

TITLE IX: GENERAL REGULATIONS

Chapter

- 90. NUISANCES; HEALTH AND SAFETY**
- 91. FIRE PREVENTION AND PROTECTION**
- 92. PARKS AND RECREATION**
- 93. ANIMALS**
- 94. FIREWORKS AND OTHER DANGEROUS ARTICLES**
- 95. STREETS AND SIDEWALKS**
- 96. ABANDONED, UNCLAIMED, EXCESS PROPERTY**

CHAPTER 90: NUISANCES; HEALTH AND SAFETY

Section

General Provisions

- 90.01 Definition
- 90.02 Public nuisances affecting public health
- 90.03 Public nuisances affecting morals and decency
- 90.04 Public nuisances affecting peace and safety
- 90.05 State defined nuisances
- 90.06 Prohibited acts
- 90.07 Abatement procedure

Excessive Noise

- 90.20 General prohibition
- 90.21 Horns, audible signaling devices and the like
- 90.22 Mufflers for motor vehicles
- 90.23 Radios, tape and disc players
- 90.24 Buildings
- 90.25 Pile drivers, hammers and the like
- 90.26 Parties and gatherings
- 90.27 Animals, birds and the like

Air Pollution

- 90.40 Unauthorized, unlawful burning
- 90.41 Rules adopted by reference

Other Nuisances

- 90.55 Inoperable, unlicensed, junk vehicles
- 90.56 Open pits, basements and other excavations
- 90.57 Open stairways and balconies
- 90.58 Radio and television interference

- 90.99 Penalty

Cross-reference:

Nuisance Board, see § 33.12

GENERAL PROVISIONS**§ 90.01 DEFINITION.**

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

PUBLIC NUISANCE. Any thing, act, occupation, condition, use or property which:

- (1) Unreasonably annoys, injures or endangers the health, safety, comfort or repose of the public;
- (2) In any way renders the public insecure in life or obstructs the free use of property;
- (3) Greatly offends the public morals or is indecent;
- (4) Is offensive to the senses; or
- (5) Unlawfully and substantially interferes with, obstructs or tends to obstruct or render dangerous for passage any sidewalk, street, alley, highway, navigable body of water or other public way. (Ord. 151, 2nd Series, passed 10-12-2015)

§ 90.02 PUBLIC NUISANCES AFFECTING HEALTH.

The following acts, commissions, places, conditions and things are hereby specifically declared to be public health nuisances, but shall not be construed to exclude other health nuisances coming within the definition of § 90.01:

- (A) All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public;
- (B) Unlawful acts relating to animals (See Chapter 93).
- (C) Carcasses of animals, birds, fish and fowl not buried or otherwise disposed of in a sanitary manner within 24 hours after death;
- (D) Accumulations of decayed animal or vegetable matter, unwholesome food, manure, trash, rubbish, debris, rotting lumber, bedding, packing material, cardboard, plastic bags and containers, bottles, cans, scrap metal, brush, or any material in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed;

(E) All stagnant water in which mosquitoes, flies or other insects can multiply;

(F) The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the city limits in quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property;

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

(H) All noxious weeds, including all weeds defined by the State Commissioner of Agriculture to be injurious to public health, roads, crops, livestock and other property including obviously neglected lawns and/or yards, as determined by the city.

(1) It is the primary responsibility of any owner, occupant or agent of any lot or parcel of land to maintain any weeds or grass growing thereon at a height of not more than six inches; to remove all public health or safety hazards therefrom; to install or repair water service lines thereon; to treat or remove insect-infested or diseased trees thereon; and, when deciduous trees have seasonally lost their leaves, to clean up and remove the leaves from the premises.

(2) It is unlawful for any owner, occupant or agent of any lot or parcel of land to allow any weeds or grass growing upon any lot or parcel of land to grow to a greater height than six inches or to allow the weeds or grass to go to seed.

(3) It is unlawful for any owner, occupant or agent of any lot or parcel of land to fail to promptly remove leaves from the premises after deciduous trees have lost their leaves.

(4) It is unlawful for any owner, occupant or agent of any lot or parcel of land to fail to remove all public health or safety hazards thereon, to fail to install or repair water service lines thereon or to fail to treat or remove insect-infested or diseased trees thereon.

(5) If any owner, occupant or agent fails to comply with this division (H)(5), and after notice given by the city, has not within 48 hours of the notice complied, the city shall cause the weeds or grass to be cut, or leaves to be cleaned up and removed, or public health or safety hazards removed, or water service lines repaired, or diseased or insect-infested trees treated or removed, and the expense thus incurred, including administrative costs, shall be the personal liability of the owner of the premises. A bill, indicating the cost, shall be sent to the owner, occupant or agent. If the total amount is not paid in accordance with the terms indicated on the bill, the amount of the costs and expenses incurred, plus accrued interest on the unpaid balance, shall be charged against the property involved as a special assessment as authorized by 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.

(I) *Tree diseases.*

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

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

(b) Any living or standing ash tree or part thereof infected to any degree with the Emerald Ash Borer [*Agrilus Planipennis* Fairmaire (Coleoptera: Bupretidae)] Beetle or which harbors any of the Emerald Ash Borer Beetle.

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

(d) Any living or standing oak tree or part thereof infected to any degree with the Oak Wilt Fungus (*Ceratocystis Fagacearum*);

(e) 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; and/or

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

(2) *Abatement of nuisance.* It is unlawful for any person to permit any public nuisance as defined in division (I)(1) above to remain on any premises the person owns or controls within the city. The City Council may, by resolution, order the nuisance abated. Before action is taken on that 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 the affected property owner and published once no less than one week prior to the meeting. The notice shall state the time and place of the meeting, the property 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 any property owner with reference to the scope and desirability of the proposed project. The City Council shall thereafter adopt a resolution confirming the original resolution with modifications as it considers desirable and provide for the doing of the work by day labor or by contract.

(3) *Record of costs.* The City Administrator shall keep a record of the costs of abatement done under this section for 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) *Unpaid charges.* On or before September 1 of each year, the City Administrator shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this section. The City Council may then spread the charges or any portion thereof against the property involved as a special assessment as authorized by 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.

(J) Any use of property, substances or things within the city emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the city.

(K) *Storage restrictions.*

(1) *Firewood.* Firewood shall be stored in a compact and orderly fashion so as not to constitute a hazard to adjacent buildings or property or to endanger the public health. All firewood shall be stored or stacked up off the surface of the ground. Stacks of wood in the open shall not exceed six feet in height and without consent of adjacent property owners shall not be located less than five feet from a boundary line. There shall be no front yard or front lot storage of firewood in the city; provided that, this division (K)(1) shall not prevent businesses that sell firewood from displaying firewood to the public in a manner that is deemed necessary for the business purposes, as long as the storage and display does not violate any other of the provisions of this section.

(2) *Pipe, lumber and the like.* The storage of pipe, lumber, forms, steel, machinery or similar materials shall not be allowed on residential property.

(3) *Solid fuel.* For the purpose of this division (K)(3), **SOLID FUEL** includes, but is not limited to, corn, shelled or unshelled, and wood pellets. Outdoor storage requirements for solid fuel shall be as follows.

(a) The storage container shall be painted and designed to blend in with the structure it serves or be screened from view of neighboring properties.

(b) The container shall be permanently attached to the ground.

(c) The container shall be of sturdy leak-proof construction with a leak-proof lid.

(d) Storage of grain shall not be allowed in Zoning Districts R-1, R-2, R-3, B-1 or B-3 except as provided in this section.

(4) *Junk yards.* For the purpose of this division (K)(4), the words **JUNK YARDS** shall be defined as: land or buildings where waste, discarded or salvaged materials are bought, sold, exchanged, stored, cleaned, packed, disassembled or handled, including, but not limited to, scrap metal, rags, paper,

hides, rubber products, glass products, lumber products and products resulting from the wrecking of automobiles or other vehicles. All junk yard storage shall be hidden from view from any public right-of-way and adjacent properties. This shall be accomplished by fencing and/or screening as specified in Ch. 152 of this code of ordinances. This division (K)(4) shall not prevent businesses that sell salvaged material from displaying material to the public in a manner that is deemed necessary for the business purposes, as long as the storage and display does not violate any other of the provisions of this chapter. (Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

Cross-reference:

Animals, see Chapter 93

§ 90.03 PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.

The following acts, commissions, places, conditions and things are hereby specifically declared to be public nuisances offending public morals and decency, but the enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of § 90.01:

(A) All illegal gambling devices; and

(B) Any place or premises where the ordinances or state laws relating to public health, safety, peace, morals or welfare are continuously, repeatedly and intentionally violated.
(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.04 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

The following acts, omissions, places, conditions and things are hereby declared to be public nuisances affecting peace and safety, but the enumerations shall not be construed to exclude other nuisances affecting public peace and safety coming within the provisions of § 90.01:

(A) All trees, fences, hedges, signs, billboards, vehicles, recreational vehicles, items of personal property or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk. All limbs of trees which project over a public sidewalk less than eight feet above the surface thereon or 13 feet above the road surface of a public street;

(B) All use or display of fireworks, except as provided by the laws of the state and ordinances of the city;

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

(D) All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use;

(E) Any fence that is not constructed in a substantial workmanlike manner and of substantial material reasonably suitable for the purpose for which the fence is proposed to be used; any fence that has been constructed of improper materials for the district in which it is located, such as the use of barbed wire or electric fencing in a residential district or as a boundary fence; any fence that has not been maintained and is in a condition of disrepair or has become a danger to public safety, health or welfare;

(F) All wires over streets, alleys or public grounds which are strung less than 15 feet above the surface of the street or ground;

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

(H) All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by ordinance;

(I) All open and unguarded pits, wells, in-ground pools, excavations or unused basements freely accessible from any public street, alley or sidewalk;

(J) Accumulations in the open of discarded or disused items including, but not limited to, machinery, household appliances, household furniture and flooring, consumer electronics (i.e. computer equipment, cell phones, TVs, other audio and/or visual equipment), any materials not designed for outdoor use, motor vehicle bodies or parts, tires, batteries, unused and/or discarded construction materials; accumulations of any materials 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 accumulations in a manner creating fire, health or safety hazards;

(K) Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks;

(L) Any abandoned above or underground tank whose capacity is in excess of 1,100 gallons;

(M) All loud or discordant noises or vibrations of any kind;

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

(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, metal scraps, garbage, leaves, tin cans, grass or tree limbs, shreds or rubbish, or to empty any water containing salt or other injurious chemical thereon, which may injure any person or animal or damage any pneumatic tire when passing over the substance. It is a violation of this section to haul any soil or material, not adequately enclosed or covered, thereby permitting the same to fall upon the streets;

(Q) All other conditions or things which are likely to cause injury to the person or property of another; and/or

(R) *Fire and explosion danger.* It is unlawful for any person to deposit or dispose of any refuse which is in flames, or heated to the point that it could cause danger of fire, or any other material which is flammable or so volatile as to create a danger of fire or explosion. If ashes are to be disposed of as part of the refuse collection system, the ashes must be placed in a separate container and not commingled with any other garbage or refuse to be collected. The ashes must be contained in a way that the refuse collectors are able to distinguish same as ashes and be able to observe that they are safe to be deposited in the refuse collection vehicle.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.05 STATE DEFINED NUISANCES.

Any nuisance so defined by M.S. § 561.01, as amended from time to time, supplemented or replaced, or by the common law of the state, is also a nuisance under this chapter.

(Ord. 151, 2nd Series, passed 10-12-2015)

§ 90.06 PROHIBITED ACTS.

No owner or occupant of any premises shall permit any nuisance to be or remain in or upon the premises; nor shall he, she or they allow for the storage of firewood or junk vehicles in violation of the terms of this chapter.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.07 ABATEMENT PROCEDURE.

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

NUISANCE. Public nuisances affecting health in §§ 90.02(A)-(G), (J), and (K); public nuisances affecting morals and decencies as codified in § 90.03; public nuisances affecting peace and safety as codified in § 90.04; state defined nuisances as codified in § 90.05; and inoperable, unlicensed or junk vehicles as codified in § 90.55.

(B) *Report of nuisance.*

(1) Whenever the Building and Zoning Department receives a signed written complaint form which alleges that a nuisance exists, an official from the Building and Zoning Department shall conduct an inspection of the real estate where the nuisance is alleged to exist.

(2) If the official determines that a nuisance exists, the official shall notify the owner of the real estate in writing that a nuisance exists and order that the nuisance be abated. The notice shall also specify the time the owner has to either abate the nuisance or request a hearing before the Nuisance Board.

(C) *Property owner's response.* If the owner of the real estate where the nuisance exists fails to either abate the nuisance or request a hearing within the time specified in the notice, the city at the city's sole and exclusive discretion may or may not abate the nuisance. The city shall have the right to recover all costs, including administrative costs, to abate the nuisance in the manner provided in division (D).

(1) If the owner requests a hearing, the request must be in writing and made within the time specified in the notice received from the Building and Zoning Department.

(2) Upon receipt of a timely written request for a hearing, the Building and Zoning Department shall notify the owner in writing of the time, date, and place of the hearing. The owner may appear in person at the hearing and/or present a written statement in time for consideration at the hearing.

(3) If the Nuisance Board determines that a nuisance exists, the Board shall inform the owner in writing of the amount of time the owner has to abate the nuisance. If the owner fails to abate the nuisance within said time, the city may abate the nuisance. The city shall have the right to recover all costs, including administrative costs, to abate the nuisance in the manner provided in division (D).

(D) *Recovery of costs.*

(1) *Personal liability.* The owner of the real estate where a nuisance has been abated by the city shall be personally liable for all costs the city incurred to abate the nuisance, including administrative costs. As soon as the work has been completed and the costs determined, the city shall prepare an invoice for the costs and mail it to the owner. Thereupon the amount shall immediately be due and payable at the Office of the City Clerk.

(2) *Assessment.* If the owner of the real estate fails to pay the costs of the abatement and/or the administrative costs, then after notice and hearing as provided by M.S. § 429.061, as it may be amended from time to time, the City Administrator shall, on or before December 31 next following abatement of the nuisance, list the total unpaid charges to abate the nuisance, including administrative costs, against each separate lot or parcel to which the charges are attributable. The special assessments levied under this chapter shall be payable in installment(s) as the City Council may determine.

(E) *Immediate abatement.*

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

(2) If the city abates a nuisance that posed an imminent and serious hazard to human life or safety, the city shall have the right to recover all costs, including administrative costs, to abate the nuisance in the manner provided in division (D).

(F) *Notice.* For the purpose of giving written or mailed notice under this section, the notice shall be mailed by first class U.S. mail to the owner of the real estate where the nuisance is alleged to exist. The owner shall be those individual(s) shown to be such in the records of the County Auditor/Treasurer of Cottonwood County, Minnesota, but other appropriate records may also be used for this purpose.

(1) The notice shall be mailed to the address of the owner as it appears in the records located in the County Auditor/Treasurer's Office of Cottonwood County, Minnesota, unless the city is reasonably aware of a different address for the owner, in which case the notice shall be sent to the known address of the owner.

(2) If the address of the owner is not on file in the Auditor/Treasurer's Office of Cottonwood County, Minnesota, and is unknown, service on the owner may be accomplished by posting a copy of the notice on the premises.

(G) *Length of time complaint remains open.* If a signed written complaint form is received and an inspection reveals that there are valid public nuisance violations on the property referred to in the complaint form, that complaint shall remain open for the period of four months from the date that the violations are remedied and the property comes into compliance with city code. During that period, the city will make periodic inspections and take follow-up action as required without the need for the submission of another signed written complaint form.

