

TITLE IX: GENERAL REGULATIONS

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CHAPTER 90: ANIMALS

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

(3) **NON-DOMESTIC ANIMALS.** Those animals commonly considered to be naturally wild and not naturally training or domesticating, 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 descended), raccoon, squirrel, or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets.

§ 90.01 DEFINITIONS.

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

ANIMAL. Any 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.

(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 domesticated animals of a dog kind.

OWNER. Any person or persons, firm, association or corporation owning, keeping, or harboring an animal.(Ord. 09-01, passed 5-5-09)

§ 90.02 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 petty 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 and cats over the age of six months kept, harbored, or maintained by their owners in the city, shall be licensed, and registered with the city. Pet licenses shall be issued by the city upon payment of the license fee as established by the City Council. 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/cat owned or kept by him or her. No license shall be granted for a dog/cat 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/cat is vaccinated.

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

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

(4) The licensing provisions of this division shall not apply to dogs or cats whose owners are non-residents temporarily within the city, nor to dogs brought into the city for purpose of participating in any dog show, nor shall this provision apply to "seeing eye" dogs properly trained to assist blind persons for the purpose of aiding them in going from place to place.

(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 with the city shall be vaccinated at least once every three years by a licensed veterinarian for:

(a) Rabies, with a live modified vaccine; and

(b) Distemper.

(2) A certificate of vaccination must be kept on which is stated the date of vaccination, owner's name and address, the animal's name (if applicable), sex, description and weight, the type of vaccine, and the veterinarian's signature. Upon demand made by the city, 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 or officer. Failure to do so shall be deemed a violation of this section.

(Ord. 09-01, passed 5-5-09) Penalty, see § 90.99

§ 90.03 NON-DOMESTIC ANIMALS.

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, parade, or a licensed show or exhibition.

(Ord. 09-01, passed 5-5-09) Penalty, see § 90.99

§ 90.04 FARM ANIMALS.

Farm animals shall only be kept in an agricultural district of the city. 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, parade, or a licensed show or exhibition.(Ord. 09-01, passed 5-5-09)

§ 90.05 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. 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, adopted or otherwise disposed of per the contractor's policies and procedures. 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.

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(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 at the animal shelter for a period to be determined by the animal shelter.

(C) *Reclaiming.* All animals conveyed to the shelter shall be kept, with humane treatment and sufficient food and water for their comfort, per the contractor's policies and procedures. Unless the animal is a dangerous animal as defined under § 90.11, in which case it shall be kept for seven regular business days or the times specified in § 90.11, and except if the animal is a cruelty-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 shelter, the following shall be required, unless otherwise provided for in this code or established from time to time by resolution of the City Council, or the agent of the city:

- (1) The description of the animal by species, breed, sex, approximate age and any other distinguishing detail;
- (2) The location at which the animal was seized;
- (3) The date of seizure;
- (4) The name and address of the owner of said animal;
- (5) The name and address of the person the animal is transferred to, if not the owner.

(D) The releasing fee for impounded animals is set by the contractor. After the holding period set by the contractor the impounded animal may be put up for adoption. Adopting individuals must apply for and obtain a city license.

(Ord. 09-01, passed 5-5-09)

§ 90.06 KENNELS.

(A) *Definition of kennel.* The keeping of four or more domestic animals on the same premises, except for birds and fish, whether owned by the same person or not and for whatever purpose kept, shall constitute a "kennel" except that a fresh litter or pups may be kept for a period of three months before that keeping shall be deemed to be a "kennel," or an animal grooming business where the animals are kept inside a structure, shall also not be deemed a "kennel."

(B) *Kennel as a nuisance.* Because of the keeping of four 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 four 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.

(Ord. 09-01, passed 5-5-09) Penalty, see § 90.99

§ 90.07 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 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 damages.

(C) *Clearing 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) *Other*. Any animals kept contrary to this section are subject to impoundment as provided in § 90.05
(Ord. 09-01, passed 5-5-09)

§ 90.08 SEIZURE OF ANIMALS.

Seizure of animals will be per M.S. Ch. 347.
(Ord. 09-01, passed 5-5-09)

§ 90.09 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. Otherwise, the person or officer may apprehend the animal and deliver it to the shelter for confinement under § 90.05. If the animal is destroyed, the owner or keeper of the animal destroyed shall be liable to the shelter 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 § 90.05(C).
(Ord. 09-01, passed 5-5-09)

§ 90.10 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 is properly licensed under this chapter.

(B) *Confinement*. Any animal reasonably suspected of being diseased and presenting a threat to the health and safety of the public, may be apprehended and confined in the shelter 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.
(Ord. 09-01, passed 5-5-09) Penalty, see § 90.99

§ 90.11 DANGEROUS ANIMALS.

