Chief and/or hearing officer are authorized to order the destruction or other disposition of any dog, after proper notice is given pursuant to § 91.11(J) and upon a finding that:

(1) The dog has habitually destroyed property or habitually trespassed in a damaging manner on property of persons other than the owner;

(2) The dog has been declared dangerous, the owner's right to appeal hereunder has been exhausted or expired, and the owner has failed to comply with the provisions of this section;

(3) It is determined that the dog is infected with rabies;

(4) The dog inflicted substantial or great bodily harm on a human on public or private property without provocation;

(5) The dog inflicted multiple bites on a human on public or private property without provocation;

(6) The dog bit multiple human victims on public or private property in the same attack without provocation;

(7) The dog bit a human on public or private property without provocation in an attack where more than one dog participated in the attack; or

(8) The dog poses a danger to the public's health, safety or welfare. In determining whether the dog poses a danger to the public's health, safety or welfare, the following factors may be considered:

(a) The dog weighs more than 20 pounds;

(b) The strength of the dog, including jaw strength;

(c) The dog's tolerance for pain;

(d) The dog's tendency to refuse to terminate an attack;

(e) The dog's propensity to bite humans or other domestic animals;

(f) The dog's potential for unpredictable behavior;

(g) The dog's aggressiveness;

(h) The likelihood that a bite by the dog will result in serious injury.

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

(M) *Dog ownership prohibited.*

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

(a) Convicted of a third or subsequent violation of § 91.11(D), (E) or (F) or similar ordinance in another jurisdiction, or M.S. §§ 347.51, 347.515 or 347.52;

(b) Convicted of 2nd degree manslaughter due to negligent or intentional use of a dog under M.S. § 609.205 (4); or

(c) Convicted of gross misdemeanor harm caused by a dog under M.S. § 609.226, Subd. d.

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

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

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

(O) *Penalties.*

(1) Unless stated otherwise, any person who violates a provision of this section is guilty of a misdemeanor.

(2) Any person who is convicted of a second or subsequent violation of any provision of § 91.11(D), (E), or (F) is guilty of a gross misdemeanor.

(3) Any person who violates § 91.11(M), whether an owner or household member, is guilty of a gross misdemeanor.

§ 91.12 DANGEROUS ANIMALS (EXCLUDING DOGS).

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

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

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

(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 1¼-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.

(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 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). When an animal is declared potentially dangerous, the Animal Control Officer shall cause one owner of the potentially dangerous animal to be notified in writing that the animal is potentially dangerous.

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

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

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

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

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

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

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

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

(2) If an owner requests a hearing for determination as to the dangerous nature of the animal, the hearing shall be held before the City Council, which shall set a date for hearing not more than three weeks after demand for the hearing. The records of the Animal Control or City Clerk's office shall be admissible for consideration by the Animal Control Officer without further foundation. After considering

all evidence pertaining to the temperament of the animal, the City Council shall make an order as it deems proper. The City Council may order that the Animal Control Officer take the animal into custody for destruction, if the animal is not currently in custody. If the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the Animal Control Officer. If the owner does not immediately make the animal available, the Animal Control Officer shall obtain an order or warrant authorizing the seizure and the destruction of the animal from a court of competent jurisdiction.

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

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

(I) *Notification of new address.* The owner of an animal which has been identified as dangerous or potentially dangerous shall notify the Animal Control Officer in writing if the animal is to be relocated from its current address or given or sold to another person. The notification shall be given in writing at least 14 days prior to the relocation or transfer of ownership. The notification shall include the current owner's name and address, the relocation address, and the name of the new owner, if any.

(J) *Dangerous animal requirements.*

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

(a) That the owner provide and maintain a proper enclosure for the dangerous animal as specified in § 91.12(C)(3);

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

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

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

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

(f) All animals deemed dangerous by the Animal Control Officer shall be registered with the county in which this city is located within 14 days after the date the animal was so deemed and provide satisfactory proof thereof to the Animal Control Officer.

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

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

(3) *Reclaiming animals.* A dangerous animal seized under § 91.12(J)(2), may be reclaimed by the owner of the animal upon payment of impounding and boarding fees and presenting proof to animal control that each of the requirements under § 91.12(J)(1), is fulfilled. An animal not reclaimed under this section within 14 days may be disposed of as provided under § 91.12(F), and the owner is liable to the city for costs incurred in confining and impounding the animal.