(H) *Habitual offenders.* There are properties for which the city may receive more than one complaint per year or may receive complaints in consecutive years. The city will follow the procedures as set forth in § 90.07. However, at the city's sole and exclusive discretion, criminal misdemeanor charges may also be filed and other judicial remedies may be pursued as allowed by law.

(I) *Violation a misdemeanor.* Any violation of Chapter 90 which is not corrected, as set forth herein, shall be considered a misdemeanor.
(Ord. 151, 2nd Series, passed 10-12-2015; Ord. 177, 2nd Series, passed 5-7-2019)

EXCESSIVE NOISE

§ 90.20 GENERAL PROHIBITION.

(A) No person shall make or cause to be made, any distinct and loud audible noise that unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace, safety or welfare of any person, or precludes their enjoyment or diminishes their property value.

(B) This general prohibition includes, but is not limited to, the specific restrictions of the following sections.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.21 HORNS, AUDIBLE SIGNALING DEVICES AND THE LIKE.

No person shall sound any audible signaling device, except as a warning of danger, or as permitted in M.S. § 169.68, as amended from time to time.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.22 MUFFLERS FOR MOTOR VEHICLES.

Every motor vehicle shall at all times be equipped with a muffler in working order which blends the exhaust noise into the overall vehicle noise and is in constant operation to prevent excessive or unusual

noise; and no person shall use a dynamic engine or transmission brake, muffler cutout, bypass or similar device upon a motor vehicle on a street or highway.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.23 RADIOS, TAPE AND DISC PLAYERS.

No person shall use, operate or play any radio receiving set, tape or disc player, musical instrument, phonograph, loudspeaker, sound amplifier or other device in a manner as to disturb the peace, quiet and repose of a person or persons of ordinary sensibilities, except as allowed by city license or permit for civic and/or charitable activities and events.

(A) The play, use or operation of any radio, tape or disc players, musical instrument, phonograph or other machine or device for the production or reproduction of sound in a manner as to be plainly audible at a distance of one city block from the machine or device or for the purpose of commercial advertising, or attracting the attention of the public to any building structure, shall be prima facie evidence of a violation of this section; and/or

(B) When sound violating this subchapter is produced or reproduced by a machine or device that is located in or on a vehicle, the vehicle's owner(s) is guilty of the violation; provided, however, that, if the vehicle's owner is not present at the time of the violation, the person in charge or control of the vehicle at the time of the violation is guilty of the violation.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.24 BUILDINGS.

(A) No person shall engage in construction (including excavation), demolition, alteration or repair of any building between the hours of 9:00 p.m. and 6:00 a.m.; except that, individuals or families may work on single-family residences for their own occupancy.

(B) City officials may, in case of emergency, grant permission to repair at any time when they find repair work will not affect the health and safety of the persons in the vicinity.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.25 PILE DRIVERS, HAMMERS AND THE LIKE.

No person shall use or operate, between the hours of 9:00 p.m. and 6:00 a.m., any pile driver, power shovel, pneumatic hammer, derrick power, electrical hoist or other machine or appliance, the use of which is accompanied by loud or unusual noise.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.26 PARTIES AND GATHERINGS.

(A) *Prohibition.* No person shall congregate at or participate in any party or gathering from which noise emanates of a sufficient volume so as to disturb the peace, quiet or repose of another person. No person shall knowingly remain at a noisy party or gathering.

(B) *Evidence.* The following is prima facie evidence of violation of this section:

(1) Noise of a volume as to be clearly heard at a distance of one city block from the structure or building in which the party or gathering is occurring, or in the case of an apartment building, in the adjacent hallway or apartment; and

(2) Any complaint from a person that is verified by an officer.

(C) *Duty to disperse.* When an officer determines that a party or gathering is in violation of this section, the officer may order all persons present at the premises where the violation is occurring, other than the owner or tenants of the premises, to disperse immediately. No persons ordered to leave shall remain at or return to the party or gathering.

(D) *Exemption.* The following are exempt from violation of this section:

(1) Activities which are duly authorized, sponsored or licensed by the city so long as the activity is conducted pursuant to the conditions of the license, permit or contract;

(2) Person(s) who have gone to a party for the sole purpose of abating the violation;

(3) Church bells, chimes or carillons;

(4) School bells;

(5) Anti-theft devices; and

(6) Machines or devices for the production of sound on or in authorized emergency vehicles. (Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.27 ANIMALS, BIRDS AND THE LIKE.

No person shall keep, or allow to be kept, any animal which is causing long continued noise which disturbs the comfort or repose of any person(s) in the vicinity.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

Cross-reference:

Animals, see Chapter 93

AIR POLLUTION**§ 90.40 UNAUTHORIZED, UNLAWFUL BURNING.**

(A) It is unlawful for any person to burn or permit burning of any grass, weeds, leaves, rubbish or other substance upon premises owned or occupied by him or her, except as otherwise provided by this code and as identified in M.S. § 88.16, Starting and Reporting Fires, M.S. § 88.17, Permission to Start Fires; Prosecution for Unlawfully Starting Fires, and M.S. § 88.171, Open Burning Prohibitions, as they may be amended from time to time.

(1) Exceptions allowed for open burning for permitted materials include:

(a) A fire started when the ground is snow-covered. ***SNOW-COVERED*** means that the ground has a continuous unbroken cover of snow, to a depth of three inches or more, surrounding the immediate area of the fire sufficient to keep the fire from spreading. Between 24 and 48 hours prior to starting a fire permitted pursuant to this § 90.40(A)(1)(a), the owner or occupant of the premises where the fire is going to occur shall notify the Cottonwood County Sheriff's Department or the Windom Fire Chief of the exact location where the fire will occur and the time the fire will start.

(b) A campfire.

(c) A fire contained in a charcoal grill, camp stove, or other device designed for the purpose of cooking or heating.

(d) A fire to burn dried vegetative materials and other materials allowed by Minnesota Statutes or official state rules and regulations in a burner of a design which has been approved by the Commissioner of Natural Resources and with which there is no combustible material within five feet of the base of the burner and is in use only between the hours of 6:00 p.m. and 8:00 a.m. of the following day, when the ground is not snow-covered.

(2) *Written permission required.* Excluding the previous exceptions allowed for open burning, it shall be unlawful to start or have any open fire without written permission.

(3) Burning of the following materials is prohibited:

(a) Rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke;

(b) Hazardous wastes;

(c) Industrial solid waste;

(d) Demolition debris;

Windom - General Regulations

- (e) Salvage operations;
- (f) Motor vehicles; and
- (g) Garbage.

(B) (1) *Burning permitted.* Pursuant to the provisions of M.S. § 116.082, as amended from time to time, the open burning of dried leaves between September 15 and December 1 is hereby allowed in the city, subject to the limits and conditions specified in this division (B).

(2) *Limits and conditions.* The burning of leaves will only be permitted under the following limits and conditions:

- (a) The open burning of leaves will only be permitted between September 15 and December 1;
- (b) The Police Department must be notified by the property owner prior to each burning;
- (c) Burning shall be limited only to the areas of the city zoned residential;
- (d) A fire shall not be less than five feet from any property line and not less than 25 feet from any building, lumber pile, wood yard, haystack or other comparable hazard;
- (e) A responsible person shall be in constant attendance until the fire is completely extinguished;
- (f) Burning will only be allowed during daylight hours;
- (g) The burning of leaves is prohibited on city streets, alleys, sidewalks, boulevards or any public parking areas;
- (h) No burning shall take place during an air pollution alert, high fire danger alert, warning or other emergency declared by the city, the State Pollution Control Agency (MPCA) or the State Department of Natural Resources (DNR); and
- (i) The Fire Chief, or other local fire authority designee, will have the authority to discontinue a burn when:
 - 1. A fire hazard exists or develops during the course of the burn;
 - 2. Any of the conditions of the permit are violated during the course of the burn; and
 - 3. It is determined that the smoke emissions are offensive to occupants of the surrounding property.

(3) *Permits.*

(a) Upon determination that all necessary precautions have been taken to protect life and property, the Fire Chief, City Administrator or other authorized agent may issue a leaf-burning permit.

(b) The cost of obtaining a permit to burn dried leaves shall be at a rate as approved from time to time by the City Council. The fee will be paid by the applicant upon receipt of permit.

(c) Beginning on the date of issuance, the permit shall be valid until December 1 of the year it was issued.

(4) *Copy to state agencies.* A copy of this division (B), or any amendment thereof, shall be submitted to the MPCA and the DNR.

(5) *Penalty.* Any person violating the provisions of this division (B) shall be guilty of a misdemeanor.

(6) *Application.* The provisions of this division (B) shall only apply to the burning of leaves. It is unlawful for any person to burn any materials prohibited under the city ordinances or state statute.

(7) *Effective date.* This division (B) becomes effective on the date of its publication or upon the publication of a summary of the ordinance as provided by M.S. § 412.191, Subd. 4, as it may be amended from time to time, which meets the requirements of M.S. § 331A.01, Subd. 10, as it may be amended from time to time.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.41 RULES ADOPTED BY REFERENCE.

(A) The Air Pollution Control Rules, 1976, APC 1 through 32, 6 MCAR 4.0033, 6 MCAR 4.0039 and 6 MCAR 4.0041, updated through 1983, promulgated by the State Pollution Control Agency, are hereby adopted by reference as though set forth verbatim herein. One copy of the rules shall be marked "CITY OF WINDOM - OFFICIAL COPY" and kept on file in the office of the City Administrator and open to inspection and use by the public.

(B) It is unlawful to violate a provision of this section or of the Air Pollution Control Rules hereby adopted by reference.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

OTHER NUISANCES**§ 90.55 INOPERABLE, UNLICENSED, JUNK VEHICLES.**

In the interest of promoting public health, safety and welfare, the city does hereby enact this section governing the parking and storing of junk vehicles as follows.

(A) No person shall leave any partially dismantled, non-operating wrecked or junked vehicle on any street or highway within the city.

(B) (1) All vehicles on property within the city limits shall be currently licensed and in running order (operable condition) or properly licensed and stored as a collector vehicle. No person in charge or control of any property within the city, whether as owner, tenant, occupant, lessee or otherwise, shall allow any partially dismantled, non-operating, wrecked, junked or discarded vehicle to remain on the property longer than 96 hours.

(2) Except that, this section shall not apply to:

(a) A vehicle in an enclosed building;

(b) A vehicle on the premises of a business enterprise operated in a lawful place and manner when necessary to the operation of the business enterprise; provided that, the vehicle is located on the premises for a period of not longer than one year; or

(c) A vehicle which has been placed by the city in an appropriate storage place or depository maintained in a lawful place and manner.

(C) Vehicles, trailers and truck and/or van boxes are not approved accessory buildings as defined in Ch. 152 of this Code of Ordinances and shall not be used for storage of items that would typically be stored in an accessory building and also shall not be used for storage of garbage, trash or junk items. (Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.56 OPEN PITS, BASEMENTS AND OTHER EXCAVATIONS.

(A) It is unlawful for any person owning or in control of real estate to have any pit, basement, well, septic tank, cesspool or other excavation on the premises open and without protection for the public.

(B) If the excavation is open for 72 hours or less, it shall be protected by use of flares or lights at night and a railing or other temporary protection during the day.

(C) If it shall be permanently installed, it shall be protected with a chain link fence at least 48 inches high, night and day.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.57 OPEN STAIRWAYS AND BALCONIES.

It is unlawful for the owner of any premises to construct or maintain thereon, or permit the construction or maintenance thereon, of a stairway opening to a public sidewalk without adequately protecting the opening with a gate, fence, bars or other barrier adequately protecting the same. It is unlawful for the owner of any premises to construct or maintain thereon, or permit the construction or maintenance thereon, of a balcony unless it is protected with a solid wall or screened with a firm material with openings no larger than eight inches in diameter, if round, or eight inches by eight inches, if square, and to a height of at least three feet.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.58 RADIO AND TELEVISION INTERFERENCE.

It is unlawful for any person to maintain, use or operate any apparatus or device whether electrical, mechanical or of any other type, so as to cause interference with radio or television reception. This section shall not apply to electro-medical devices; provided that, they are equipped so far as reasonably possible with apparatus tending to reduce the interference.

(Ord. 151, 2nd Series, passed 10-12-2015) Penalty, see § 90.99

§ 90.99 PENALTY.

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

(B) Every person violates §§ 90.01 through 90.07, 90.20 through 90.27 and 90.55 when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful or fails to act when the failure is prohibited or declared unlawful by a code adopted by reference by these sections and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.

(C) Every person violates §§ 90.40, 90.41 and 90.56 through 90.58 when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful, or performs an act prohibited or declared unlawful or fails to act when the failure is prohibited or declared unlawful by a code adopted by reference by these sections and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.

(Ord. 151, 2nd Series, passed 10-12-2015)

[Text continues on page 25.]

CHAPTER 91: FIRE PREVENTION AND PROTECTION

Section

- 91.01 Adoption of Fire Prevention Code
- 91.02 Enforcement
- 91.03 Definition
- 91.04 Establishment of limits of districts in which storage of explosives and blasting agents, storage of flammable liquids in outside aboveground tanks, and bulk storage of liquified petroleum gases restricted
- 91.05 Modifications
- 91.06 Appeals

§ 91.01 ADOPTION OF FIRE PREVENTION CODE.

There is hereby adopted by the city for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code known as the Fire Prevention Code, Abbreviated Edition, recommended by the American Insurance Association, being particularly the 1968 Edition thereof and the whole thereof, save and except the portions as are hereinafter deleted, modified or amended, of which Code not less than three copies have been and now are filed in the office of the City Administrator, and the same are hereby adopted and incorporated as fully as if set out at length herein.

(Prior Code, § 10.41)

§ 91.02 ENFORCEMENT.

The Code hereby adopted shall be enforced by the Chief of the Fire Department.

(Prior Code, § 10.41)

§ 91.03 DEFINITION.

Wherever the word “Municipality” is used in the Code hereby adopted, it shall be held to mean “the City of Windom”.

(Prior Code, § 10.41)

§ 91.04 ESTABLISHMENT OF LIMITS OF DISTRICTS IN WHICH STORAGE OF EXPLOSIVES AND BLASTING AGENTS, STORAGE OF FLAMMABLE LIQUIDS IN OUTSIDE ABOVEGROUND TANKS, AND BULK STORAGE OF LIQUIFIED PETROLEUM GASES RESTRICTED.

The limits referred to in § 53b of the Code hereby adopted, in which storage of explosives and blasting agents is prohibited, the limits referred to in § 74c of the Code hereby adopted in which storage of class I liquids in outside aboveground tanks is prohibited and the limits referred to in § 114 of the Code hereby adopted, in which bulk storage of liquified petroleum gas is restricted are hereby established as follows: the industrial zone as now or hereafter established under the zoning provisions of the city code.

(Prior Code, § 10.41)

§ 91.05 MODIFICATIONS.

The Chief of the Fire Department shall have power to modify any of the provisions of the Code hereby adopted upon application in writing by the owner or lessee, or his or her duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the Code; provided that, the spirit of the Code shall be observed, public safety secured and substantial justice done. The particulars of the modification when granted or allowed and the decision of the Chief of the Fire Department thereon shall be entered upon the records of the Department and a signed copy shall be furnished to the applicant.

(Prior Code, § 10.41)

§ 91.06 APPEALS.