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

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

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

DANGEROUS ANIMAL. An animal which has:

(a) Caused bodily injury or disfigurement to any person or 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.

POTENTIALLY DANGEROUS ANIMAL. An animal which has:

(a) When unprovoked 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.

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.

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

(D) *Designation as a 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 under the definition for “potentially dangerous animal” under this section. 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 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 under the definition for “dangerous animal” in this section.

(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 under the definition for “dangerous animal” in this section.

(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 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 an impartial employee or an impartial person retained by the City Council for a review of this determination.

(1) If no appeal is filed, the order issued will stand or the animal control officer may order the animal destroyed.

(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.

(3) No person shall harbor an animal after it has been found by the City Council 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.

(Ord. 09-01, passed 5-5-09) Penalty, see § 90.99

§ 90.12 DANGEROUS ANIMAL REQUIREMENTS.

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

(1) That the owner provide and maintain a proper enclosure for the dangerous animal as specified under the definition for “proper enclosure” in § 90.11(C);

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

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

(4) If the animal is a dog and is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash (not to exceed 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 dog from biting any person or animal, but will not cause injury to the dog or interfere with its vision or respiration;

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

(6) All animals deemed dangerous by the animal control officer shall be registered with St. Louis County within 14 days after the date the animal was so deemed and provide satisfactory proof thereof to the animal control officer.

(7) If the animal is a dog, the dog must be licensed and up to date on rabies vaccination. If the animal is a cat or ferret, it must be up to date with a rabies vaccination.

(B) *Seizure.* 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.

(C) *Reclaiming animals.* A dangerous animal seized under division (B) of this section may be reclaimed by the owner of the animal upon payment of impounding and boarding fees and presenting proof to animal control that each of the requirements under division (B) of this section is fulfilled. An animal not reclaimed under this section within 14 days may be disposed of as provided under § 90.11(F), and the owner is liable to animal control for costs incurred in confining and impounding the animal.

(D) *Subsequent offenses.* If any owner of an animal has subsequently violated the provisions under § 90.11 with the same animal, the animal must be seized by animal control. The owner may request a hearing as defined in § 90.11(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 division (C) of this section. If the animal is not yet claimed 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 § 90.11(F) and the owner is liable to animal control for the costs incurred in confining, impounding and disposing of the animal.

(Ord. 09-01, passed 5-5-09)

§ 90.13 BASIC CARE.

All animals shall receive from their owners or keepers kind treatment, housing in the winter, and sufficient food and water for their comfort. Any person not treating their pet in a humane manner will be subject to the penalties provided in this section. (Ord. 09-01, passed 5-5-09) Penalty, see § 90.99

§ 90.14 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.

(Ord. 09-01, passed 5-5-09)

§ 90.15 ENFORCING OFFICER.

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

(Ord. 09-01, passed 5-5-09)

§ 90.16 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 shelter while engaged in that operation, or in any other manner to interfere with or hinder the officer in the discharge of his or her duties under this chapter.

(Ord. 09-01, passed 5-5-09) Penalty, see § 90.99

§ 90.99 PENALTY.

Any person violating this chapter is guilty of a petty misdemeanor and in the event of conviction, shall be punished as provided in § 10.99.

(Ord. 09-01, passed 5-5-09)

CHAPTER 91: LAKEVIEW CEMETERY

Section

- 91.01 Council authority; rules and regulations
- 91.02 Sale of lots
- 91.03 Lot record
- 91.04 Receipt book
- 91.05 Payments and fees
- 91.06 Digging graves
- Appendix A: Burial Deed
- Appendix B: Lot Record

§ 91.01 COUNCIL AUTHORITY; RULES AND REGULATIONS.

(A) The City Council may, from time to time, pass and adopt rules and regulations as they may deem necessary and expedient to the management and control of Lakeview Cemetery. All persons acquiring property therein shall take the same subject to the rules and regulations. All persons entering Lakeview Cemetery shall subject themselves to the rules and regulations.

(B) The City Council may designate a portion of the Lakeview Cemetery as "Veteran's Lots." The City Council may by resolution adopt regulations different than those for other lots in the cemetery. (Prior Code, § 2.5.07)

§ 91.02 SALE OF LOTS.

(A) The sale of all family lots, single graves, or other property in Lakeview Cemetery shall be made through the Administrator/Clerk-Treasurer's office of the city. No sales shall be made, except for cash paid to the city, through the Administrator/Clerk-

Treasurer's office, and upon payment being made the purchaser shall receive a good and sufficient deed duly executed on behalf of the city, by its Mayor and its Administrator/Clerk-Treasurer, and the deed shall have affixed thereto the corporate seal of the city. The deed may be substantially in form as set out in Appendix A.