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

§ 91.13 BASIC CARE.

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

(B) Dogs and cats. Dogs and cats must be provided the following basic care.

(1) *Food.* Dogs and cats must be provided with food of sufficient quantity and quality to allow for normal growth or the maintenance of body weight. Feed standards shall be those recommended by the National Research Council.

(2) *Water.* Dogs and cats must be provided with clean, potable water in sufficient quantity to satisfy the animal's needs or supplied by free choice. Snow or ice is not an adequate water source.

(3) *Transportation and shipment.* When dogs or cats are transported in crates or containers, the crates or containers must be constructed of nonabrasive wire or a smooth, durable material suitable for the animals. Crates and containers must be clean, adequately ventilated, contain sufficient space to allow the animals to turn around, and provide maximum safety and protection to the animals. Exercise for 20 to 30 minutes and water must be provided at least once every eight hours. Food must be provided at least once every 24 hours or more often, if necessary, to maintain the health and condition of the animals.

(4) *Shelter size.* A confinement area must provide sufficient space to allow each animal to turn about freely and to easily stand, sit, and lie in a normal position. Each confined animal must be provided a minimum square footage of floor space as measured from the tip of its nose to the base of its tail, plus 25%, expressed in square feet. The formula for computing minimum square footage is: (length of animal plus 25%) times (length of animal plus 25%), divided by 144. A shaded area must be provided sufficient to protect the animal from the direct rays of the sun at all times during the months of May to October.

(5) *Exercise.* All dogs and cats must be provided the opportunity for periodic exercise, either through free choice or through a forced work program, unless exercise is restricted by a licensed veterinarian.

(6) *Group housing and breeding.* Animals housed together must be kept in compatible groups. Animals must not be bred so often as to endanger their health.

(7) *Temperature.* Confinement areas must be maintained at a temperature suitable for the animal involved.

(8) *Ventilation.* An indoor confinement area must be ventilated. Drafts, odors, and moisture condensation must be minimized. Auxiliary ventilation, such as exhaust fans, vents, and air conditioning, must be used when the ambient temperature rises to a level that may endanger the health of the animal.

(9) *Lighting.* An indoor confinement area must have at least eight hours of illumination sufficient to permit routine inspection and cleaning.

(10) *Confinement and exercise area surfaces.* Where applicable, the interior surfaces of confinement and exercise areas, including crates or containers, must be constructed and maintained so that they are substantially impervious to moisture and may be readily cleaned. They must protect the animal from injury and be kept in good repair.

(11) *Drainage.* Where applicable, a suitable method must be used to rapidly eliminate excess fluids from confinement areas.

(12) *Sanitation.* Food and water receptacles must be accessible to each animal and located so as to minimize contamination by excreta. Feeding and water receptacles must be kept clean. Disposable food receptacles must be discarded when soiled. Measures must be taken to protect animals from being contaminated with water, wastes, and harmful chemicals. Wastes must be disposed of properly. Where

applicable, flushing methods and a disinfectant must be used periodically. Bedding, if used, must be kept clean and dry. Outdoor enclosures must be kept clean and base material replaced as necessary.

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

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

(1) *Unattended dogs or cats.* A person may not leave a dog or a cat unattended in a standing or parked motor vehicle in a manner that endangers the dog's or cat's health or safety.

(2) *Removal of dogs or cats.* A peace officer, as defined in M.S. § 626.84, as it may be amended from time to time, a humane agent, a dog warden, or a volunteer or professional member of a fire or rescue department of the city may use reasonable force to enter a motor vehicle and remove a dog or cat which has been left in the vehicle in violation of (D)(1). A person removing a dog or a cat under this division shall use reasonable means to contact the owner of the dog or cat to arrange for its return home. If the person is unable to contact the owner, the person may take the dog or cat to an animal shelter.