Whenever the Chief of the Fire Department shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the Code do not apply or that the true intent and meaning of the Code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Chief of the Fire Department to the Council, within 30 days from the date of the decision appealed.

(Prior Code, § 10.41)

CHAPTER 92: PARKS AND RECREATION

Section

- 92.01 Definitions
- 92.02 Park property
- 92.03 Sanitation
- 92.04 Traffic
- 92.05 Parking
- 92.06 Bicycles, snowmobiles and go-carts
- 92.07 Recreational activities
- 92.08 Hunting and firearms
- 92.09 Picnic areas and use
- 92.10 Camping
- 92.11 Games
- 92.12 General restrictions
- 92.13 Merchandising, advertising and signs
- 92.14 Park operating policy
- 92.15 Enforcement

§ 92.01 DEFINITIONS.

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

DIRECTOR. A person immediately in charge of any park area and its activities and to whom all park attendants of the area are responsible.

PARK. A park, reservation, playground, beach, recreation center or any other area in the city owned or used by the city and devoted to active or passive recreation.

VEHICLE.

(1) Any wheeled conveyance whether motor-powered or self-propelled. The term shall include any trailer in tow of any size, kind or description.

(2) Exception is made for baby carriages and vehicles in the service of the city.
(Prior Code, § 10.43)

§ 92.02 PARK PROPERTY.

It is unlawful for any person in a park to:

(A) Intentionally remove or cause damage to park property, either real or personal;

(B) Fail to cooperate in maintaining restrooms and washrooms in a neat and sanitary condition. No person over the age of five years shall use the restrooms and washrooms designated for the opposite sex;

(C) Construct or erect any building or structure of whatever kind whether permanent or temporary in character or run or string any public service utility into, upon or across the lands, except on special written permit issued hereunder;

(D) Damage, cut, carve, transplant or remove any tree or plant or injure the bark or pick the flowers or seeds of any tree or plant, nor shall any person attach any rope, wire or other contrivance to any tree or plant. A person shall not dig in or otherwise disturb grass areas or, in any other way, injure or impair the natural beauty or usefulness of any area;

(E) Ride or bring a horse into any park;

(F) Permit a dog to run at large. All dogs shall be restrained at all times on adequate leashes not greater than eight feet in length;

(G) Hunt, molest, harm, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal or bird nor shall he or she remove or have in his or her possession the young of any wild animal or the eggs or nest or young of any animal or bird; and/or

(H) Give or offer or attempt to give to any animal or bird any tobacco, alcohol or other known noxious substances.

(Prior Code, § 10.43) Penalty, see § 10.99

§ 92.03 SANITATION.

It is unlawful for any person in a park to:

(A) Bring in, dump, deposit or leave any rubbish, waste, garbage, refuse or other trash, liquid or solid. No refuse or trash shall be placed in any waters in or contiguous to the park or left anywhere on the grounds thereof, but shall be placed in the proper receptacles where these are provided; where receptacles are not provided, all rubbish or waste shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere; and/or

(B) Deposit or leave garbage cans or other containers on park property.

(Prior Code, § 10.43) Penalty, see § 10.99

Parks and Recreation

§ 92.04 TRAFFIC.

It is unlawful for any person in a park to:

(A) Fail to comply with all applicable provisions of the State Motor Vehicle Traffic Laws in regard to equipment and operation of vehicles together with the regulations as are contained in this section and other provisions of the city code;

(B) Fail to obey all traffic officers and park employees, the person being hereby authorized and instructed to direct traffic whenever and wherever needed in the parks and on the highways, streets, roads immediately adjacent thereto in accordance with the provisions of these regulations and the supplementary regulations as may be issued subsequently by the Director;

(C) Fail to observe carefully all traffic signs indicating speed, direction, caution, stopping or parking and all others posted for proper control and to safeguard life and property;

(D) Ride or drive a vehicle at the rate of speed exceeding ten mph, except upon the roads as the Director may designate or by posted signs for speedier travel; and/or

(E) Drive any vehicle on any area, except the park roads or parking areas or other areas as may on occasion be specifically designated as temporary parking areas by the Director.

(Prior Code, § 10.43) Penalty, see § 10.99

§ 92.05 PARKING.

It is unlawful for any person in a park to:

(A) Park a vehicle in other than an established or designated parking area and the use shall be in accordance with the posted directions thereat and with the instructions of any attendant who may be present;

(B) Full park on the road or driveway at any time. Vehicles may be parked with the two left wheels near the right edge of the paving for not more than 15 minutes. No stopping or parking is permitted even briefly on the left-hand side of any road or driveway;

(C) Leave a vehicle standing or parked at night without lights clearly visible for at least 75 feet from both front and rear on any driveway or road area, except legally established parking areas;

(D) Fail to immediately notify an attendant of any emergency in the nature of a breakdown requiring the assistance of a tow truck, mechanic or other person;

(E) Double-park any vehicle on any road or parkway unless directed by a park official; and/or

(F) Fail to use a muffler adequate to deaden the sound of the engine in the motor vehicle.
(Prior Code, § 10.43) Penalty, see § 10.99

§ 92.06 BICYCLES, SNOWMOBILES AND GO-CARTS.

It is unlawful for any person in a park to:

(A) Ride a bicycle or go-cart on other than a vehicular road or path designated or area designated for that purpose. The bicyclist shall be permitted to wheel or push a bicycle by hand over any grassy area or wooded trail or any paved area reserved for pedestrian use;

(B) Ride a snowmobile on the area designated in any park as a baseball diamond;

(C) Ride a bicycle, snowmobile or go-cart other than on the right-hand side of the road paving as close as conditions permit and they shall keep in single file when two or more are operating as a group. They shall, at all times, operate their machines with reasonable regard to the safety of others, pass to the left of any vehicle they are overtaking and pass to the right of any vehicles they may be meeting;

(D) Leave a bicycle in a place other than a bicycle rack when it is provided and there is space available;

(E) Leave a bicycle, snowmobile or go-cart lying on the ground or paving or set against trees or in any place or position where other persons may trip over or be injured by them;

(F) Ride a bicycle or snowmobile on any road, path or area between 30 minutes after sunset and 30 minutes before sunrise without an attached headlight plainly visible at least 200 feet from the rear of the bicycle or snowmobile; and/or

(G) Ride any other vehicles any other place in the park, except as may be designated; provided, however, that, city maintenance equipment may be used.
(Prior Code, § 10.43) Penalty, see § 10.99

§ 92.07 RECREATIONAL ACTIVITIES.

It is unlawful for any person in a park to:

(A) Swim, bathe or wade in any waters or any waterways in or adjacent to any park, except in waters and at places as are provided therefor and in compliance with regulations as are herein set forth or may hereafter be adopted, nor shall any person frequent any waters or places customarily designated for the purpose of swimming or bathing or congregate thereat when the activities are prohibited by the Director upon a finding that the use of the water would be dangerous or otherwise inadvisable;

(B) Frequent any waters or places designated for the purpose of swimming or bathing or congregate thereat, except between the hours of the day as shall be designated by the Director for those purposes for each individual area;

(C) Erect, maintain, use or occupy on or in any beach or bathing area any tent, shelter or structure of any kind unless there shall be an unobstructed view into the tent, shelter or structure from at least two sides, nor shall any guy wire, rope or extension or exterior brace or support be connected or fastened from any structure to any other structure, stake, rock or other object outside thereof; and/or

(D) Dress or undress on any beach or any vehicle or toilet or place, except in the bathing houses or structures as may be provided for that purpose.

(Prior Code, § 10.43) Penalty, see § 10.99

§ 92.08 HUNTING AND FIREARMS.

It is unlawful for any person in a park to hunt, trap or pursue wildlife at any time and it is also unlawful for any person to use, carry or possess firearms of any description or air rifles, spring guns, bows and arrows, slings or any other forms of weapons potentially inimical to wildlife and dangerous to human safety or any instrument that can be loaded with and fire blank cartridges or any kind of trapping device. Shooting into park areas from beyond park boundaries is forbidden.

(Prior Code, § 10.43) Penalty, see § 10.99

§ 92.09 PICNIC AREAS AND USE.

It is unlawful for any person in a park to:

(A) Picnic or lunch in a place other than those designated for that purpose. Attendants shall have the right and authority to regulate the activities in those areas when necessary to prevent congestion and to secure the maximum use for the comfort and convenience of all. Visitors shall comply with any directions given to achieve this end;

(B) Violate the regulations, and use of the individual fireplaces together with tables and benches follows generally the rule of “first come, first served”;

(C) Use any portion of the picnic area or any of the buildings or structures therein for the purpose of holding picnics to the exclusion of other persons, nor shall any person use the areas and facilities for an unreasonable time if the facilities are crowded; and/or

(D) Leave a picnic area before fires are completely extinguished and before all trash in the nature of boxes, papers, cans, bottles, garbage and other refuse is placed in the disposal receptacles where

provided. Where no trash receptacles are available, refuse and trash shall be carried away from the park area by the picnicker to be properly disposed of elsewhere.

(Prior Code, § 10.43) Penalty, see § 10.99

§ 92.10 CAMPING.

It is unlawful for any person in a park to camp or set up tents, shacks or any other temporary shelter for the purpose of overnight camping in any place, except as the place may be designated specifically for camping, nor except as may be designated, leave in a park after closing hours any movable structure or special vehicle to be used or that could be used for the purpose such as a house trailer, camp trailer, camp wagon or the like.

(Prior Code, § 10.43) Penalty, see § 10.99

§ 92.11 GAMES.

It is unlawful for any person in a park to take part in or abet the playing of any games involving thrown or otherwise propelled objects such as balls, stones, arrows, javelins or model airplanes, except in areas set apart for these forms of recreation. The playing of rough or comparatively dangerous games such as football or baseball is prohibited, except on the fields and courts or areas provided therefor.

(Prior Code, § 10.43) Penalty, see § 10.99

§ 92.12 GENERAL RESTRICTIONS.

It is unlawful for any person in a park to:

(A) Occupy any seat or bench or enter into or loiter or remain in any pavilion or other park structure or section thereof which may be reserved and designated for the use of the opposite sex. Exception is made for children under 12 years of age;

(B) Solicit alms or contributions for any purpose whether public or private;

(C) Build or attempt to build a fire, except in areas and under regulations as may be designated by the Director. It is also unlawful for any person to drop, throw or otherwise scatter lighted matches, burning cigarettes or cigars, tobacco, paper or other inflammable material within a park area or on any highway, road or street abutting or contiguous thereto;

(D) Enter any area posted as "Closed to the Public", nor shall any person use or abet the use of any area in violation of posted notice;

(E) Gamble or participate in or abet any game of chance;

(F) Sleep or lounge on the seats or benches or other areas or engage in loud, boisterous, threatening, abusive, insulting or indecent language or engage in any disorderly conduct or behavior tending to breach the public peace;

(G) Fail to produce and exhibit any permit from the Director he or she claims to have upon request to any authorized person who shall desire to inspect the same for the purpose of enforcing compliance with any city code provision or rule;

(H) Disturb or interfere unreasonably with any person or party occupying any area or participating in any activity under the authority or permit; and/or

(I) It is unlawful for any person to keep, or allow to be kept, within the area of any city park, beverage containers made partially or entirely of glass, or any other material which is breakable and results in sharp or potentially harmful pieces when broken. The prohibition contained herein shall apply to bringing any beverage container into a city park, the use of the beverage container within the city park, and the actual or constructive possession of a beverage container within a city park.
(Prior Code, § 10.43) (Ord. 53, 2nd Series, eff. 5-25-1989) Penalty, see § 10.99

§ 92.13 MERCHANDISING, ADVERTISING AND SIGNS.

It is unlawful for any person in a park to:

(A) Expose or offer for sale any article or thing, nor shall he or she station or place any stand, cart or vehicle for the transportation, sale or display of any article or thing. Exception is here made as to any regularly licensed concessionaire acting by and under the authority and regulation of the Director;

(B) Announce, advertise or call the public attention in any way to any article or service for sale or hire; and/or

(C) Post any sign, placard, advertisement or inscription whatever, nor shall any person erect or cause to be erected a sign whatever on any public lands, highways or roads.
(Prior Code, § 10.43) Penalty, see § 10.99

§ 92.14 PARK OPERATING POLICY.

(A) Except for unusual or unforeseen emergencies the park shall be open to the public every day of the year during designated hours. The opening and closing hours for each individual park shall be posted therein for public information.

(B) Any section or part of any park may be declared closed to the public by the Director at any time and for any interval of time either temporarily or at regular and stated intervals, (daily or otherwise) and either entirely or merely to certain uses as the Director shall find reasonably necessary.

(C) The finding of lost articles by park attendants shall be reported to the Director who shall make every possible effort to find articles reported as lost.
(Prior Code, § 10.43)

§ 92.15 ENFORCEMENT.

(A) The Director, Police Department and park attendants shall, in connection with their duties imposed by the law, diligently enforce the provisions of this chapter.

(B) The Director and any park attendant shall have the authority to eject from the park any person acting in violation of this chapter.

(C) The Director and any park attendant shall have the authority to seize and confiscate any property, thing or device in the park used in violation of this chapter.
(Prior Code, § 10.43)

CHAPTER 93: ANIMALS

Section

General Provisions; Dog and Cat Licensing and Regulations

- 93.001 Definitions
- 93.002 License required
- 93.003 License fee
- 93.004 Collar tags
- 93.005 Violations, fines and penalties
- 93.006 Limitation on ownership
- 93.007 Seeing-eye dogs permitted in public places
- 93.008 Animal restraint
- 93.009 Running at large
- 93.010 Seizure and impoundment
- 93.011 Notice of impoundment
- 93.012 Exception
- 93.013 Notice of impounding; claiming interest
- 93.014 Right to hearing and release from animal pound
- 93.015 Release from impoundment
- 93.016 Habitual barking and noise
- 93.017 Removal of nuisance when owner not found
- 93.018 Diseased dogs and cats
- 93.019 Quarantine of dogs or cats

Unlawful Acts Relating to Animals

- 93.035 Unlawful acts relating to animals

Removal of Animals

- 93.050 Removing animals subject to cruel, inhumane treatment; duty of officers

Wild and Exotic Animals

- 93.065 License and registration required for wild and exotic animals
- 93.066 Investigation period
- 93.067 Site inspection fees and permit fee for wild or exotic animals
- 93.068 Exception

Dangerous Animals

93.080 Dangerous animals

93.999 Penalty

Cross-reference:

Public nuisances, see § 90.02

GENERAL PROVISIONS; DOG AND CAT LICENSING AND REGULATIONS**§ 93.001 DEFINITIONS.**

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

ANIMAL. Cattle, horses, ponies, mules, sheep, goats, swine, feathered fowl such as ducks, geese, turkeys, chickens, guinea hens; dogs, cats and other animals; and honey bees.

ANIMAL CONTROL AUTHORITY. See § 93.080(A) for definition.

DANGEROUS ANIMAL. See § 93.080(A) for definition.

OWNER. Any person who owns, harbors, feeds, boards, keeps or otherwise possesses an animal, and who is the head of the household of the residence, or the owner or manager in charge of the establishment or premises at which an animal remains, or to which it returns.

POTENTIALLY DANGEROUS ANIMAL. See § 93.080(A) for definition.

PROPER ENCLOSURE. See § 93.080(A) for definition.

UNPROVOKED. See § 93.080(A) for definition.