(B) (1) All deeds issued by the city shall be numbered consecutively, beginning with the number "one." The first deed issued shall bear the number "one," the second deed issued the number "two," and so forth. Upon the issuance of each deed and before delivery thereof, the Administrator/Clerk-Treasurer shall make or cause to be made an exact record or copy of the deed, in a record book provided for the purposes by the city, and to be known as "Lakeview Cemetery Deed Record No. _____."

(2) The book or books, which case may be, shall forever be and remain a part of the records of the Administrator/Clerk-Treasurer's office of the city.

(3) Upon the record and copy being made, the Administrator/Clerk-Treasurer shall endorse upon the original deed, the book and page number and date of the filing and recording and no deed shall be delivered without the recording and endorsing made. (Prior Code, § 2.5.02)

§ 91.03 LOT RECORD.

(A) There shall be provided by the city and forever kept as a record in the Administrator/Clerk-Treasurer's office another and separate record book of all Lakeview Cemetery property sales. The book

shall be known as "Administrator/Clerk-Treasurer's Cemetery Lot Record." Each page in the book shall, for the purpose of the record, be printed in substantially the form set out in Appendix B.

(B) Upon the sale of each family lot or single grave in Lakeview Cemetery, the Administrator/Clerk-Treasurer shall enter or cause to be entered a complete record thereof in the proper lot and block space in the book.
(Prior Code, § 2.5.03)

retained by the Administrator/Clerk-Treasurer as a permanent record. The original receipt shall be made on white paper, and the Administrator/Clerk-Treasurer's copy on light blue paper.
(Prior Code, § 2.5.05)

§ 91.04 RECEIPT BOOK.

(A) There shall also be provided by the city for the Administrator/Clerk-Treasurer's office, a receipt book containing blank receipts printed substantially in the following form:

CITY OF BUHL, MN, PAYER'S COPY
RECEIPT NO. _____

_____, _____

Received of _____ \$ _____

For account of _____

Purchase of Lot _____, Block _____, \$ _____

Interment of Lot _____, Block _____, \$ _____

Miscellaneous _____

_____ **Administrator/Clerk-Treasurer** _____

_____ **Deputy** _____

(B) The receipt book shall be printed and bound in the form that by the use of carbon paper, a receipt of each payment to the Administrator/Clerk-Treasurer on account of any Lakeview Cemetery transaction, may be made in triplicate, the original receipt to be delivered to the Mayor, and a copy thereof to be

§ 91.05 PAYMENTS AND FEES.

Upon each and every payment made to the Administrator/Clerk-Treasurer for any Lakeview Cemetery property or privilege, the Administrator/Clerk-Treasurer shall issue to the person making the payment, an original receipt, properly itemized, and deliver the same to the Mayor. (Prior Code, § 2.5.07)

§ 91.06 DIGGING GRAVES.

(A) The city shall, upon payment to the Administrator/Clerk-Treasurer therefor, procure persons to dig graves in Lakeview Cemetery and properly surface the same, which work shall be done at once upon the payment being made, except that no work shall be required to be done in the night time, nor on Sundays or holidays, except under special circumstances and upon previous notice to the city.

(B) The charge for the grave digging and surfacing shall be fixed by the City Council of the city, and shall be known as an "interment" charge. The charge may be greater for all work required to be done in the winter season than for like work done in the summer and greater for the work done on graves for adults than for children. All moneys received therefor by the city shall be deposited in a fund as designated by the city. (Prior Code, § 2.5.09)

APPENDIX A: BURIAL DEED

Deed No. _____
Lakeview Cemetery

Know all men by these present, that the City of Buhl, in the County of St. Louis and the State of Minnesota, in consideration of the sum of \$ _____ paid by _____ the receipt whereof is hereby acknowledged, does hereby grant, bargain, seal and convey unto the _____, pursuant to the laws of the State of Minnesota and the ordinances and regulations of the city, a certain burial lot numbered _____, in block _____, lettered _____, in Lakeview Cemetery according to the recorded plat thereof in the office of the Register of Deeds in and for the county and state, together with all hereditaments and appurtenances thereto belonging.

To have and hold the same for burial purposes only, and subject always to the regulations relative to the cemetery as the City Council may from time to time adopt. These presents are upon the express condition that if, at any time while the cemetery shall be and remain vacated by the city, the _____, heirs or assigns shall use or appropriate the premises hereby conveyed, to or for any other purpose or purchases than hereinbefore mentioned, the same shall revert to the city and this deed become void.