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

(1) *Building specifications.* The shelter shall include a moisture proof and windproof structure of suitable size to accommodate the dog and allow retention of body heat. It shall be made of durable material with a solid, moisture proof floor or a floor raised at least two inches from the ground. Between November 1 and March 31 the structure must have a windbreak at the entrance. The structure shall be provided with a sufficient quantity of suitable bedding material consisting of hay, straw, cedar shavings, blankets, or the equivalent, to provide insulation and protection against cold and dampness and promote retention of body heat.

(2) *Shade.* Shade from the direct rays of the sun, during the months of May to October shall be provided.

(3) *Farm dogs.* In lieu of the requirements of (E)(1) and (E)(2), a dog kept on a farm may be provided with access to a barn with a sufficient quantity of loose hay or bedding to protect against cold and dampness.

§ 91.14 BREEDING MORATORIUM.

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

§ 91.15 ENFORCING OFFICER.

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

§ 91.16 POUND.

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

§ 91.17 INTERFERENCE WITH OFFICERS.

No person shall in any manner molest, hinder, or interfere with any person authorized by the City Council to capture dogs, cats or other animals and convey them to the pound while engaged in that operation. Nor shall any unauthorized person break open the pound, or attempt to do so, or take or attempt to take from any agent any animal taken up by him or her in compliance with this chapter, or in any other manner to interfere with or hinder the officer in the discharge of his or her duties under this chapter. Penalty, see § 91.99

§ 91.18 FIGHTING ANIMALS.

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

(B) No person shall:

(1) Promote, engage in, or be employed in the activity of cockfighting, dogfighting, or violent pitting of one pet or companion animal as defined in M.S. § 346.36, 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; or

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

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

§ 91.19 FEEDING STRAY CATS AND DOGS.

(A) *Definitions.*

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

(2) ***STRAY*** means an unlicensed domestic or feral dog or cat running at large and unaccompanied or controlled by an owner.

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

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

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

§ 91.99 PENALTY.

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

(C) *Petty misdemeanor.* Violations of §§ 91.02, 91.07, 91.13 and 91.14 are petty misdemeanors punishable as provided in § 10.99.

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. Shall mean one or more of the following: snow, ice, or rubbish removal from sidewalks; weed elimination from 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 or other person designated by the City Council may cause removal from all public sidewalks 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 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.

(D) *Installation and repair of water service lines.* Whenever the city installs or repairs water service lines serving private property under Chapter 52 of this code, the City Clerk shall keep a record of the total cost of the installation or repair against the property.

(E) *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 such damage. Any person who willfully acts or fails to exercise due care and by that act damages any public property shall be liable for the amount thereof, which amount shall be collectable by action or as a lien under M.S. § 514.67, as it may be amended from time to time.
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 such 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 as defined by M.S. § 89.001, 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 such 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 tasks incident to such a program adopted by the Council. The term ***TREE INSPECTOR*** includes any person designated by Council or the Tree Inspector to carry out activities authorized in this section.

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

(1) In abating a nuisance declared by ordinance under divisions (B) and (C), 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. Such abatement procedures shall be carried out in accordance with the control measures and areas prescribed by ordinance according to divisions (C) and (K) and (O) .

(2) In addition, should the appropriate abatement procedure be removal and the tree(s) and/or hedge(s) be 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) 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 Minnesota 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 inspect premises and places within the city to determine whether shade tree pests exist thereon and to investigate all reported incidents of shade tree pests. The Tree Inspector is authorized to take all reasonable measures 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 Minnesota Department of Agriculture or the Commissioner of the Minnesota Department of Natural Resources or other reliable means.

(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 authority while engaged in activities authorized by this section.

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

(1) The Tree Inspector will notify in writing the owner of record or occupant of the premises of such fact and order that the nuisance be terminated or abated. The notice may 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.

(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 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) 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 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 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) 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 (L) or (M). 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 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.

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

(Q) *Penalty.*

(1) Any person, firm, or corporation who violates any provision of this section shall, upon conviction, be guilty of a misdemeanor. The penalty which may be imposed for any crime which is a misdemeanor under this section, including 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.

(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 fagacearum. Control measures prescribed for abating Oak Wilt Disease are:

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

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

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

(d) *Wood disposal.* All wood more than three inches in diameter or ten inches in circumference from such 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 4-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) 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, *Guidelines to Slow the Growth and Spread of Emerald Ash Borer* from the Minnesota Department of Agriculture.