WILD OR EXOTIC ANIMALS. Any wild mammal, reptile or fowl which is not naturally tame or gentle, but is of a wild nature or disposition and which, because of its size, vicious nature or other characteristics would constitute a danger to human life or property if it is not kept or maintained in a safe manner or in secure quarters. Examples of wild or exotic animals include, but are not limited to, skunks, foxes, coyotes, raccoons, minks, weasels, ostriches, emus, snakes, reptiles, lizards, lions, tigers, cougars, leopards, cheetahs, bears, lemurs, monkeys, chimpanzees, gorillas, etc.
(Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.002 LICENSING REQUIRED.

It is unlawful for any person to keep a dog over six months or a cat over three months of age without a license therefor from the city. Application for a dog or cat license shall be on a form supplied by the city and will contain certificate from a veterinarian, who is duly licensed to practice veterinary medicine in the state. The certificate shall state that the dog or cat, for which application for a license is made, has been inoculated against rabies for at least the period for which a license is applied.

(Ord. 152, 2nd Series, passed 10-12-2015) Penalty, see § 93.999

§ 93.003 LICENSE FEE.

All dog and cat licenses shall expire on December 31 of each year. The fee for these licenses shall be prescribed by the Council, but shall not be less than \$3. All licenses applied for and issued in the last three months of the calendar year shall be issued to cover those months as well as the following calendar year.

(Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.004 COLLAR TAGS.

The City Administrator issuing a license, shall, at the same time, deliver to the licensee a metal tag which shall bear the same serial number as the license. The licensee shall securely attach the tag to a collar (or harness) which shall at all times be kept on the dog or cat for which the license is issued. A duplicate for a lost tag may be issued by the City Administrator upon presentation of the receipt showing the payment of the license fee for the current year and upon payment of a reissue fee for the duplicate. Dog and cat tags shall not be transferable and no refunds shall be made on any dog or cat license fee because of leaving the city or death of the dog or cat before expiration of the license.

(Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.005 VIOLATIONS, FINES AND PENALTIES.

Any person who shall not have obtained a license for any dog or cat as required by this section shall be liable for a fine as set forth in § 93.99, together with the cost of the license fee.

(Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.006 LIMITATION ON OWNERSHIP.

(A) (1) It is unlawful for any person to own, keep, care for, have custody of or knowingly permit at any time more than three dogs and/or three cats in or about his or her residence or any other location under the person's control within the city.

(2) A residence or other location may contain up to three dogs and/or three cats. Impoundment procedures shall be implemented as described in this subchapter.

(B) This section shall not apply to the following:

(1) One litter of pups or kittens under 90 days of age born to a licensed dog or cat;

(2) Residents of newly-annexed areas; provided that, the owners have the animals licensed within 90 days after annexation occurs, and until the time as one or more of the illegal animals dies or for some other reason is not owned or possessed by the resident;

(3) A kennel licensed by the State Board of Animal Health that is located in an appropriately-zoned area;

(4) A licensed veterinarian; or

(5) An animal shelter owned and operated by a city or a humane society.
(Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.007 SEEING-EYE DOGS PERMITTED IN PUBLIC PLACES.

Wherever a blind person accompanied by a "seeing-eye" or guide dog presents himself or herself for accommodation or service at any public conveyance, vehicle or to any café or restaurant, store or other place of business open to the public, it is unlawful for any owner, or his or her agent, to refuse admission to the dog or service to the blind person.

(Ord. 152, 2nd Series, passed 10-12-2015) Penalty, see § 93.999

§ 93.008 ANIMAL RESTRAINT.

(A) The license holder, owner or keeper of any dog or cat shall be responsible for the effective restraint of the dog or cat and shall not permit the dog or cat to run at large.

(B) It is unlawful for the owner or the keeper of any dog or cat to fail to properly and effectively restrain the dog or cat.

(C) Any dog or cat which is not effectively contained within a fenced area, or any dog or cat which is on any unfenced area or lot abutting a street, alley, public park, public place or upon any other private land, without being effectively controlled or restrained from moving beyond the unfenced area or lot, or any dog or cat on any street, public work, school ground or public place without being effectively restrained by chain or leash, shall be deemed "not effectively restrained," and in violation of this subchapter.

(Ord. 152, 2nd Series, passed 10-12-2015) Penalty, see § 93.999

§ 93.009 RUNNING AT LARGE.

It is unlawful for any owner, or any person having control of a dog or cat, to permit the dog or cat to run at large in the city. Any dog or cat upon public property, or upon private property over the protest and against the will of the property owner, not on a leash or otherwise under the control of an accompanying person, shall be deemed as running at large. The term *OWNER*, as used in this section, means any person who owns, harbors or keeps the dog or cat.

(Ord. 152, 2nd Series, passed 10-12-2015) Penalty, see § 93.999

§ 93.010 SEIZURE AND IMPOUNDMENT.

(A) Any dog or cat running at large in the city may be seized and placed in the pound by any police officer, city official or other person designated by the Council for the purpose of enforcing this subchapter. An accurate record of the time of the placement shall be kept on each dog or cat. Each dog or cat so placed in the pound shall be held for redemption by the owner for a period of not less than five regular business days. A *REGULAR BUSINESS DAY* is one during which the pound is open for business to the public for at least four hours between the hours of 8:00 a.m. and 7:00 p.m.

(B) Impoundment records shall be preserved for a minimum of at least six months and shall show:

(1) The description of the animal by species, breed, sex, approximate age and other distinguishing traits;

(2) The location at which the animal was seized;

(3) The date of seizure;

(4) The name and address of the person from whom any dog over six months of age or cat over three months of age was received; and

(5) The name and address of the person to whom any dog over six months of age or cat over three months of age was transferred.

(Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.011 NOTICE OF IMPOUNDMENT.

(A) Upon the impoundment of any dog or cat, the officer to whom the dog or cat is delivered shall notify the owner personally, or by U.S. mail. If the owner of the dog or cat is unknown, written notice shall be posted in three public places within the city for five days, describing the dog or cat, and stating where the dog or cat is impounded, and the condition of release.

(B) If unclaimed, the dog or cat shall be humanely destroyed and the carcass disposed of, unless it is requested by a licensed educational or scientific institution under M.S. § 35.71, as amended from time to time; provided, however, that, if a tag is affixed to the dog or cat, or a statement by its owner after seizure specifies that the animal should not be used for research, the animal shall not be made available to any institution, but may be destroyed after expiration of the five-day notice period. (Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.012 EXCEPTION.

Any dog or other animal seized under M.S. §§ 343.22 or 343.29, as amended from time to time, shall be held for ten regular business days. For the purposes of this section, the term **REGULAR BUSINESS DAY** means any day during which the establishment having custody of the animal is open to the public for not less than four consecutive hours between 8:00 a.m. and 7:00 p.m. A person claiming an interest in an animal in custody under this subchapter may prevent disposition of the animal by posting security in an amount sufficient to provide for the animal's actual costs of care and keeping. The security must be posted within ten days of the seizure inclusive of the date of the seizure. (Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.013 NOTICE OF IMPOUNDING; CLAIMING INTEREST.

(A) Upon impounding an animal under § 93.10, notice shall be given the owner or person claiming interest in the animal by delivering or mailing it to a person claiming an interest in the animal, by posting a copy of it at the place where the animal is taken into custody or by delivering it to a person residing on the property, and telephoning, if possible.

(B) The notice shall include:

(1) A description of the animal seized; the authority and purpose for the seizure, the time, place and circumstances under which the animal was seized; and the location, address, telephone number and contact person where the animal is kept;

(2) A statement that a person claiming an interest in the animal may post security to prevent disposition of the animal and may request a hearing concerning the seizure or impoundment and that failure to do so within ten days of the date of the notice will result in disposition of the animal;

(3) A statement that all actual costs of the care, keeping and disposal of the animal are the responsibility of the person claiming an interest in the animal, except to the extent that a court or Hearing Officer finds that the seizure or impoundment was not substantially justified by law; and

(4) A form that can be used by a person claiming an interest in the animal for requesting a hearing under this subchapter.

(Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.014 RIGHT TO HEARING AND RELEASE FROM ANIMAL POUND.

(A) (1) Upon request of a person claiming interest in the animal, which request must be made within ten days of the date of seizure, a hearing shall be held within five business days of the request to determine the validity of the seizure and impoundment. If the seizure was done pursuant to a warrant under M.S. § 343.22, as amended from time to time, the hearing must be conducted by the judge who issued the warrant.

(2) If the seizure was done under M.S. § 343.29, as amended from time to time, the city may either:

(a) Authorize a licensed veterinarian with no financial interest in the matter or professional association with either party; or

(b) Use the services of a Hearing Officer to conduct the hearing.

(B) A person claiming interest in the animal who is aggrieved by a decision of a Hearing Officer under this subchapter may seek a court order governing the seizure or impoundment within five days of the notice of the order.

(C) The judge or Hearing Officer may authorize the return of the animal, if the judge or Hearing Officer finds that:

(1) The animal is physically fit; and

(2) The person claiming an interest in the animal can and will provide the care required by law for the animal.

(D) The person claiming an interest in the animal is liable for all actual costs of the care, keeping and disposal of the animal, except if a court or Hearing Officer finds that the seizure or impoundment was not substantially justified by law. The costs shall be paid in full or a mutually satisfactory arrangement for payment must be made between the city and the person claiming an interest in the animal before return of the animal to the person.

(1) If an animal is owned by a resident of the city, the cost shall include the purchase of a license, if unlicensed, payment for the animal's maintenance while in custody, and may include an immunization fee of any animal for rabies.

(2) If an animal is owned by a person not a resident of the city, the cost shall include payment for the animal's maintenance while in custody, and may include an immunization fee of any animal for rabies.

(Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.015 RELEASE FROM IMPOUNDMENT.

Dogs or cats shall be released to their owners or persons previously in possession of the dog or cat as follows:

(A) *Resident owner.* After showing proof of purchase of city dog or cat license, proof of inoculation for rabies and payment of all impounding fees, costs, charges and any fines which have occurred up to the time of release; or

(B) *Non-resident owner.* After proof of inoculation for rabies, and payment of all impounding fees, costs, charges and any fines which have occurred up to the time of release.

(Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.016 HABITUAL BARKING AND NOISE.

It shall be unlawful for any person to keep or harbor a dog which habitually barks or cries. **HABITUAL BARKING** shall be defined as barking for repeated intervals of at least five minutes with less than one minute of interruption. The barking must also be audible off of the owner's or caretaker's premises. A barking dog shall not constitute a violation of this division if, at the time that the dog is barking or making any other noise, a person is trespassing or threatening to trespass upon the private property upon which the dog is situated or when the dog is teased or provoked. An owner shall be advised in writing or verbally by a city enforcement official that a complaint has been filed charging a violation of this division and ordering that the violation be abated immediately. If the animal continues to disturb the peace and quiet of the city beyond the five days provided in the notice or if there is a reoccurrence of the noise complained of at any time within six months of the date of notice, a citation shall be issued charging the owner of the animal with a violation of this division. No person shall be convicted under the provision, except upon the evidence of two or more persons, each of a different household or upon the evidence of an enforcement official from the city. If the owner of the animal cannot be located, the enforcement official shall have the right to remove the animal at his or her discretion.

(Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.017 REMOVAL OF NUISANCE WHEN OWNER NOT FOUND.

A peace officer or Animal Control Authority who witnesses a continual nuisance of a barking dog or excessively noisy cat, and the owner cannot be located within a reasonable time, may remove and temporarily shelter and care for the dog or cat in order to abate the nuisance. The peace officer or Animal Control Authority may remove only cats and dogs that are kept outside the owner's residence and, in doing so, the peace officer or Animal Control Authority may enter upon the owner's property for the purpose of seizing the animal. In all cases, the owner, if known, shall immediately be notified and the person having possession of the animal shall have a lien thereon for its actual cost of care in keeping and expenses of notice.

(Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.018 DISEASED DOGS AND CATS.

It is unlawful for any person having custody or control of any diseased dog or cat to keep or allow the dog or cat to suffer unless the dog or cat is under the care of a veterinarian.
(Ord. 152, 2nd Series, passed 10-12-2015) Penalty, see § 93.999

§ 93.019 QUARANTINE OF DOGS OR CATS.

Whenever any dog or cat has bitten any person, the owner shall immediately quarantine it at home or at some other suitable place within the city, as directed by the City Health Officer, or other designated officer, for a period of ten days and report the bite to the Animal Control Authority. During the quarantine period, the animal shall be securely confined within the building so as to prevent it from contact with other persons or animals. Failure to comply with the quarantine requirements herein shall subject the animal to impoundment under the authority of the Animal Control Authority or city police at the owner's expense. At the end of the ten-day quarantine period, the animal may be released if a licensed veterinarian determines that it is not rabid. If the animal is determined to be rabid, it shall be destroyed humanely after completion of necessary medical procedures.
(Ord. 152, 2nd Series, passed 10-12-2015)

UNLAWFUL ACTS RELATING TO ANIMALS**§ 93.035 UNLAWFUL ACTS RELATING TO ANIMALS.**

(A) It is unlawful for any person to keep any animal, not in transit, in any part of the city not zoned for agricultural purposes, except for domestic pets (dogs, cats, parakeets, aquarium fish, and the like).

(B) It is unlawful for any person to keep domestic fowl, such as ducks, geese, turkeys, chickens, guinea hens, etc. or wild fowl, such as doves, pigeons, pheasants, peacocks, etc. in any part of the city not zoned for agricultural purposes; and in the A-O Zoning District, only in limited quantities and not as a commercial hatchery, feeding, finishing or egg operation.

(C) It is unlawful for any person to sell baby chicks, or sell, offer for sale, barter, give away or be in possession of any artificially colored animals or fowl.

(D) It is unlawful for any person to keep mammals, such as cattle, buffalo, elk, pigs, pot-bellied pigs, sheep, goats, llama, alpaca, etc. in any part of the city not zoned for agricultural purposes; and in the A-O Zoning District, only in limited numbers and not as a commercial calving or farrowing, feeding or finishing operation.

(E) It is unlawful for any person to keep horses, ponies, mules, or donkeys in any part of the city not zoned for agricultural purposes.

Windom - General Regulations

(F) It is unlawful for any person to keep predators or any animals classified as exotic, wild or dangerous, such as skunks, foxes, coyotes, raccoons, minks, weasels, ostriches, emus, snakes, reptiles, lizards, lions, tigers, cougars, leopards, cheetahs, bears, lemurs, monkeys, chimpanzees, gorillas, etc., except after proper licensing with the United States Department of Agriculture and/or registration with the city (depending upon the specific animal), and then only in accordance with all applicable city, state and Federal regulations. (See §§ 93.065 through 93.068; M.S. § 346.155 "Possessing Regulated Animals", as amended from time to time; and applicable Federal regulations.)

(G) It is unlawful for any person to keep or allow to be kept any hive or other facility for the housing of honey bees.

(H) It is unlawful for any person to harbor or keep any stray animal. Animals known to be strays shall be immediately reported to the Police Department.

(I) It is unlawful for any person to suffer or permit animals to run at large in the streets or public places, or to be herded or driven thereon, unless each animal is confined within a vehicle or restrained by means of bridles, halters, ropes or other means of individual restraint. It is also unlawful for any person to permit any animal under his or her care, custody or control to be left standing unattended in any street or public place, whether leashed or unleashed.

(J) It is unlawful for any person to herd, ride or drive any animal over and upon any grass, turf, boulevard, city park, cemetery, garden or lot without specific permission therefor from the owner.