In testimony whereof, the city has caused these presents to be signed by its Mayor and attested by the Administrator/Clerk-Treasurer this _____ day of _____, _____.

Signed, sealed and delivered in the presence of:

City of Buhl

By _____
Mayor

Attest _____
Administrator/Clerk-Treasurer

**STATE OF MINNESOTA)
COUNTY OF ST. LOUIS) SS
CITY OF BUHL)**

On this _____ day of _____, A.D., _____, before me a notary public personally appeared _____ and _____, who being first duly sworn by me, did say that they are respectively the Mayor and Administrator/Clerk-Treasurer of the City of Buhl, and that they executed the instrument hereto attached by authority vested in them by the Council of the City of Buhl.

Notary Public, St. Louis Co., MN
My commission expires _____

(Prior Code, § 2.5.02)

APPENDIX B: LOT RECORD

**LAKEVIEW CEMETERY
CITY OF BUHL, MINNESOTA
DUPLICATE LOT RECORD
NO. _____**

Block No.	History	Interment(s) Name	Receipt No.
Lot No.	Owner		
	Address		
Price			
	Deed No.		
	Date		
	Page in deed records		

(Prior Code, § 2.5.03)

CHAPTER 92: NUISANCES

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§ 92.01 ASSESSABLE CURRENT SERVICES.

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

CURRENT SERVICE. One or more of the following: snow, ice, or rubbish removal from sidewalks; weed elimination from street grass plots adjacent to sidewalks or from private property; removal or elimination of public health or safety hazards from private property, excluding any hazardous building included in M.S. §§ 463.15 through 463.26, as it may be 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.

Open Burning

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- 92.63 Permit required
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Buhl - General Regulations**(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 Administrator/Clerk-Treasurer 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 Administrator/Clerk-Treasurer or designated person shall keep a record showing the cost of the removal adjacent to each separate lot and parcel.

(C) *Weed elimination.*

(1) *Weeds as a nuisance.* Any weeds, whether noxious, as defined by law, or not, growing upon any lot or parcel of land outside the traveled portion of any street or alley in the city to a greater height than 12 inches or which have gone or are about to go to seed are a nuisance. The owner and the occupant shall abate or prevent the nuisance on the property and on land outside the traveled portion of the street or alley abutting on the property.

(2) *Notice.* On or before June 1 of each year and at other times as ordered by resolution of the City Council, the Administrator/Clerk-Treasurer shall publish once in the official newspaper a notice directing owners and occupants of property within the city to destroy all weeds declared by division (C)(1) of this section to be a nuisance and stating that if not so destroyed within ten days after publication of the notice, the weeds will be destroyed by city employees at the expense of the owner and that if not paid, the charge for the work will be made a special assessment against the property concerned.

(3) *Removal by city.* If the owner or occupant of any property in the city fails to comply with the notice within ten days after its publication, city employees may cut and remove the weeds. The Administrator/Clerk-Treasurer shall keep a record showing the cost of the work attributable to each separate lot and parcel.

(D) *Public health and safety hazards.* When the city removes or eliminates public health or safety hazards from private property under city ordinance, 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 the information to the Administrator/Clerk-Treasurer.

(E) *Installation and repair of water service lines.* Whenever the city installs or repairs water service lines serving private property of this code, the Administrator/Clerk-Treasurer shall keep a record of the total cost of the installation or repair against the property.

(F) *Repair of sidewalks and alleys.*

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

(2) *Inspections; notice.* The City Council or its designee shall make inspections as are necessary to determine that public sidewalks and alleys within the city are kept in repair and safe for pedestrians or vehicles. If it is found that any sidewalk or alley abutting on private property is unsafe and in need of repairs, the City Council shall cause a notice to be served, by registered or certified mail or by personal service, upon the record owner of the property, ordering the owner to have the sidewalk or alley repaired and made safe within 30 days and stating that if the owner fails to do so, the city will do so. The

expense thereof must be paid by the owner, and if unpaid it will be made a special assessment against the property concerned.

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

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

(H) *Damage to public property.*

(1) 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 may sustain as a result of any illegal operation, or driving or moving of the vehicle, equipment or object or contrivance weighing in excess of the maximum weight permitted by statute or code.

(2) When the driver is not the owner of the vehicle, equipment, object, or contrivance, but is so operating, driving, or moving the same with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any damage. Any person who willfully acts or fails to exercise due care and by that act damages any public property shall be liable for the amount thereof, which amount shall be collectable by action or as a lien under M.S. § 514.67, as it may be amended from time to time.