(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 de-barked or covered from April 15 to October 15 with 4 mil 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.

A person must not act, or fail to act in a manner that is or causes a public nuisance. For purpose of this chapter, a person who does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor:

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

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

(C) Does 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; and

(K) Any offensive trade or business as defined by statute not operating under local license.
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 and permitted 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 or 3.2 malt 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 or 3.2 malt liquor, or where intoxicating or 3.2 malt liquor is kept for sale or other disposition in violation of law, and all liquor and other property used for maintaining that place.

(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) Any person participating in any party or other gathering that causes the unreasonable disturbing of the peace, quiet, or repose of another person in such a manner as to be plainly audible at the boundary of the real property, building, structure, or residence from which the noise originates, or at a distance of 50 feet from the source of the noise. "Plainly audible" is defined as sound that can be detected by a person using their unaided hearing faculties.

(E) All unnecessary and annoying vibrations;

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

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

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

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

(J) 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;

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

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

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

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

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

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

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

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

(S) 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 (1) footcandle when abutting any commercial or industrial parcel.

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

(U) (1) *Noises prohibited.*

(a) 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 in such a manner as to be plainly audible at the boundary of the real property, building, structure, or residence from which the noise originates, or at a distance of 50 feet from the source of the noise. (this general prohibition is not limited by any specific restrictions provided in this ordinance). "Plainly audible" is defined as sound that can be detected by a person using their unaided hearing faculties.

(b) All obnoxious noises, motor vehicle or otherwise, in violation of Minn. Rules. Ch. 7030, as they may be amended from time to time, are hereby incorporated into this ordinance by reference.

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

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

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

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

(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.

(d) *Radios, music devices, paging systems, and the like.* The operation of any device referred to in subdivision (1) (f) between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building shall be prima facie evidence of a violation of this section.

(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 such statement and take its evaluation into account in approving or disapproving the license or permit applied for or the zoning change requested.
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 fishing houses, skateboard ramps, playhouses or other similar non-permanent structures outside continuously for longer than 24 hours in the front-yard area of residential property unless more than 100 feet back from the front property line.

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

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

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

(b) Vehicles that are parked or stored outside in the front-yard area must be on a paved or graveled parking surface 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) *Declaration of a nuisance.* Any motor vehicles described in this section shall constitute a hazard to the health and welfare of the residents of the community as such vehicles can harbor noxious diseases, furnish a shelter and breeding place for vermin, and present physical danger to the safety and well-being of children and citizens. Motor vehicles also contain various fluids which, if released into the environment, can and do cause significant health risks to the community.

(B) 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. § 168.B,11, Subd. 3, as it may be amended from time to time.

(C) 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.
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, antennae, air vents, and other similar projections must be structurally sound and in good repair. These projections must be secured properly, where applicable, to an 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 §§ 92.22 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) 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 such 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.

(B) *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.

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

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

(E) *Unlawful parties or gatherings.* When law enforcement determines that a gathering is creating such a noise disturbance as prohibited under Section Four, Subdivision D, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disburse immediately. No person shall refuse to leave after being ordered to do so by law enforcement. Every owner or tenant of such premises who has knowledge of the disturbance shall make every reasonable effort to see that the disturbance is stopped.

(F) *Judicial remedy.* Nothing in this section shall prevent the city from seeking a judicial remedy when no other adequate administrative remedy exists.
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 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.

(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 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, in cases of appeal, on the property owner of the ordinance violation that 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 of Minnesota, and that are commonly found in meadow and prairie plant communities, except weeds as defined herein.

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

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

(a) Noxious weeds and rank vegetation shall include but not be limited to: alum (allium), Buckthorn, Bur Cucumber, Canada Thistle, Corncockle, Cressleaf Groundsel, Curly Dock, Dodder, Field Bindweed, French Weed, Hairy Whitetop, Hedge Bindweed, Hoary Cress, Horsenettle, Johnsongrass, Leafy Spurge, Mile-A-Minute Weed, Musk Thistle, Oxeye Daisy, Perennial Sowthistle, Poison Hemlock, Purple Loosestrife, Quackgrass, Russian Knapweed, Russian Thistle, Serrated Tussock, Shatter Cane, Sorghum, Wild Carrot, Wild Garlic, Wild Mustard, Wild Onion, Wild Parsnip;

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

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

(d) Any weeds, grass, or plants, other than trees, bushes, flowers, or other ornamental plants, growing to a height exceeding 12 inches;

(e) Rank vegetation includes the uncontrolled, uncultivated growth of annuals and perennial plants;

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

(g) 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, which at the time of notice, is in excess of 12 inches in height.