(K) It is unlawful for any person to attach any animal under his or her care, custody or control to any tree, shrub or other planting, or to any post or pole in any street or public place.

(L) It is unlawful for the owner, caretaker or attendant of any animal to allow it to defecate on public or private property other than his or her own, or to permit any accumulation thereof on his or her own property. If the animal does defecate on public or private property other than his or her own, it shall not be a violation of this provision if the owner, caretaker or attendant shall immediately and thoroughly clean the fecal material from the property, and properly dispose thereof.

(M) It is unlawful for any person to keep any animals in any structure infested by rodents, vermin, flies or insects.

(N) It is unlawful for any person to abuse, neglect, or treat any animal in a cruel or inhumane manner.

(O) It is unlawful for any person, not acting under instructions from the owner or the city, to willfully or maliciously administer or cause to be administered poison of any sort whatsoever to any animal, with the intent to injure or destroy the animal, or to willfully or maliciously place any poison or poisoned food where the same is accessible to any animal.

(P) It is unlawful for any person to abandon an animal owned by him or her.

(Q) It is unlawful for any person to give any false information or statement concerning the owner, keeper or attendant of any animal, or concerning any animal brought into the animal shelter or impounded therein.

(Ord. 152, 2nd Series, passed 10-12-2015)

REMOVAL OF ANIMALS

§ 93.050 REMOVING ANIMALS SUBJECT TO CRUEL, INHUMANE TREATMENT; DUTY OF OFFICERS.

(A) Any peace officer or Animal Control Authority may remove, shelter and care for any animal which has been found to be treated in a cruel and inhumane manner or which is not properly sheltered from cold, heat or inclement weather or any animal not properly fed or watered or provided with suitable food and drink in circumstances that threaten the life of the animal.

(B) When necessary, a peace officer or Animal Control Authority may deliver the animal to another person to be sheltered and cared for and furnished with suitable food and drink.

(C) In all cases, the owner, if known, shall be immediately notified as provided in M.S. § 343.235(3), as amended from time to time, which is incorporated by reference, and the person having possession of the animal shall have a lien thereon for its actual cost of care in keeping and the expenses of notice.

(Ord. 152, 2nd Series, passed 10-12-2015)

WILD AND EXOTIC ANIMALS

§ 93.065 LICENSE AND REGISTRATION REQUIRED FOR WILD AND EXOTIC ANIMALS.

(A) It is unlawful for any person to keep or maintain any wild or exotic animal without a license therefor from the United States Department of Agriculture (USDA), compliance with the USDA regulations and standards, registration with the local Animal Control Authority, and other requirements as set forth in M.S. § 346.155, as amended from time to time, which is incorporated by reference.

(B) Any wild or exotic animals not covered by M.S. § 346.155, as amended from time to time, shall be subject to special permitting by the city. A permit may be issued for the keeping of no more than two wild or exotic animals at any single location. No permit for such animal(s) shall be issued for a period exceeding one year and the permit shall specify the conditions under which the animal shall be kept. These animals shall also be subject to all regulations, standards, and procedures provided for by the United States Department of Agriculture and also as set forth in M.S. § 346.155, as amended from time to time.

Windom - General Regulations

(C) The Chief of Police shall issue a special permit for the purpose of keeping or maintaining a wild or exotic animal, pursuant to division (B), if it is found that:

(1) The animal is, at all times, kept or maintained in a safe manner and confined securely so that the keeping of the animal will not constitute the danger to human life or property of others;

(2) Adequate safeguards are made to prevent unauthorized access to the animals by members of the public;

(3) The health or well-being of the animal is not, in any way, endangered by the manner of keeping or confinement;

(4) The keeping of the animal does not constitute a nuisance and will not harm the surrounding neighborhood or disturb the peace and quiet of the surrounding neighborhood;

(5) The keeping of the animal will not create or cause offensive odors or constitute a danger to public health;

(6) The quarters in which the animal is kept or confined are adequately lighted, ventilated and are so constructed that they may be kept in a clean and sanitary condition;

(7) A sign is prominently displayed on the structure where the animal is housed indicating that a wild or exotic animal is on the premises; and

(8) The applicant for the special permit proves his or her ability to respond to damages to and including the amount of at least \$300,000 for bodily injury to or death of any person or persons or for the damage to property owned by any other persons which may result from the ownership, keeping or maintenance of the animal. Proof of liability to respond to damages may be given by filing with the Chief of Police of a certificate of insurance stating that the applicant is, at the time of his or her application, and will be during the period of the special permit, insured against liability to respond to the damages, or by posting with the city a surety bond, approved by the City Attorney, in the amount of at least \$300,000 conditioned upon the payment of the damages during the period of the special permit. The certificate of insurance or bond shall provide that no cancellation of the insurance or bond will be made unless ten days' written notice is first given to the city's Police Department.

(D) A person may not move a wild or exotic animal from its location unless the person notifies the city's Police Department in writing prior to moving the animal. The notification must include the date and the location where the animal is to be moved, unless the animal is being transported to a licensed veterinarian.

(E) A person who possesses a wild or exotic animal must notify the city's Police Department in writing within ten days of a change in address or location where the wild or exotic animal is kept. The notification of change in address or location shall be made on the form prepared by the Minnesota Animal Control Association and approved by the Board of Animal Health.

(F) A person who possesses a wild or exotic animal must notify local law enforcement officials as soon as possible of any escape of the animal. The person who possesses the wild or exotic animal is liable for any costs incurred by any person, city, county, or state agency resulting from the escape of the wild or exotic animal unless the escape is due to a criminal act by another person or a natural event. (Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.066 INVESTIGATION PERIOD.

The Chief of Police, in investigating any applicant for a permit for a wild or exotic animal (pursuant to § 93.065(C) or any enforcement of this subchapter) is authorized to consult with and seek the advice of the United States Department of Agriculture, Department of Natural Resources, Minnesota Animal Control Association, Board of Animal Health, Society for the Prevention of Cruelty to Animals, the Humane Society, any representative of the Animal Control Center of the county, if there be one, or any other individual, agency, organization or society which may be able to provide information and advice concerning the keeping of wild or exotic animals. (Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.067 SITE INSPECTION FEES AND PERMIT FEE FOR WILD OR EXOTIC ANIMALS.

A fee of up to \$50 may be charged for an initial site inspection by the Animal Control Authority. Upon compliance with all provisions of §§ 93.065(B) and (C) and 93.066, a permit shall be issued for an annual fee as established, and may from time to time be amended, by resolution of the Council; provided that, the permit shall not be issued for the keeping of more than two wild or exotic animals at any single location (See § 93.065(B)). Additional site inspection fees may be charged as set forth in M.S. § 346.155, as amended from time to time. (Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.068 EXCEPTION.

The provisions of this chapter shall not apply to the keeping of wild or exotic animals in the following cases:

(A) The keeping of an animal for exhibition to the public by a traveling circus, carnival or other exhibit or show holding a permit issued by the Commissioner of Natural Resources pursuant to M.S. § 97A.041 and Minn. Rule 6244 ("Captive Wildlife"), as amended from time to time.

(B) The keeping of animals in a licensed veterinary hospital for treatment; and/or

(C) Dangerous or poisonous reptiles may be maintained by a bona fide educational or medical institution for the purpose of instruction or study; provided, the reptiles are securely confined and are properly cared for pursuant to standards and regulations of the United States Department of Agriculture and standards and regulations set forth in M.S. § 346.155, as amended from time to time, and in a manner satisfactory to the Chief of Police.
(Ord. 152, 2nd Series, passed 10-12-2015)

DANGEROUS ANIMALS

§ 93.080 DANGEROUS ANIMALS.

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

ANIMAL CONTROL AUTHORITY. An agency of the county or city which is responsible for animal control operations in its jurisdiction.

DANGEROUS ANIMAL. An animal which has:

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

OWNER. Any person who owns, harbors, feeds, boards, keeps or otherwise possesses an animal, and who is the head of the household of the residence, or the owner or manager in charge of the establishment or premises at which an animal remains, or to which it returns.

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. A pen or kennel shall meet the following minimum specifications:

(a) Have a minimum overall floor size of 32 square feet;

(b) Sidewalls shall have a minimum height of five feet and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed two inches, and support posts shall be 11-inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of 18 inches in the ground;

(c) A cover over the entire pen or kennel shall be provided. The cover shall be constructed of the same gauge wire or heavier as the sidewalls and shall also have no openings in the wire greater than two inches; and

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

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

(B) *Attacks by animals.*

(1) *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 division 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.

(2) *Stopping an attack.* If any police officer or Animal Control Authority 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.

(C) *Dangerous dogs designation.*

(1) *Designation.* The Animal Control Authority shall designate any dog as a dangerous dog upon receiving evidence that the dog meets any of the criteria of a "dangerous animal" as set forth in division (A) of this section.

(2) *Notice.*

(a) Upon a designation that a dog is dangerous, the Animal Control Authority shall provide a written notice of dangerous dog to the owner of record. Service upon any owner shall be effective as to all owners. The notice shall include a description of the dog and shall state the dates, times, places and facts of the incidents which form the basis for the determination.

(b) The notice shall also set forth the registration requirements and other restrictions imposed upon a dangerous dog under this chapter and M.S. Ch. 347.

(c) The notice shall also advise the owner(s) that they have 14 days to appeal the determination by requesting a hearing before the hearing officer, and shall include a pre-printed form which the owner can use to request a hearing.

(d) If the owner does not request a hearing within the allotted 14 days, the designation of dangerous dog, as issued in the written notice of dangerous dog, will stand and the owner will be subject to all restrictions and requirements set forth in the notice.

(3) *Hearing.* If an owner, within 14 days of the date of the notice, requests a hearing for determination as to the dangerous nature of the dog, the hearing shall be held before a hearing officer not more than 14 days after the Animal Control Authority is notified of the owner's request for a hearing. Any dog owner who requests such a hearing is liable to the city for all costs and expenses related to the hearing. The records of the Animal Control Authority, any police reports relating to an attack or bite, medical records, and all reliable hearsay shall be admissible for consideration by the hearing officer without further foundation.

(a) Pending the hearing, the dog may be seized and kept at animal control unless the owner shows proof that the dog is properly licensed, if required; has met the requirement for rabies vaccinations; keeps the dog only in a proper enclosure unless restrained on a leash with a muzzle; and otherwise demonstrates to the Animal Control Authority that the dog, under its present circumstances, does not present an unreasonable risk of harm to persons or other domestic animals.

(b) *Burden of proof.* The standard of proof shall be clear and convincing evidence if the Authority seeks to destroy the dog; in all other cases it shall be by a preponderance of the evidence.

(c) After considering all evidence pertaining to the dog, the hearing officer shall make such orders as he/she deems proper, including ordering the Animal Control Authority to take the dog into custody, if the dog is not currently in custody.

(d) Any person who fails or refuses to release a dog to the Animal Control Authority or law enforcement agent upon demand, or after it has been found by a hearing officer to be dangerous and ordered into custody, shall be guilty of a misdemeanor.

(e) *Authority to order destruction.* The hearing officer, upon a finding that a dog is dangerous hereunder, is authorized to order, as part of the disposition of the case, that the dog be destroyed based on a written order containing findings of fact:

1. The dog is dangerous, as demonstrated by a vicious attack, an unprovoked attack, an attack without warning, or multiple attacks; and
2. The owner of the dog has demonstrated an inability or unwillingness to sufficiently control the dog in order to prevent injury to persons or other animals.
3. The owner or person claiming an interest in the dog is liable for all actual costs of seizure, care, and disposal of the dog.

(f) *Release upon conditions.* The hearing officer, upon a finding that a dog is dangerous hereunder and a further finding that the owner has the ability and willingness to ensure that the appropriate safeguards are implemented to ensure the safety of persons and other domestic animals, is authorized to order release of the dog to the owner after the following requirements have been met:

1. Upon inspection by the Animal Control Authority, all requirements for registration of a dangerous dog as set forth in this chapter have been met.
2. All actual costs of seizure and care of the dog have been paid in full or a mutually satisfactory arrangement for payment has been made between the city and the owner or person claiming an interest in the dog before the dog is returned to the person.

(4) *Review of designation.* Beginning one year after a dog is declared a dangerous dog, an owner may request annually that the Animal Control Authority review the designation. The owner must provide evidence that the dog's behavior has changed due to the dog's age, sterilization, environment, completion of obedience training that includes modification of aggressive behavior, or other factors. If the Animal Control Authority finds sufficient evidence that the dog's behavior has changed, the authority may rescind the dangerous dog designation.

(D) *Dangerous dog registration.*

(1) *Registration.* No person may own or possess a dangerous dog unless the dog is registered as provided in this chapter. All dogs deemed dangerous by the Animal Control Authority shall be registered as a dangerous dog with the Animal Control Authority within 14 days after the date the dog was so deemed.

(2) *Registration requirements.* The Animal Control Authority shall issue a certificate of registration to the owner of a dangerous dog only if the owner presents sufficient evidence that all of the following are met:

(a) The owner provides and maintains a proper enclosure for the dangerous dog as defined in division (A) of this section; and

(b) The owner posts clearly visible warning signs, understandable to children, that there is a dangerous dog on the property. These warning signs must be posted on the front and the rear of all buildings on the property and upon the proper enclosure for the dog; and

(c) If the dangerous dog 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; and

(d) An identification microchip was implanted in the dog as required under M.S. § 347.515; and

(e) The dog must have an easily identifiable, standardized tag identifying the dog as dangerous affixed to its collar at all times; and

(f) The owner provides, and annually shows proof of, public liability insurance prepaid in full in the minimum amount of \$300,000; and

(g) The dog must have a lifetime license, if required, and must be up to date on all vaccinations including rabies; and

(h) The owner has paid an annual fee of not more than \$500, in addition to any regular dog licensing fees, to obtain a certificate of registration for a dangerous dog under this section; and

(i) An owner of a dangerous dog must renew the registration of the dog annually until the dog is deceased.

(3) *Release.* If a dangerous dog was impounded by the Animal Control Authority, or upon order of a hearing officer, the dog shall not be released until the owner demonstrates to the Animal Control Authority that all applicable requirements of this chapter, including all registration requirements, have been complied with. The owner must pay the city for all costs incurred in the seizure and care of the dog prior to its return.

(4) *Death or relocation of dangerous dog.* An owner of a dangerous dog shall notify the Animal Control Authority, in writing, of the death of the dog, or if the dog relocates or transfers out of the city to a new location, within 14 days of the death or relocation. The notification shall include the current owner's name and address, the circumstances surrounding the death and disposition, or the

complete name, address, and telephone number of the person to whom the dog was transferred. A person who sells or otherwise transfers ownership or control of a dangerous dog must notify any potential purchaser or transferee, prior to the consummation of the transaction, that the dog was previously designated as dangerous.

(5) *Property inspection.* The owner of a dangerous dog shall permit the Animal Control Authority and/or law enforcement to enter the property where a dangerous dog is kept or located, at all hours reasonable under the circumstances, without a warrant to inspect to ensure compliance with the provisions of this chapter. The failure of an owner to permit such inspection is, by itself, a ground to immediately seize the dog pursuant to division (F) of this section and revoke the dangerous dog registration issued pursuant to division (D)(2) of this section.

(E) *Potentially dangerous dogs designation.*

(1) *Designation.* The Animal Control Authority shall designate any dog as a potentially dangerous dog upon receiving evidence that the dog meets any of the criteria of a "potentially dangerous animal" as set forth in division (A) of this section.