(I) *Assessment.*

(1) On or before September 1 of each year, the Administrator/Clerk-Treasurer shall list the total unpaid charges for each type of current service and charges under this section against each separate lot or parcel to which they are attributable.

(2) The City Council may then spread the charges against property benefitted as a special assessment under M.S. § 429.01, as it may be amended from time to time, and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case. Penalty, see § 10.99

§ 92.02 TREE DISEASES.

(A) *Declaration of policy.* The City Council determines that the health of the elm and oak trees within the city is threatened by fatal diseases known as Dutch Elm and Oak Wilt diseases, and other trees may be threatened by other epidemic diseases of shade trees. The City Council further determines that the loss of elm, oak, and other trees growing upon public and private property would substantially depreciate the value of property within the city and impair the safety, good order, general welfare, and convenience of the public. It is declared to be the intention of the City Council to control and prevent the spread of those diseases and this section is enacted for that purpose.

(B) *Designated enforcement officer.* It shall be the duty of the officer designated by the City Council to coordinate, under the direction and control of the City Council, all activities of the city relating to the control and prevention of Dutch Elm disease and Oak Wilt disease and other epidemic diseases of shade trees. The officer shall recommend to the City Council the details of a program for the control of such diseases, and perform the duties incident to a program adopted by the City Council.

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

(1) Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm disease fungus *Ceratocystis Ulmi (Buisman) Moreau* or which harbors any of the elm bark beetles *Scolytus Multistriatus (Eichh.)* or *Hylungopinus Rufipes (Marsh)*;

(2) Any dead elm tree or part thereof, including branches, stumps, firewood, or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle insecticide;

(3) Any living or standing oak tree or part thereof infected to any degree with the Oak Wilt fungus *Ceratocystis fagacearum*;

(4) Any dead oak tree or part thereof which in the opinion of the designated officer constitutes a hazard, including but not limited to logs, branches, stumps, roots, firewood, or other oak material which has not been stripped of its bark and burned or sprayed with an effective fungicide; or

(5) Any other shade tree with an epidemic disease.

(D) *Inspection and investigation.* As often as practical, the designated officer shall inspect all public and private premises within the city which might harbor any plant pest as defined in M.S. § 18.46(13), as it may be amended from time to time, to determine whether any condition described in division (C) of this section exists thereon. The designated officer shall investigate all reported incidents of infestation of Dutch Elm fungus, elm bark beetles, Oak Wilt fungus or any other epidemic disease of shade trees.

(E) *Entry on private premises.* The designated officer or his or her duly authorized agents may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned under this section.

(F) *Abatement of nuisance.* It is unlawful for any person to permit any public nuisance, as defined in division (C) of this section, to remain on any premises the person owns or controls within the city. The nuisances may be abated in the manner prescribed by this section. In abating a nuisance, defined in division (C) of this section, the designated officer shall cause the infected tree or wood to be sprayed, removed, burned, or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of epidemic diseases such as Dutch Elm disease and Oak Wilt disease. The designated officer shall also take other steps as are necessary to prevent root graft transmission of the diseases. The abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the Commissioner of Agriculture.

(G) *Procedure for removal of infected trees and wood.*

(1) *Action by the designated officer.* Whenever the designated officer finds with reasonable certainty that the infestation, defined in division (C), exists in any trees or wood in any public or private place in the city, the designated officer shall, in writing, notify the owner of the existence of a nuisance, which notice shall state that the owner has 60 days to abate the nuisance and avoid city action. A copy of the notice shall be transmitted to the Administrator/Clerk-Treasurer for the information of the City Council. If within the 60-day period the property owner has not abated the nuisance, the designated officer shall report all the facts surrounding the unabated nuisance to the City Council.

(2) *Action by the City Council.* Upon receipt of the designated officer's report required in division (G)(1) of this section, the City Council shall, by resolution, order the nuisance abated. Before action is taken on the resolution, the City Council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to affected property owners and published once no less than one week prior to the meeting. The notice shall state the time and place of the meeting, the

streets affected, action proposed, the estimated cost of the abatement and the proposed basis of assessment, if any, of costs. At the hearing or adjournment thereof, the City Council shall hear property owners with reference to the scope and desirability of the proposed project. The City Council shall thereafter adopt a resolution confirming the original resolution with such modifications as it considers desirable and provide for the doing of the work by day labor or by contract.

(3) *Record.* The designated officer shall keep a record of the costs of abatement done under this section and shall report monthly to the Administrator/Clerk-Treasurer or other appropriate officer all work done for which assessments are to be made, stating and certifying the description of the land, lots, parcels involved, and the amount chargeable to each.