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

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

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

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. 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 or any other city agency. The notice shall be served in writing by certified mail. The notice shall provide that within seven 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.

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

§ 92.41 APPEALS.

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

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

§ 92.42 ABATEMENT BY CITY.

In the event that the property owner shall fail to comply with the "Destruction Order" within seven regular business days and has not filed a notice within 48 hours to the City Clerk of an intent to appeal, the City Council may employ the services of city employees or outside contractors and remove the weeds to conform to this subchapter by all lawful means. No person shall enter the property to abate the nuisance, except with the permission of the owner, resident or other person in control of the property or has obtained a warrant issued by a court of competent jurisdiction.

§ 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 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

§ 92.59 RULES AND LAWS ADOPTED BY REFERENCE.

The provisions of M.S. Ch. 88, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, permits, and all other matters pertaining to open burning are hereby adopted by reference and are made a part of this ordinance as if set out in full. It is the intention of the City Council that all future amendments of M.S. Ch. 88, are hereby adopted by reference as if they had been in existence at the time this ordinance was adopted.

§ 92.60 DEFINITIONS.

For the purpose of this chapter, 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 and which area is depressed below ground, on the ground, or on a raised bed. Included are permanent outdoor wood burning fireplaces. Burning barrels are not a "recreation fire site" as defined herein. Recreational fire sites shall not be located closer than 25 feet to any structure or combustible material.

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, manufactured fireplace logs, charcoal, cord wood or untreated dimensional lumber. "Wood" does not include wood that is green with leaves or needles, rotten, wet, oil soaked, or treated with paint, glue or preservatives. Clean pallets may be used for recreational fires when cut into three foot lengths.

§ 92.61 PROHIBITED MATERIALS.

(A) No person shall conduct, cause or permit open burning of oils, petroleum fuels, rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke such as but not limited to: 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 materials from salvage operations; solid waste generated from an industrial or manufacturing process; materials from a service or commercial establishment; or building material generated from demolition of commercial or institutional structures.

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

(D) No person shall conduct, cause or permit open burning of any leaves or grass clippings.
Penalty, see § 92.99

§ 92.62 PERMIT REQUIRED FOR OPEN BURNING.

No person shall start or allow any open burning on any property in the city without first having obtained an open burn permit, except that a permit is not required for any fire which is a recreational fire as defined in § 92.60.
Penalty, see § 92.99

§ 92.63 PURPOSES ALLOWED FOR OPEN BURNING.

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

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

(2) Ground thawing for utility repair and construction.

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

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

(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.

(6) Running fires.

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

(C) Permits for the operation of permanent tree and brush burning sites may only be issued by the Minnesota Department of Natural Resources (DNR).
Penalty, see § 92.99

§ 92.64 PERMIT APPLICATION FOR OPEN BURNING; PERMIT FEES.

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

(B) An open burning permit shall require the payment of a fee. Permit fees shall be in the amount established in the Ordinance Establishing Fees and Charges, authorized by § 30.11, as it may be amended from time to time.
Penalty, see § 92.99

§ 92.65 PERMIT PROCESS FOR OPEN BURNING.

(A) If the established criteria for the issuance of an open burning permit are not met, the application will be denied.

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

§ 92.66 PERMIT HOLDER RESPONSIBILITY.

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

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

§ 92.67 REVOCATION OF OPEN BURNING PERMIT.

An 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

§ 92.68 DENIAL OF OPEN BURNING PERMIT.

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

§ 92.69 BURNING BAN OR AIR QUALITY ALERT.

(A) The designated fire official is authorized to determine when conditions make open burning potentially hazardous and declare a burning ban within the city.

(B) 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

§ 92.70 RESERVED.