(2) *Notice.* Upon a designation that a dog is potentially dangerous, the Animal Control Authority shall provide a written notice of potentially dangerous dog to the owner of record. Service upon any owner shall be effective as to all owners. The notice shall include a description of the dog and shall state the dates, times, places and facts of the incidents which form the basis for the determination.

(F) *Confiscation.*

(1) *Seizure.* The Animal Control Authority shall immediately seize any dangerous dog if:

(a) After 14 days after the owner has notice that the dog is dangerous, the dog is not validly registered under this subchapter or applicable state law; or

(b) After 14 days after the owner has notice that the dog is dangerous, the owner has not secured and provided proof of the proper liability insurance or surety coverage as required under this subchapter; or

(c) The dog is not maintained in a proper enclosure as defined in division (A) of this section; or

(d) The dog is outside the property enclosure and is not properly leashed and muzzled and under the proper physical restraint of a responsible person as required under this chapter or any applicable state law; or

(e) The owner is served with written notice, by certified mail to the owner's last known address, that the owner is in violation of any requirements of this chapter or any applicable state statute, or is in violation of any directive issued by the Animal Control Authority or order from a hearing officer; and, within 14 days of service of such written notice, has refused or failed to achieve satisfactory compliance; or

(f) The Animal Control Authority has reason to believe the dog is dangerous or potentially dangerous dog and is kept or maintained under conditions or circumstances creating an unacceptable risk for harm to persons or other domesticated animals; or

(g) For any other reason authorized by law.

(2) *Reclaiming dogs.* A dog seized under this chapter may be released to the owner of the dog upon payment of fees for seizure and care of the dog, and presentation of proof to the Animal Control Authority that all requirements of this chapter and state law have been met or are in the process of being met. If requirements are not met, the dog may be seized. A dog not reclaimed under this section within 14 days may be disposed of and the owner is liable to the Animal Control Authority for costs incurred in seizure, care and disposal of the dog.

(3) *Subsequent offenses.* If a person has been convicted of a misdemeanor for violating a provision of this chapter, and the person is charged with a subsequent violation relating to the same dog, the dog shall be seized by the Animal Control Authority. If the owner is convicted of the crime for which the dog was seized, the hearing officer may order that the dog be destroyed in a proper and humane manner and the owner pay the costs of seizure, care and disposal of the dog. If the person is not convicted of the crime for which the dog was seized, the owner may reclaim the dog upon payment to the Animal Control Authority of a fee for the seizure and care of the dog. If the dog is not reclaimed by the owner within 14 days after the owner has been notified that the dog may be reclaimed, the dog may be disposed of by the Authority. The owner is liable to the Animal Control Authority for the costs incurred in seizure, care and disposal of the dog.

(Ord. 152, 2nd Series, passed 10-12-2015)

§ 93.999 PENALTY.

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

(B) Any person who shall violate any provisions of §§ 93.002 through 93.005, §§ 93.008 through 93.015, or §§ 93.017 through 93.019 shall be liable for civil fines as established by resolution of the City Council from time to time, together with any handling fee and cost of any license for the dog or cat not licensed.

(C) Any person who shall violate any of the provisions of §§ 93.006 or 93.035 shall be subject to the provisions of the abatement procedure for nuisances set forth in § 90.07.

(D) Any person who shall violate any of the provisions of §§ 93.065 through 93.068 is guilty of a misdemeanor.

(E) Any person who shall violate any of the provisions of § 93.080 shall be subject to the penalties set forth in said section and also shall be subject to the penalties set forth in M.S. § 347.55, as it may be amended from time to time.

(Ord. 152, 2nd Series, passed 10-12-2015)

CHAPTER 94: FIREWORKS AND OTHER DANGEROUS ARTICLES

Section

- 94.01 Acts prohibited; exception
- 94.02 Discharge of firearms and explosives; exception
- 94.03 Consumer fireworks; sale, storage, possession and use
- 94.04 Exposure of unused container
- 94.05 Use of bow and arrow

§ 94.01 ACTS PROHIBITED; EXCEPTION.

(A) It is unlawful for any person to:

(1) Recklessly handle or use a gun or other dangerous weapon or explosive so as to endanger the safety of another;

(2) Intentionally point a gun of any kind, capable of injuring or killing a human being and whether loaded or unloaded, at or toward another;

(3) Manufacture or sell for any unlawful purpose any weapon known as a slung-shot or sand club;

(4) Manufacture, transfer or possess metal knuckles or a switch-blade knife opening automatically;

(5) Possess any other dangerous article or substance for the purpose of being used unlawfully as a weapon against another;

(6) Sell or have in his or her possession any device designed to silence or muffle the discharge of a firearm;

(7) Permit, as a parent or guardian, any child under 14 years of age to handle or use, outside of the parent's or guardian's presence, a firearm or air gun of any kind, or any ammunition or explosive; or

(8) Furnish a minor under 18 years of age with a firearm, air gun, ammunition or explosive without the written consent of his or her parent or guardian or of the Police Department.

(B) Nothing in division (A) above shall prohibit the possession of the articles therein mentioned if the purpose of the possession is for public exhibition by museums or collectors of art.
(Prior Code, § 10.10) Penalty, see § 10.99

§ 94.02 DISCHARGE OF FIREARMS AND EXPLOSIVES; EXCEPTION.

(A) It is unlawful for any person to fire or discharge any cannon, gun, pistol or other firearm, firecracker, sky rocket or other fireworks, air gun, air rifle or other similar device commonly referred to as a BB gun. It is equally unlawful to fire or discharge any prohibited object or device whether it is fired or discharged within the city, or from a point without the city into the city.

(B) Nothing in division (A) above shall apply to a display of fireworks by an organization or group of organizations authorized in writing by the Council, or to a peace officer in the discharge of his or her duty, or to a person in the lawful defense of his or her person or family. This section shall not apply to the discharge of firearms in a range authorized in writing by the Council.

(C) Nothing in division (A) above shall apply to a veterans group, military personnel, or similar group firing blanks as part of a formal funeral or memorial service.

(D) Nothing in division (A) above shall apply with permission of the City Administrator, or his or her designated agent, upon application for and receipt of a permit specifying the time period, place, purpose, safety precautions required, type of weapon or apparatus and type of ammunition/projectile to be used and the person, corporation or organization to whom the permission is granted.
(Prior Code, § 10.10) (Ord. 163, 2nd Series, passed 7-18-2017; Ord. 172, 2nd Series, passed 12-18-2018) Penalty, see § 10.99

§ 94.03 CONSUMER FIREWORKS; SALE, STORAGE, POSSESSION AND USE.

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

CONSUMER FIREWORKS. Fireworks held for retail sale to consumers pursuant to state statutes.

FIREWORKS.

(a) Any substance or combination of substances or articles prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, which shall include, but not be limited to, blank cartridges, toy cannons and toy canes in which explosives are used; any type of balloon which requires fire underneath to propel it; firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, sparklers other than those specified in division (B) below, or other fireworks of like construction; and any fireworks containing any explosive or inflammable compounds; or any tablets or other device containing any explosive substance and commonly used as **FIREWORKS**.

(b) The term **FIREWORKS** shall not include toy pistols, toy guns in which paper caps containing 25/100 grains or less of explosive compound are used, and toy pistol caps which contain less than 20/100 grains of explosive mixture.

(c) The term **FIREWORKS** also does not include wire or wood sparklers of not more than 100 grams of mixture per item; other sparkling items which are non-explosive and non-aerial and contain 75 grams or less of chemical mixture per tube or a total of 200 grams or less for multiple tubes; snakes and glow worms, smoke devices or trick noisemakers which include paper streamers, party poppers, string poppers, sappers and drop pops, each consisting of not more than 25/100 grains of explosive mixture.

(B) *Permit required.*

(1) *Fireworks.* No person shall use or display any fireworks unless the person is an operator certified by the State Fire Marshal. State law does not allow private displays of fireworks. A permit is required for any and all public displays. The permits shall allow the use and display of fireworks for that display only. No permit so granted shall be transferable.

(a) *Application.* The application shall state the name and address of the person who will supervise the display, the name and address of the person who will conduct the display, the location of the display and the date and time of the display. The application shall be filed not less than 15 days prior to the event.

(b) *Investigation.* The Fire Chief shall investigate each application to determine whether the operator of the display is competent and whether the display will be of a character or will be so located, discharged or fired as to be hazardous to any person or property.

(c) *Conditions.* Every display shall be conducted so as not to endanger any person or property. Every display shall be conducted in accordance with all applicable provisions of this code, state law and regulations, including regulations of the State Fire Marshal.

(2) *Consumer fireworks.* No person or business shall, directly or indirectly, keep for retail sale, sell at retail or otherwise dispose of consumer fireworks unless first receiving a permit from the city. A permit application shall be submitted to the city together with the permit fees as determined, from time to time, by City Council resolution. A permit shall be issued for the specific premises identified in the application.

(a) *Application.* The applicant shall provide:

1. The net gross quantity of explosive material to be kept on the premises for retail sale or other disposition;
2. The interior floor plan of the building showing the place(s) of storage and/or display;

Windom - General Regulations

3. The location, type and capacity of sprinkler(s) and fire extinguishers; and

4. A certificate of insurance indicating the applicant has liability coverage. The certificate must demonstrate that the insurer has been notified of the type and quantity of consumer fireworks kept on the premises.

(b) *Term.* A permit shall expire on December 31 of each year.

(c) *Permit restrictions.* A permit shall be issued subject to the following restrictions.

1. No transient sales of consumer fireworks are permitted.

2. No outdoor sales, storage or retail display of consumer fireworks are permitted.

3. Use of fireworks and consumer fireworks is prohibited on property where sale and/or storage of consumer fireworks is permitted.

4. Smoking is prohibited within buildings where sale and/or storage of consumer fireworks is permitted.

5. A list of consumer fireworks kept on the premises shall be available for inspection at all times.

6. Material safety data sheets (MSDS) for all consumer fireworks kept on the premises shall be available for inspection at all times.

7. A minimum of two water-type extinguishers, with a minimum of two and one-half gallon capacity each, shall be kept within 15 feet of the storage and display area(s).

(C) *Storage.* The permit holder shall comply with all applicable provisions of the State Building and Fire Codes. If there is a conflict between the regulations of the state and the regulations of the city, the more restrictive regulation shall control.

(1) In buildings without an approved automatic sprinkler system, a maximum quantity of 50 pounds net pyrotechnic composition or 200 pounds gross weight, if the pyrotechnic composition is not known, may be kept on the premises.

(2) In buildings with an approved automatic sprinkler system, a maximum quantity of 100 pounds net pyrotechnic composition or 400 pounds gross weight, if the pyrotechnic composition is not known, may be kept on the premises.

(D) *Inspections.* The premises shall be inspected at least twice annually by the Fire Chief or City Fire Marshal to verify compliance with the terms and conditions of the permit. (Prior Code, § 10.10) (Ord. 123, 2nd Series, eff. 5-20-2003) Penalty, see § 10.99

§ 94.04 EXPOSURE OF UNUSED CONTAINER.

It is unlawful for any person, being the owner or in possession or control thereof, to permit an unused refrigerator, ice box or other container, sufficiently large to retain any child and with doors which fasten automatically when closed, to expose the same accessible to children, without removing the doors, lids, hinges or latches.

(Prior Code, § 10.10) Penalty, see § 10.99

§ 94.05 USE OF BOW AND ARROW.

It is unlawful for any person to shoot a bow and arrow, except in a physical education program in a school supervised by a member of its faculty, a community-wide supervised class or event specifically authorized by the Chief of Police or a bow and arrow range authorized by the Council.

(Prior Code, § 10.10) Penalty, see § 10.99

CHAPTER 95: STREETS AND SIDEWALKS

Section

General Provisions

- 95.01 Application
- 95.02 Scope and orders of police officer
- 95.03 Traffic and parking control
- 95.04 Ice and snow on public sidewalks
- 95.05 Placing snow or ice in public street or other city property
- 95.06 Grass, weeds and trees in streets
- 95.07 Street openings or excavations
- 95.08 Obstructions, fire and the like
- 95.09 Sewer and water main service lateral installation
- 95.10 Load limits
- 95.11 Private use of public streets and parking lots
- 95.12 Curb setback
- 95.13 Sidewalk maintenance and repair
- 95.14 Street maintenance
- 95.15 Curb, gutter, street and sidewalk painting or coloring
- 95.16 Unloading on street or sidewalk
- 95.17 Street and sidewalk obstruction
- 95.18 Materials on street or sidewalk

Sidewalk Cafes

- 95.20 Purpose and goals
- 95.21 Definitions
- 95.22 Location
- 95.23 Sidewalk cafe design and maintenance
- 95.24 Sidewalk extension design
- 95.25 Annual renewal
- 95.26 Permit required

Right-Of-Way Construction Regulations

- 95.30 Election to manage the public right-of-way
- 95.31 Definitions and adoption of rules by reference

- 95.32 Permit requirement
- 95.33 Permit applications
- 95.34 Issuance of permit; conditions
- 95.35 Permit fees
- 95.36 Right-of-way patching and restoration
- 95.37 Supplementary applications
- 95.38 Denial of permit
- 95.39 Installation requirements
- 95.40 Inspection
- 95.41 Work done without a permit
- 95.42 Supplementary notification
- 95.43 Revocation of permits
- 95.44 Mapping data; information required
- 95.45 Location of facilities
- 95.46 Damage to other facilities
- 95.47 Right-of-way vacation
- 95.48 Indemnification and liability
- 95.49 Abandoned facilities; removal of abandoned facilities
- 95.50 Appeal
- 95.51 Reservation of regulatory and police powers

- 95.99 Penalty

GENERAL PROVISIONS

§ 95.01 APPLICATION.

(A) The provisions of this chapter and Title VII of this code of ordinances applicable to the drivers of vehicles upon the streets shall apply to the drivers of all vehicles including, but not limited to, those owned or operated by the United States, the state or any county, city, town, district or other political subdivision of the state, subject to the specific exemptions as may be set forth in Title VII of this code of ordinances.

(B) Every person riding a bicycle or an animal or driving any animal drawing a vehicle upon a roadway shall be subject to the provisions of Title VII of this code of ordinances applicable to the driver of a vehicle, except those provisions which, by their nature, can have no application. Provisions specifically referring to bicycles shall be in addition to other provisions of this code of ordinances applying to vehicles.

(Prior Code, § 7.01)

§ 95.02 SCOPE AND ORDERS OF POLICE OFFICER.

(A) *Scope.* The provisions of Title VII of this code of ordinances and this chapter relate exclusively to the streets, alleys and private roads in the city, and the operation and parking of vehicles refer exclusively to the operation and parking of vehicles upon the streets, alleys and private roads.

(B) *Orders of a police officer.* It is a misdemeanor for any person to willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control or regulate traffic.

(Prior Code, § 7.02) Penalty, see § 95.99

§ 95.03 TRAFFIC AND PARKING CONTROL.

(A) *Council action.* No device, sign or signal shall be erected or maintained for traffic or parking control unless the Council shall first have approved and directed the same, except as otherwise provided in this section; provided that, when traffic and parking control is marked or sign-posted, the marking or sign-posting shall attest to Council action thereon.

(B) *Temporarily restricting or directing traffic and parking; curb painting.*

(1) When clearly marked, barricaded or signposted, traffic and parking may be temporarily restricted for any public or private use. All restrictions shall be in accordance with the uniform policy promulgated by the city, acting through the Chief of Police, who shall be ultimately responsible to the Council for the proper enforcement thereof.