(4) *Assessment.*

(a) On or before September 1 of each year, the Administrator/Clerk-Treasurer shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this section.

(b) The City Council may then spread the charges or any portion thereof against the property involved as a special assessment under M.S. § 429.101, as it may be amended from time to time, and other pertinent statutes for certification to the County Auditor and collection the following year along with the current taxes.

(H) *Interference prohibited.* It is unlawful for any person to prevent, delay, or interfere with the designated officer or his or her agents while they are engaged in the performance of duties imposed by this section. However, it is a defense to prosecution under this division (H) that the interference alleged consisted of constitutionally protected speech only. Penalty, see § 10.99

NUISANCES

§ 92.15 PUBLIC NUISANCE DEFINED.

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

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

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

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

Penalty, see § 10.99

Statutory reference:

Similar provisions, see M.S. § 609.74

§ 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 § 10.99

§ 92.17 PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.

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

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

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

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

(D) All places where intoxicating liquor is manufactured or disposed of in violation of law or where, in violation of law, people are permitted to resort for the purpose of drinking intoxicating liquor,

or where intoxicating liquor is kept for sale or other disposition in violation of law, and all liquor and other property used for maintaining such a 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 § 10.99

§ 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 12 hours after the snow or other precipitation causing the condition has ceased to fall;

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

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

(D) All unnecessary noises and annoying vibrations;

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

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

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

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

(I) 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;

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

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

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

(M) 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 the accumulation;

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

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

(P) 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;

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

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

Penalty, see § 10.99

§ 92.19 DUTIES OF CITY OFFICERS.

The Street Foreman, a licensed peace officer, Building Inspector or other designated official shall enforce the provisions of this subchapter relating to nuisances affecting public safety. A licensed peace officer or Building Inspector shall enforce provisions relating to other nuisances and shall assist the other designated officers in the enforcement of provisions relating to nuisances affecting public safety. The officers shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances.

§ 92.20 ABATEMENT.

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

(1) *Notice of violation.* Written notice of violation shall be served by the officer charged with enforcement 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 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.

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

(C) *Emergency procedure; summary enforcement.* In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in divisions (A) and (B) of this section will permit a continuing nuisance to unreasonably endanger public health safety or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary

enforcement, the officer charged with enforcement shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare. The enforcement officer shall notify in writing the occupant or owner of the premises of the nature of the nuisance and of the city's intention to seek summary enforcement and the time and place of the City Council meeting to consider the question of summary enforcement. The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety, or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in division (A) of this section, and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

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

Penalty, see § 10.99

§ 92.21 RECOVERY OF COST.

(A) *Personal liability.* The owner of premises on which a nuisance has been abated by the city shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the Administrator/Clerk-Treasurer or other official designated by the City Council 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 Administrator/Clerk-Treasurer.

(B) *Assessment.* 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 Administrator/Clerk-Treasurer shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other charges as well as other charges for current services to be assessed under M.S. § 429.101, as it may be amended from time to time, against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case. Penalty, see § 10.99

WEEDS

§ 92.35 SHORT TITLE.

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

§ 92.36 JURISDICTION.

(A) The jurisdiction of this subchapter shall be the corporate limits of the city, as presently defined or as may be modified from time to time by annexation or city ordinance.

(B) This subchapter shall be in addition to any state statute 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.

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:

(1) 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;

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

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

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

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

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

(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.

All property owners within the corporate limits of the city shall be required and be financially 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 ten inches in average height, and in no event, exceeds 15 inches maximum height on at least 20% of the surface area of the property.

Penalty, see § 10.99

§ 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 Administrator/Clerk-Treasurer. If the city makes the complaint, an employee, officer or Council member of the city shall file the complaint in all respects as set out above.

§ 92.40 NOTICE OF VIOLATIONS.

(A) (1) 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 Administrator/Clerk-Treasurer or any other city agency.

(2) 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 Administrator/Clerk-Treasurer.

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

§ 92.41 APPEALS.

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

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

§ 92.42 ABATEMENT BY CITY.

In the event that the property owner shall fail to comply with the destruction order within seven regular business days and has not filed a notice within 48 hours to the Administrator/Clerk-Treasurer 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.

§ 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 Administrator/Clerk-Treasurer and to be deposited in a general fund as compensation for expenses and costs incurred by the city.

OPEN BURNING

§ 92.60 PURPOSE.

The purpose of this subchapter is to establish permitted categories of open burn events for residences and farms within the city and provide for a permitting process for residential and agricultural open burning, except when the open burning is defined as a "recreational fire," as prescribed in this subchapter.

§ 92.61 DEFINITIONS.