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

(A) *Definitions.*

(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 such a structure extending above a roof.

(B) *Requirements for operation.*

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

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

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

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

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

(C) *Fuels.*

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

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

§ 92.99 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

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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 § 10.99

§ 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 § 10.99

§ 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;

(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 such barricade, fence or obstruction.
Penalty, see § 10.99

RIGHT-OF-WAY CONSTRUCTION REGULATIONS

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

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

§ 93.21 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.

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

§ 93.22 PERMIT REQUIREMENT.

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

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

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

(3) *Small Wireless Facility Permit.* A small wireless facility permit is required to place a new wireless support structure (collocate) in the right-of-way, with the exception that a permit is not required for the installation, placement, maintenance, operation, or replacement of micro wireless facilities suspended on cables strung between existing utility poles in compliance with national safety codes.

(4) *Small Wireless Special or Conditional Land Use Permit.* A special or conditional land use permit is required to install a new wireless support structure in a right-of-way where the underlying district or area is zoned for single-family residential use or is in a historic district established by federal or state law or city ordinance.

(B) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless the person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new permit or permit extension is granted.

(C) *Delay penalty.* In accordance with Minn. Rules part 7819.1000 subp. 3, as it may be amended from time to time and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by the Ordinance Establishing Fees and Charges, adopted pursuant to § 30.11 of this code, as it may be amended from time to time.

(D) *Permit display.* Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city. Penalty, see § 10.99

§ 93.23 PERMIT APPLICATIONS.

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

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

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

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

(3) A certificate of insurance or self-insurance:

(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self-insurance acceptable to the city;

(b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees, and permittees, and placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;

(c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all coverages;

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

(e) 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.

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

(5) If the person is a corporation, a copy of the certificate of incorporation issued by the Secretary of State pursuant to M.S. § 302A.155.

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

(B) A Small Wireless Facility Permit applicant may file a consolidated Small Wireless Permit Application to collocate up to 15 small wireless facilities provided that all the small wireless facilities in the application:

(1) Are located within a two-mile radius;

(2) Consist of substantially similar equipment; and

(3) Are to be placed on similar types of wireless support structures.

(C) Payment of money due the city for:

(1) Permit fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, estimated restoration costs and other management costs including inspections;

(2) Prior obstructions or excavations;

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

(4) Franchise fees or other charges as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, if applicable.

§ 93.24 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 M.S. § 216D.01 - 09 (Excavation Notice System) and Minn. Rules Ch. 7560.

(C) *Additional Small Wireless Facility Conditions.* In addition to subdivision 2, the erection or installation of a wireless support structure, or the collocation of a small wireless facility, shall be subject to the following conditions:

(1) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.

(2) No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the city's written authorization, and further provided that an applicant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.

(3) No wireless facility may extend more than 10 feet above its wireless support structure.

(4) Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such support structures and any existing wireless support structure or other facilities in and around the right-of-way.

(5) Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.

(6) Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

(7) The execution of a Small Wireless Facility Collocation Agreement that incorporates any additional terms and conditions mutually agreed upon by the city and the applicant. A small wireless facility collocation agreement is considered public data not on individuals and is accessible to the public under section 13.03. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant.

(D) *Payment of Rent.*

(1) For collocations of small wireless facilities, the city can, either in its permit or in a standard collocation agreement, require annual rental payments for the small wireless collocations of up to:

(a) $150 per year for rent to collocate on the city structure.

(b) $25 per year for maintenance associated with the collocation.

(c) A monthly fee for electrical service as follows:

1. $73 per radio node less than or equal to 100 maximum watts;

2. $182 per radio node over 100 maximum watts; or

3. The actual cost of electricity if the actual cost exceeds the foregoing.

(2) For collocations or placements, other than of small wireless facilities, the city can charge a mutually agreed upon rent reached between the city and the applicant.

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

§ 93.25 PERMIT FEES.

Permit fees shall be in an amount established in the Ordinance Establishing Fees and Charges, adopted pursuant to § 30.11, as it may be amended from time to time.

(A) *Excavation permit fee.* The city shall establish an excavation permit fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, in an amount sufficient to recover the following costs:

(1) The city management costs; and

(2) Degradation costs, if applicable.