(2) Restricted or prohibited use of parking and traffic lanes may be designated by painting the same upon streets and curbs. The work shall be done under the direction of the city and in compliance with the provisions of this chapter and Title VII of this code of ordinances.

(3) It is unlawful to use traffic or parking lanes contrary to sign-posting or marking authorized and described in this section.

(4) Experimental restrictions and directions may be placed on traffic and parking by the city, acting through the Chief of Police, and it shall be his or her duty to do so when an extra hazardous condition is observed or arises. It is unlawful to violate any restriction or direction when the same has been duly marked, barricaded or sign-posted.

(Prior Code, § 7.03) Penalty, see § 95.99

§ 95.04 ICE AND SNOW ON PUBLIC SIDEWALKS.

(A) *Ice and snow a nuisance.* All snow and ice remaining upon public sidewalks is hereby declared to constitute a public nuisance and shall be abated by the owner or tenant of the abutting private property within 12 hours after the snow or ice has ceased to be deposited.

(B) *City to remove snow and ice.* The city may cause to be removed from all public sidewalks, beginning 12 hours after snow or ice has ceased to fall, all snow and ice which may be discovered thereon, and it shall keep a record of the cost of the removal and the private property adjacent to which the accumulations were found and removed.

(C) *Cost of removal to be assessed.* The City Administrator shall, upon direction of the Council, and on receipt of the information provided for in division (B) above, extend the cost of the removal of snow or ice as a special assessment against the lots or parcels of ground abutting on walks which were cleared, and the special assessments shall at the time of certifying taxes to the County Auditor be certified for collection as other special assessments are certified and collected.

(D) *Civil suit for cost of removal.* The City Administrator shall, in the alternative, upon direction of the Council, bring suit in a court of competent jurisdiction to recover from the persons owning land adjacent to which sidewalks were cleared, as provided in division (B) above, the cost of the clearing and the cost and disbursements of a civil action therefor.

(E) *City Administrator to report sidewalks cleared.* The City Administrator shall present to the Council at its first meeting after snow or ice has been cleared from the sidewalks as provided in division (B) above the report of the city thereon, and shall request the Council to determine by resolution the manner of collection to be used as provided in divisions (C) or (D) above.

(Prior Code, § 7.04)

§ 95.05 PLACING SNOW OR ICE IN PUBLIC STREET OR OTHER CITY PROPERTY.

It is a misdemeanor for any person, not acting under a specific contract with the city, to remove snow from private property or alleys and place the same on a public street in a quantity, or in a manner, as to cause a hazard to travel, without adequate arrangements for the immediate removal thereof; and it is also a misdemeanor for any person not acting under a contract with the city to dump snow on other city property.

(Prior Code, § 7.05) Penalty, see § 95.99

§ 95.06 GRASS, WEEDS AND TREES IN STREETS.

(A) *City to control tree planting (standards).*

(1) The city shall have control and supervision of planting shrubs and trees upon, or overhanging, all streets and other public property. The city may establish and enforce uniform standards relating to the species and types of trees to be planted, placement and the maintenance and removal thereof.

(2) The standards shall be kept on file in the office of the City Administrator and may be revised from time to time by action of the Council upon the recommendation of the City Administrator.

(B) *Permit to plant or remove trees.* It is a misdemeanor for any person to plant or remove any tree upon or overhanging streets, without first procuring from the city a permit in writing to do so.

(Prior Code, § 7.06) Penalty, see § 95.99

§ 95.07 STREET OPENINGS OR EXCAVATIONS.

(A) *General.* It is a misdemeanor for any person, except a city employee acting within the course and scope of his or her employment or a contractor acting within the course and scope of a contract with the city, to make any excavation, opening or tunnel in, over, across or upon a street or other public property without first having obtained a written permit from the City Administrator as herein provided.

(B) *Application.* Application for a permit to make a street excavation shall describe with reasonable particularity the name and address of the applicant, the place, purpose and size of the excavation, and other information as may be necessary or desirable to facilitate the investigation hereinafter provided for, and shall be filed with the City Administrator.

(C) *Investigation and payment of estimated costs.* Upon receipt of the application the City Administrator shall cause the investigation to be made as he or she may deem necessary to determine estimated cost of repair, such as back-filling, compacting, resurfacing and replacement, manner of procedure and time limitation upon the excavation. The foregoing estimated costs shall include permanent and temporary repairs due to weather or other conditions, and the cost of the investigation shall be included in the estimate.

(D) *Issuance of permit.* The City Administrator shall issue the permit after:

- (1) Completion of the investigation;
- (2) Payment by the applicant in advance of all estimated costs as aforesaid;
- (3) Agreement by the applicant to the conditions of time and manner as aforesaid; and

(4) Agreement in writing by the applicant to pay all actual cost of repairs over and above the estimate, including cost of the investigation.

(E) *Repairs.* All temporary and permanent repairs, including back-filling, compacting and resurfacing shall be made, or contracted for, by the city in a manner prescribed by the City Administrator, and an accurate account of costs thereof shall be kept.

(F) *Cost adjustment.* Within 60 days following completion of the permanent repairs, the City Administrator shall determine actual costs of repairs, including cost of investigation, and prepare and furnish to the permit holder an itemized statement thereof and claim additional payment from, or make refund to, the permit holder, as the case may be.

(G) *Alternate method of charging.* In lieu of the above provisions relating to cost and cost adjustment for street openings, the city may charge on the basis of surface square feet removed, excavated cubic feet or a combination of surface square feet and excavated cubic feet, on an established unit price uniformly charged.

(Prior Code, § 7.08)

§ 95.08 OBSTRUCTIONS, FIRE AND THE LIKE.

(A) *Obstructions.* It is a misdemeanor for any person to place, deposit, display or offer for sale, any fence, goods or other obstructions upon, over, across or under any street or other public property. An electrical cord or device of any kind is hereby included, but not by way of limitation, within the definition of an obstruction.

(B) *Fires*. It is a misdemeanor for any person to build or maintain a fire upon a roadway.

(C) *Dumping in streets*. It is a misdemeanor for any person to throw or deposit in any street or any other public place any nails, dirt, glass, tin cans, metal scraps, garbage, leaves, grass or tree limbs, shreds or rubbish, or to empty any water containing salt or other injurious chemical thereon. It is a violation of this section to haul any soil or material, not adequately enclosed or covered, thereby permitting the same to fall upon the streets.

(D) *Signs and other structures*. It is a misdemeanor for any person to place or maintain a sign or other structure in the traveled or untraveled portion of any street or other public property without first having obtained a written permit from the Council. In a district zoned for commercial or industrial enterprises, special permission allowing an applicant to erect and maintain signs overhanging the street may be granted upon the terms and conditions as may be set forth in the zoning or construction provisions of the city code.

(E) *Continuing violation*. Each day that any person continues in violation of this section shall be a separate offense, and punishable as such.

(Prior Code, § 7.20) Penalty, see § 95.99

§ 95.09 SEWER AND WATER MAIN SERVICE LATERAL INSTALLATION.

(A) *Requirement of sewer and water laterals*. No petition for the improvement of a street shall be considered by the Council if the petition contemplates constructing therein any part of a pavement or stabilized base, or curb and gutter, unless all sewer and water main installations shall have been made therein, including the installation of service laterals to the curb, if the area along the street will be served by the utilities installed in the street.

(B) *Sewer system service and water main service laterals*. No sewer system shall be hereafter constructed or extended unless service laterals to platted lots and frontage facing thereon shall be extended simultaneously with construction of mains.

(C) *Waiver*. The Council may waive the requirements of this section only if it finds the effects thereof are burdensome and upon the notice and hearing as the Council may deem necessary or proper. (Prior Code, § 7.21) Penalty, see § 95.99

§ 95.10 LOAD LIMITS.

The Council, upon the recommendation of the City Administrator, may from time to time impose upon vehicular traffic on any part or all of the streets load limits as may be necessary or desirable. The limits, and the specific extent or weight to which loads are limited shall be clearly and legibly sign-posted thereon. It is a misdemeanor for any person to operate a vehicle on any street in violation of the limitation so posted.

(Prior Code, § 7.22) Penalty, see § 95.99

Cross-reference:

Truck routes, see § 70.02

§ 95.11 PRIVATE USE OF PUBLIC STREETS AND PARKING LOTS.

(A) *Authority, permission and procedure.* Upon an application duly made to the City Administrator, the Council may in its discretion, grant special permission whereby on-street parking or the use of city-owned parking lots or ramps or public sidewalks may be temporarily or permanently prohibited or restricted for private reasons and purposes (including, but not limited to, establishment of private or “leased” parking, “loading zones” or display of merchandise on sidewalks) at places, on terms and for compensation as the Council may deem just and equitable. In establishing the amount of the compensation to be paid to the city, the Council shall consider the amount of space, location thereof, loss of parking meter revenues, if any, public inconvenience, and hazards to persons or property. Upon complaint of any aggrieved person at any time and by reason of any specific special permission so granted, the Council shall, at its next regular meeting after receipt of the complaint, call a hearing thereon to be held after ten days’ notice in writing to applicant and complainant and published notice at least ten days prior to the hearing. After the hearing, the Council shall by resolution decide whether to terminate, continue or re-define the terms of the permission and the decision shall be final and binding on all persons directly or indirectly interested therein; except that, the Council may, on its own motion, reconsider the same.

(B) *Public vehicles.* Free and reserved on-street parking shall be limited to city-owned and operated vehicles.

(C) *Forbidden practices.* It is unlawful for any person to park or otherwise infringe upon a grant of right under this section, when clearly and distinctly marked or sign-posted. It is unlawful for any person not granted the right to assert the same, or for any grantee of the right to exceed the same under claim thereto.

(Prior Code, § 7.23) Penalty, see § 95.99

§ 95.12 CURB SETBACK.

(A) *Permit required.* It is unlawful for any person to hereafter remove, or cause to be removed, any curb from its position abutting upon the roadway to another position without first making application to the Council and obtaining a permit therefor.

(B) *Agreement required.*

(1) No permit shall be issued until the applicant, and abutting landowner if other than applicant, shall enter into a written agreement with the city agreeing to pay all costs of constructing and maintaining the setback area in at least as good condition as the abutting roadway, and further agreeing to demolish and remove the setback and reconstruct the area as was at the expense of the landowner, his or her heirs or assigns if the area ever, in the Council's opinion, becomes a public hazard.

(2) The agreement shall be recorded in the office of the County Recorder, and shall run with the adjoining land.

(C) *Sign-posting.* "Angle Parking Only" signs shall be purchased from the city and erected and maintained at the expense of the adjoining landowner in all setback areas now in use or hereafter constructed. It is unlawful for any person to park other than at an angle in the setback areas, as angle parking is herein described and allowed.

(D) *Public rights preserved.* The setback parking areas shall be kept open for public parking and the abutting landowner shall, at no time, acquire any special interest or control of or in the areas. (Prior Code, § 7.24) Penalty, see § 95.99

§ 95.13 SIDEWALK MAINTENANCE AND REPAIR.

(A) *Primary responsibility.* It is the primary responsibility of the owner of property upon which there is abutting any sidewalk to keep and maintain the sidewalk in safe and serviceable condition.

(B) *Construction, reconstruction and repair specifications.* All construction, reconstruction or repair of sidewalks shall be done in strict accordance with specifications on file in the office of the City Administrator.

(C) *Notice - no emergency.* Where, in the opinion of the City Administrator, no emergency exists, notice of the required repair or reconstruction shall be given to the owner of the abutting property. The notice shall require completion of the work within 90 days, and shall be mailed to the owner or owners shown to be such on the records of the county officer who mails tax statements.

(D) *Notice - emergency.* Where, in the opinion of the City Administrator, an emergency exists, notice of the required repair or reconstruction shall be given to the owner of the abutting property. The notice shall require completion of the work within ten days, and shall be mailed to the owner or owners shown to be such on the records of the county officer who mails tax statements.

(E) *Failure of owner to reconstruct or make repairs.* If the owner of the abutting property fails to make repairs or accomplish reconstruction as herein required, the City Administrator shall report the failure to the Council and the Council may order the work to be done under its direction and the cost thereof assessed to the abutting property owner as any other special assessment.

(F) *Duty to inspect.* In order to accomplish the purpose of this section, it shall be the duty of the City Administrator to inspect sidewalks within the city, or cause the same to be inspected under his or her direction.

(Prior Code, § 7.25) Penalty, see § 95.99

§ 95.14 STREET MAINTENANCE.

(A) The Council shall, by resolution, annually determine the streets to be sprinkled, flushed, oiled or given dust treatment and shall also from time to time determine the streets on which trees shall be trimmed, otherwise maintained or removed. Prior to the work being done, the Council shall call for a hearing and the City Administrator shall give published notice once at least two weeks prior to the hearing stating the date, time and place of the hearing, the streets affected, particular projects proposed, and estimated cost of each project. At the hearing, property owners will be heard and the Council shall thereupon adopt a resolution confirming the original projects, as modified. The City Administrator shall keep a record of the cost attributable to each lot and parcel of property abutting the street on which the work is done, and upon completion and determination of cost, mail statements to the property owners affected. Prior to October 10 of each year, the City Administrator shall present a certificate to the Council of all unpaid charges.

(B) When the certificate has been approved, it shall be extended as to the cost therein stated as a special assessment against the abutting land and the special assessment shall, at the time of certifying taxes to the County Auditor, be certified for collection as other special assessments are certified and collected.

(Prior Code, § 7.26)

§ 95.15 CURB, GUTTER, STREET AND SIDEWALK PAINTING OR COLORING.

It is unlawful for any person to paint, letter or color any street, sidewalk or curb and gutter for advertising purposes, or to paint or color any street, sidewalk or curb and gutter for any purpose, except as the same may be done by city employees acting within the course or scope of their employment; provided, however, that, this provision shall not apply to uniformly coloring concrete or other surfacing, or uniformly painted house numbers, as the coloring may be approved by the City Administrator.

(Prior Code, § 7.27) Penalty, see § 95.99

§ 95.16 UNLOADING ON STREET OR SIDEWALK.

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

Penalty, see § 95.99

§ 95.17 STREET AND SIDEWALK OBSTRUCTION.

No person shall obstruct any street, alley, sidewalk, or other public way within the city by erecting thereon any fence or building, or permitting any fence or building to remain thereon. Each day that any fence or building is permitted to remain upon the public way shall constitute a separate offense.

Penalty, see § 95.99

§ 95.18 MATERIALS ON STREET OR SIDEWALK.

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

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

- (1) Obstruct any street or sidewalk by depositing snow or ice thereon;
- (2) Dig any holes in any street, sidewalk or right-of-way;
- (3) Remove any earth, gravel, or rock from any street, sidewalk or right-of-way;
- (4) Obstruct any ditch draining any street or drain any noisome materials into any ditch;

(5) Deface, mar, damage, or tamper with any structure, work, material, equipment, tools, signs, markers, signals, paving, guardrails, drains or any other highway appurtenance on or along any street, sidewalk or right-of-way.

(6) Remove, injure, displace, or destroy right-of-way markers, or reference or witness monuments, or markers placed to preserve section or quarter-section corners;

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

Penalty, see § 95.99

SIDEWALK CAFES**§ 95.20 PURPOSE AND GOALS.**

(A) *Purpose.* The purpose of this subchapter is to establish guidelines for the design and location of both public and private sidewalk cafes. These guidelines will aid the city and the City Council in determining whether or not to grant the private use of public streets and sidewalks, as allowed in § 95.11. These sections will provide a formal mechanism and permit process for business owners to develop sidewalk cafes in the public right-of-way adjacent to their businesses.