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

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

OPEN BURNING. The burning of any matter if the resultant combustion products are emitted directly to the atmosphere without passing through a stack, duct or chimney, except a "recreational fire," as defined herein.

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. Mobile cooking devices such as manufactured hibachis, charcoal grills, wood smokers and propane or natural gas devices are not defined as ***RECREATIONAL FIRES***. No more than one ***RECREATIONAL FIRE*** is allowed on any property at one time.

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

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

WOOD. Dry, clean fuel only such as twigs, branches, limbs, "presto logs," charcoal, cord wood

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

§ 92.62 PROHIBITED MATERIALS.

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

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

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

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

§ 92.63 PERMIT REQUIRED.

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 § 92.61.
Penalty, see § 10.99

§ 92.64 PURPOSES ALLOWED FOR OPEN BURNING.

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

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

(2) Ground thawing for utility repair and construction;

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

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

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

(B) Fire training permits can only issued by the Minnesota Department of Natural Resources.
Penalty, see § 10.99

§ 92.65 PERMIT APPLICATION; 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 the applications.

(B) An open burning permit shall require fee. Permit fees shall be set annually by City Council resolution. However, the City Council may, at other times, amend its resolution setting the fee as it deems

necessary. The fee established by City Council resolution shall continue to be the required fee until amended by a resolution.

Penalty, see § 10.99

§ 92.66 PERMIT PROCESS FOR OPEN BURNING.

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

§ 92.67 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 § 10.99

§ 92.68 REVOCATION OF PERMIT.

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

Penalty, see § 10.99

§ 92.69 DENIAL OF 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.

§ 92.70 BURNING BAN OR AIR QUALITY ALERT.

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

Penalty, see § 10.99

§ 92.71 RULES ADOPTED BY REFERENCE.

The provisions of M.S. §§ 88.16 to 88.22, as they may be amended from time to time, and the *Minnesota Uniform Fire Code* are hereby adopted by reference and made a part of this subchapter as if fully set forth at this point.

DRUG PARAPHERNALIA**§ 92.80 DRUG PARAPHERNALIA.**

(A) *Purpose.* The purpose of this section is to regulate the possession, sale, manufacturing, advertisement, and delivery of drug paraphernalia and thereby deter the use of controlled substances in the city.

(B) *Other applicable laws.* This section is not intended to allow what the Minnesota Statutes prohibit nor to prohibit what the Minnesota Statutes expressly allow.

(C) *Definitions.* The following words and terms when used in this section shall have the following meanings unless the context indicates otherwise.

DRUG PARAPHERNALIA. All equipment, products and materials of any kind which are used, intended to for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of Minnesota Statutes or this section. It includes, but is not limited to:

(a) Kits used, intended to use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;

(e) Scales and balances used, intended for use, or designed for use in weighting or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

(g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(k) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parentally injected controlled substances into the human body; and

(l) Objects used, intended for use, or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

2. Water pipes;
3. Carburetion tubes and devices;
4. Smoking or carburetion masks;
5. Roach clips, meaning objects used to hold burning material such as a marijuana cigarette which has become too small or too short to be held in the hand;
6. Miniature cocaine spoons and cocaine vials;
7. Chamber pipes;
8. Carburetor pipes;
9. Electric pipes;
10. Air-driven pipes;
11. Chillums;
12. Bongs;
13. Ice pipes or chillers

(D) Evidence, in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) Prior convictions, if any, of an owner or anyone in control of the object under state or federal law relating to any controlled substance;
- (3) The proximity of the object, in time and space, to a direct violation of this section;
- (4) The proximity of the object to controlled substances;

(5) The existence of any residue of controlled substances on the object;

(6) Direct or circumstantial evidence of the intent of an owner or anyone in control of the object to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this section, the innocence of an owner or anyone in control of the object as to a direct violation of this section should not prevent a finding that the object is intended for use or designed for use as drug paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community;

(14) Expert testimony concerning its use.

(E) *Offenses.*

(1) *Possession.* It is unlawful for any person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,

process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this section.

(2) *Manufacture, sale, or delivery.* It is unlawful for any person to sell, deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia allowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this section.

(3) *Minors.* Any person 18 years of age or over who violates division (E)(2) above by selling or delivering drug paraphernalia and said sale or delivery is to a person who is under 18 years of age and at least three years his or her junior shall also be violating this paragraph as well as division.

(4) *Advertisement.* It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(F) *Penalty.* Violation of any provision of this section shall be a misdemeanor and each day of violation shall be considered a separate offense.

(G) *Civil forfeiture.* All drug paraphernalia as defined in this section are subject to forfeiture, subject to the provisions set forth in Minnesota Statutes.