(B) *Obstruction Permit Fee.* The city shall establish the obstruction permit fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, and shall be in an amount sufficient to recover the city management costs.

(C) *Small Wireless Facility Permit Fee.*

(1) The city shall impose a one-time small wireless facility permit fee at the time of approval of the collocation application in an amount sufficient to recover:

(a) Management costs;

(b) Restoration costs or degradation fee, if applicable,

(c) Inspection fees, if applicable,

(d) City engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

(2) The city will not impose a small wireless facility permit fee for any of the following activities:

(a) Routine maintenance of a small wireless facility;

(b) Replacement of a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or

(c) Installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes

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

(E) *Non-refundable.* Permit fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, that were paid for a permit that the city has revoked for a breach as stated in § 93.33 are not refundable.

(F) *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.

(G) All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.1000, as it may be amended from time to time.
Penalty, see § 10.99

§ 93.26 RIGHT-OF-WAY PATCHING AND RESTORATION.

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

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

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

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

(C) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules part 7819.1100, as it may be amended from time to time. The city 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, 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, 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, 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 city, or fails to satisfactorily and timely complete all restoration required by the city, the city may do the work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(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 § 30.11 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.

§ 93.27 PERMIT LIMITATIONS.

(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) *Obstruction from Small Wireless Facility Work.* The city will not require an additional small wireless facility permit fee or require a new collocation agreement for routine maintenance of a small wireless facility, for replacement of a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or for installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes. The city may require advance notification, however, of these activities if the work will obstruct the public right-of-way.

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

§ 93.28 TIMELINE FOR ACTION ON PERMIT APPLICATIONS.

(A) *Denial in General.* 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.

(B) *Procedure for Denial on Permits other than Small Wireless Facilities Permits.* The denial of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

(C) *Procedure for Denial on Small Wireless Facilities Permits.* The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application, unless the collocation is on a support structure that already qualifies as an existing wireless tower or base station under Section 6409(a), codified at 47 U.S.C. 1455(a), which, in those instances, the city shall approve or deny the small wireless facility permit within 60 days. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

(D) *Tolling of Deadline on Small Wireless Facility Permit.* The deadline for action on a small wireless facility permit application may be tolled if:

(1) The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days and shall inform the affected applicant in writing of such extension.

(2) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.

(3) The city and a small wireless facility applicant agree in writing to toll the review period.

§ 93.29 INSTALLATION REQUIREMENTS.

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

§ 93.30 INSPECTION.

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

(B) *Site inspection.* The permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(C) *Authority of City.*

(1) At the time of inspection, the Clerk, 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 city 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 city that the violation has been corrected. If proof has not been presented within the required time, the city may revoke the permit pursuant to § 93.33.

§ 93.31 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.*

(1) Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

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

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

§ 93.32 SUPPLEMENTARY NOTIFICATION.

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

§ 93.33 REVOCATION OF PERMITS.

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

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

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

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

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

(5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 93.30.

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

(C) *Response to notice of breach.* Within 24 hours of receiving notification of the breach, the permittee shall provide the city with a plan, acceptable to the city, 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 attorneys' fees incurred in connection with the revocation.

§ 93.34 MAPPING DATA; INFORMATION REQUIRED.

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

(B) *Service laterals.* 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:

(1) Payments to contractors working on a public improvement project including those under M. S. Ch. 429;

(2) City approval of performance under development agreements, or other subdivision or site plan approval under M.S. Ch. 462.

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

§ 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 city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the Clerk, Utilities Superintendent or other person designated by the Council shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition

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

§ 93.36 DAMAGE TO OTHER FACILITIES.

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

§ 93.37 RIGHT-OF-WAY VACATION.

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

§ 93.38 INDEMNIFICATION AND LIABILITY.

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

§ 93.39 ABANDONED FACILITIES; REMOVAL OF ABANDONED FACILITIES.

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

§ 93.40 APPEAL.

A right-of-way user that has been denied registration; has been denied a permit; has had a permit revoked; believes that the fees imposed are invalid; or disputes a determination of the city regarding § 93.34(B) of this chapter, may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee as imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

§ 93.41 RESERVATION OF REGULATORY AND POLICE POWERS.

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