(Ord. 13-08, passed 11-5-13)

Cross-reference:

Synthetic drug establishments, see Ch. 114

CHAPTER 93: STREETS

Section

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

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

§ 93.02 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.

Minnesota Rules Ch. 7819, as it may be amended from time to time, is hereby adopted by reference and are incorporated into this code as if set out in full. The definitions included in Minnesota Rules part 7819.0100 subps. 1 through 23, as it may be amended from time to time, are the definitions of the terms used in the following provisions of this subchapter.

§ 93.03 PERMIT REQUIREMENT.

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

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

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

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

specified in the permit unless the person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new permit or permit extension is granted.

(C) *Delay penalty.* In accordance with Minnesota 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 resolution of the City Council establishing fees and charges, as it may be amended.

(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 Administrator/Clerk-Treasurer.

Penalty, see § 10.99

§ 93.04 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 Administrator/Clerk-Treasurer;

(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 Administrator/Clerk-Treasurer 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 Administrator/Clerk-Treasurer in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

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

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

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

(B) Payment of money due the city for:

(1) Permit fees as established by the resolution of the City Council establishing fees and charges as it may be amended from time to time, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

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

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

§ 93.05 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the Administrator/Clerk-Treasurer shall issue a permit.

(B) *Conditions.* The Administrator/Clerk-Treasurer 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.

§ 93.06 PERMIT FEES.

Permit fees shall be in an amount established in a resolution of the City Council establishing fees and charges, 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 resolution of the City Council establishing fees and charges as it 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 resolution of the City Council establishing fees and charges as it may be amended from time to time, and shall be in an amount sufficient to recover the city management costs.

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

(D) *Non-refundable.* Permit fees as established by the resolution of the City Council establishing fees and charges as it may be amended from time to time, that were paid for a permit that the Administrator/Clerk-Treasurer has revoked for a breach as stated in § 93.14 are not refundable.

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

(F) All permit fees shall be established consistent with the provisions of Minnesota Rules part 7819.100, as it may be amended from time to time. Penalty, see § 10.99

§ 93.07 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 chapter.

(B) *Patch and restoration.* The permittee shall patch its own work. The city may choose either to have the city 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 shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota 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 Minnesota Rule part 7819.1100, as it may be amended from time to time. The Administrator/Clerk-Treasurer 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 Administrator/Clerk-Treasurer,

shall correct all restoration work to the extent necessary, using the method required by the Administrator/Clerk-Treasurer. The work shall be completed within five calendar days of the receipt of the notice from the Administrator/Clerk-Treasurer, 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 chapter.

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

(F) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee as established by the resolution of the City Council establishing fees and charges as it 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.

§ 93.08 SUPPLEMENTARY APPLICATIONS.

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

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

§ 93.09 DENIAL OF PERMIT.

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

§ 93.10 INSTALLATION REQUIREMENTS.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota 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.

§ 93.11 INSPECTION.

(A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rule 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 Administrator/Clerk-Treasurer.*

(1) At the time of inspection, the Administrator/Clerk-Treasurer 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 Administrator/Clerk-Treasurer 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 Administrator/Clerk-Treasurer that the violation has been corrected. If proof has not been presented within the required time, the Administrator/Clerk-Treasurer may revoke the permit pursuant to § 93.14.

§ 93.12 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.

§ 93.13 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 Administrator/Clerk-Treasurer of the accurate information as soon as this information is known.

§ 93.14 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 § 93.05.

(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.

§ 93.15 MAPPING DATA; INFORMATION REQUIRED.

Each permittee shall provide mapping information required by the city in accordance with Minnesota Rules parts 7819.4000 and 7819.4100, as they may be amended from time to time.

§ 93.16 LOCATION OF FACILITIES.

(A) Placement, location, and relocation of facilities must comply with applicable laws, and with Minnesota 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 Administrator/Clerk-Treasurer 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 Administrator/Clerk-Treasurer 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.

§ 93.17 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 Administrator/Clerk-Treasurer 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.

§ 93.18 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 Minnesota Rules part 7819.3200, as it may be amended from time to time.

§ 93.19 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 Minnesota Rule 7819.1250, as it may be amended from time to time.

§ 93.20 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 Administrator/Clerk-Treasurer.

§ 93.21 APPEAL.

A right-of-way user that has been denied registration; has been denied a permit; has had permit revoked; or believes that the fees imposed are invalid, 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 writing and supported by written findings establishing the reasonableness of the decision.

**§ 93.22 RESERVATION OF REGULATORY
AND POLICE POWERS.**

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