(B) *Goals.* The goals of these sections are to create an inviting environment that supports local arts and business in the Central Business District, and to promote properly designed sidewalk cafes that encourage community interaction and pedestrian traffic by creating a new urban streetscape. (Ord. 170, 2nd Series, passed 6-5-2018)

§ 95.21 DEFINITIONS.

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

DOWNTOWN SQUARE. The immediate area that surrounds the Courthouse Square, and specifically properties situated on Third and Fourth Avenues, between Ninth and Tenth Streets, and on Ninth and Tenth Streets, between Third and Fourth Avenues.

PRIVATE SIDEWALK CAFE. An area adjacent to a business in the Downtown Square that provides outdoor seating in the public right-of-way only for use by the customers of that business.

PUBLIC RIGHT-OF-WAY. The area on, below, or above a public sidewalk, any sidewalk extensions, bicycle lane, and the public street, roadway or highway. For purposes of this subchapter, ***PUBLIC RIGHT-OF-WAY*** refers to the public sidewalk.

PUBLIC SIDEWALK CAFE. An area in the public right-of-way in the Downtown Square that provides outdoor seating for the general public.

SIDEWALK EXTENSION. An extension of the public sidewalk around a sidewalk cafe that provides free and unobstructed use of the public sidewalk. (Ord. 170, 2nd Series, passed 6-5-2018)

§ 95.22 LOCATION.

Sidewalk cafes must be located on a public sidewalk around the Downtown Square. Sidewalk cafes must be situated a minimum of 15 feet from a fire hydrant. Sidewalk extensions shall only occupy lawful parking spaces.

(Ord. 170, 2nd Series, passed 6-5-2018)

§ 95.23 SIDEWALK CAFE DESIGN AND MAINTENANCE.

A private sidewalk cafe shall be operated and maintained by the business it serves pursuant to the following provisions.

(A) The sidewalk cafe must be adjacent and contiguous to the business it serves.

(B) The sidewalk cafe must be accompanied by a sidewalk extension if it occupies the majority of the sidewalk.

(C) The sidewalk cafe shall not obstruct the sidewalk extension.

(D) The sidewalk cafe must be delineated by approved materials that make it easily distinguishable from the public sidewalk.

(E) Twenty percent of fixed seating must be accessible.

(F) Tables, furniture, umbrellas and other fixtures must be suitable for outdoor use and maintained by the business served by the sidewalk cafe.

(G) Businesses that intend to serve alcohol in a sidewalk cafe may only do so under the provisions of their liquor licenses and all other city codes and policies.

(H) The owners of the property served by a sidewalk cafe shall be responsible for the installation, maintenance and removal of the sidewalk extension as set forth in this policy.

(I) The owners of the property served by a sidewalk cafe shall be responsible for maintaining liability insurance in an amount acceptable to the city, which shall name the city as an additional insured, and shall hold the city harmless and indemnify the city from any damages to items situated in the sidewalk cafe or the sidewalk extension area; any damages to the sidewalk or adjacent parking spaces caused by the installation, placement or removal of the sidewalk cafe or sidewalk extension; and any injuries to the business owners, employees, patrons, or the general public incurred in the sidewalk cafe or in the sidewalk extension area.

(J) The City Council may impose any additional conditions it deems necessary in the interest of the public health, safety and welfare at the time of initial approval or any renewal of the permit for a sidewalk cafe. The conditions set forth allowing the sidewalk cafe shall be reviewed during the annual renewal period.

(K) Public sidewalk cafes (public outdoor seating areas adjacent to city property) in the Downtown Square will be governed under the same provisions, but will only occupy the public right-of-way adjacent to city-owned property. The city will construct, install, remove and maintain the sidewalk extensions associated with a public sidewalk cafe.

(Ord. 170, 2nd Series, passed 6-5-2018)

§ 95.24 SIDEWALK EXTENSION DESIGN.

Sidewalk extensions shall provide free and unobstructed use of the public sidewalk around a sidewalk cafe. Sidewalk extensions shall be built, installed, removed and maintained by the owners of the property adjacent to the sidewalk cafe according to the following provisions.

(A) Sidewalk extensions may occupy no more than three diagonal or one parallel parking space(s).

(B) Design and building materials must be adequate to support the weight of pedestrians using the extension. The sidewalk extension shall not shift, buckle or otherwise move under normal use.

(C) The floor surface of the sidewalk extension shall be stable, firm, and slip-resistant. Openings in floor surfaces shall not be more than one-half inch wide.

(D) The sidewalk extension must be level across and flush with the existing sidewalk at both points of entry.

(E) The sidewalk extension must include a traffic control barrier that encompasses the entire exterior boundary of the sidewalk extension, is a minimum of three feet high, and includes reflective material on all sides exposed to traffic.

(F) Sidewalk extensions that are placed in diagonal parking spaces shall include approved reflective "No Parking" signs to discourage parking in the remainder of the parking area between the sidewalk extension and the street.

(G) The sidewalk extension shall provide at least four feet of clear, unobstructed travel space between the sidewalk cafe and traffic control barriers.

(H) The sidewalk extension shall be a maximum of eight feet wide, including traffic control barriers.

(I) The sidewalk extension shall not prohibit the adequate drainage of storm water in the existing street.

(J) Sidewalk extensions shall be prohibited between October 1 and May 1. The city reserves the right to change the permitted dates, based on emergency or weather-related conditions.
(Ord. 170, 2nd Series, passed 6-5-2018)

§ 95.25 ANNUAL RENEWAL.

Any permit for a sidewalk cafe shall be deemed annual and, as such, the owner of the property adjacent to the sidewalk cafe will be required to apply for a permit annually. No expectation shall be assumed by the permit holder that the sidewalk cafe permit will be renewed.
(Ord. 170, 2nd Series, passed 6-5-2018)

§ 95.26 PERMIT REQUIRED.

(A) The following information, at a minimum, must be submitted to the Development Department for the consideration of a sidewalk cafe permit.

- (1) A fully-completed permit application.
- (2) Permit fees (to be established by City Council resolution).
- (3) A site plan detailing the location and size of the sidewalk cafe and sidewalk extension.
- (4) A design plan detailing building materials for sidewalk extension, traffic control barrier and sidewalk cafe barrier.
- (5) A floor plan that includes:
 - (a) The amount of seating;
 - (b) The arrangement of tables, chairs and any other furniture or fixtures; and
 - (c) The type of furniture and any other fixtures proposed on the sidewalk cafe.
- (6) A certificate of liability insurance that includes the coverage for the proposed sidewalk cafe and sidewalk extension, listing the city of as an additional insured.

(7) All other property owners on the same block (fronting the Courthouse Square) will be notified of the proposed sidewalk cafe by first class U. S. mail, at least 14 calendar days prior to the City Council meeting at which the proposal will be considered, and will have an opportunity to express their comments prior to City Council action on the proposal.

(B) The Development Department may request additional information necessary to determine if the proposed sidewalk cafe meets all requirements.

(C) The permit application will then be submitted to the City Council for final approval and authorization to issue the permit.

(D) In the event that an application is denied, the permit fee will be refunded to the applicant.

(E) Permits issued under the provisions of this policy are not assignable or transferable in any situation, and are applicable only to the person filing the application.
(Ord. 170, 2nd Series, passed 6-5-2018)

RIGHT-OF-WAY CONSTRUCTION REGULATIONS

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

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

§ 95.31 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.

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

§ 95.32 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 Minn. Rules part 7819.1000 subp. 3, as it may be amended from time to time and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time.

(D) *Permit display.* Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City Administrator, Utilities Superintendent or other person designated by the Council.
Penalty, see § 95.99

§ 95.33 PERMIT APPLICATIONS.

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

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

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

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

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

(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self-insurance acceptable to the City Administrator, Utilities Superintendent or other person designated by the Council;

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

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

(d) Requiring that the City Administrator, Utilities Superintendent or other person designated by the Council be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;

(e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City Administrator, Utilities Superintendent or other person designated by the Council in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this 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, 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, if applicable.

§ 95.34 ISSUANCE OF PERMIT; CONDITIONS.

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

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

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

§ 95.35 PERMIT FEES.

Permit fees shall be in an amount established by City Council from time to time.

(A) *Excavation permit fee.* The city shall establish an excavation permit fee in an amount sufficient to recover the following costs:

(1) The city management costs; and

(2) Degradation costs, if applicable.

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

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

(D) *Non-refundable.* Permit fees that were paid for a permit that the City Administrator, Utilities Superintendent or other person designated by the Council has revoked for a breach as stated in § 95.43 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 Minn. Rules part 7819.100, as it may be amended from time to time.
Penalty, see § 95.99

§ 95.36 RIGHT-OF-WAY PATCHING AND RESTORATION.

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

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

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

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

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

by the Council shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.

(D) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by the permittee or its agents. The permittee upon notification from the City Administrator, Utilities Superintendent or other person designated by the Council, shall correct all restoration work to the extent necessary, using the method required by the City Administrator, Utilities Superintendent or other person designated by the Council. The work shall be completed within five calendar days of the receipt of the notice from the City Administrator, Utilities Superintendent or other person designated by the Council, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under this subchapter.

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

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

§ 95.37 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.

§ 95.38 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.

§ 95.39 INSTALLATION REQUIREMENTS.

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

§ 95.40 INSPECTION.

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

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

(C) *Authority of City Administrator, Utilities Superintendent or other person designated by the Council.*

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

(2) The City Administrator, Utilities Superintendent or other person designated by the Council may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the City Administrator, Utilities Superintendent or other person designated by the Council that the violation has been corrected. If proof has not been presented within the required time, the City Administrator, Utilities Superintendent or other person designated by the Council may revoke the permit pursuant to § 95.43.

§ 95.41 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.

§ 95.42 SUPPLEMENTARY NOTIFICATION.

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

§ 95.43 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 § 95.40.

(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.

§ 95.44 MAPPING DATA; INFORMATION REQUIRED.

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

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

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

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

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

§ 95.45 LOCATION OF FACILITIES.

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

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

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

§ 95.46 DAMAGE TO OTHER FACILITIES.

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

§ 95.47 RIGHT-OF-WAY VACATION.

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

§ 95.48 INDEMNIFICATION AND LIABILITY.

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

§ 95.49 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 City Administrator, Utilities Superintendent or other person designated by the Council.

§ 95.50 APPEAL.

A right-of-way user that has been denied registration; has been denied a permit; has had permit revoked; believes that the fees imposed are invalid; or disputes a determination of the city regarding § 95.44(B) of this chapter, may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee as imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

§ 95.51 RESERVATION OF REGULATORY AND POLICE POWERS.

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

§ 95.99 PENALTY.

Every person violates a section, division, paragraph or provision of this chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful and, upon conviction thereof, shall be punished as follows.

(A) Where the specific section, division, paragraph or provision specifically makes violation a misdemeanor, he or she shall be punished as for a misdemeanor; where a violation is committed in a manner or under circumstances so as to endanger or be likely to endanger any person or property, he or she shall be punished as for a misdemeanor; where he or she stands convicted of violation of any provision of this chapter, exclusive of violations relating to the standing or parking of an unattended

vehicle, within the immediate preceding 12-month period for the third or subsequent time, he or she shall be punished as for a misdemeanor.

(B) As to any violation not constituting a misdemeanor under the provisions of division (A) above, he or she shall be punished as for a petty misdemeanor.
(Prior Code, § 7.99)

CHAPTER 96: ABANDONED, UNCLAIMED, EXCESS PROPERTY

Section

General Provisions

96.01 Disposition of abandoned property

Abandoned Vehicles

- 96.15 Findings and purpose
- 96.16 Definitions
- 96.17 Violation to abandon motor vehicle
- 96.18 Authority to impound vehicles
- 96.19 Sale; waiting periods
- 96.20 Notice of taking and sale
- 96.21 Right to reclaim
- 96.22 Operator' deficiency claim; consent to sale
- 96.23 Disposition by impound lot
- 96.24 Disposal authority
- 96.25 Contracts; reimbursement by MPCA

City Employee Purchase of Abandoned Property or Abandoned Vehicles

96.40 May purchase at auction

Unclaimed Property

- 96.55 Definition
- 96.56 Preliminary notice
- 96.57 Notice and sale
- 96.58 Funds and claims thereon

Excess Property/Equipment

- 96.70 Definitions
- 96.71 Declaration of surplus; authorizing sale or donation of property/equipment
- 96.72 Surplus property with a total estimated value of less than \$1,000
- 96.73 Surplus property with a total estimated value over \$1,000
- 96.74 Receipts from sales of surplus property/equipment

GENERAL PROVISIONS**§ 96.01 DISPOSITION OF ABANDONED PROPERTY.**

(A) *Procedure.* Except for abandoned and junked vehicles, all property lawfully coming into possession of the city shall be disposed of as provided in this section which is adopted pursuant to M.S. § 471.195, as it may be amended from time to time. Abandoned and junked vehicles shall be disposed of according to the procedures of §§ 96.15 et seq.

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

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

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

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

ABANDONED VEHICLES**§ 96.15 FINDINGS AND PURPOSE.**

M.S. Ch. 168B, and Minn. Rules Ch. 7035, as they may be amended from time to time, are hereby adopted by reference. Sections 9615 through 9625 of this code are adopted under the authority of M.S. § 168B.09, Subd. 2, as it may be amended from time to time. If any of these provisions are less stringent than the provisions of M.S. § 168B or Minn. Rules Ch. 7035, as it may be amended from time to time, the statute or rule shall take precedence.

§ 96.16 DEFINITIONS.

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

ABANDONED VEHICLE.

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

(a) Has remained illegally:

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

2. On private property for a period of time, as determined under § 96.18(B), without the consent of the person in control of the property; and

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

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

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

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

DEPARTMENT. The Minnesota Department of Public Safety.

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

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

JUNK VEHICLE. A vehicle that:

- (1) Is three years old or older;
- (2) Is extensively damaged, with the damage including things as broken or missing wheels, motor, drive train or transmission;
- (3) Is apparently inoperable;
- (4) Does not have a valid, current registration plate; and
- (5) Has an approximate fair market value equal only to the approximate value of the scrap in it.

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

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

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

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

PUBLIC IMPOUND LOT. An impound lot owned by or contracting with a unit of government under § 96.24.

UNAUTHORIZED VEHICLE. A vehicle that is subject to removal and impoundment pursuant to § 96.18(B), or M.S. § 169.041 as it may be amended from time to time, but is not a junk vehicle or an abandoned vehicle.

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

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

§ 96.17 VIOLATION TO ABANDON MOTOR VEHICLE.

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

§ 96.18 AUTHORITY TO IMPOUND VEHICLES.

(A) *Abandoned or junk vehicles.* The City Administrator or his or her designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any abandoned or junk vehicle if the vehicle is on public property. If the abandoned or junk vehicle is located on private property, the vehicle shall not be removed or impounded until the provisions of § 96.18(C) are complied with.

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

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

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

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

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

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

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

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

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

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

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

(C) If the vehicle is on private property, the City Administrator or his or her designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any abandoned or junk vehicle on private property only with the permission of the owner of the property, a resident, or other person in control of the premises. If permission is denied, the city may declare the existence of the abandoned or junk vehicle to be a nuisance and proceed to abate the nuisance. Once the

abatement procedure has been completed, the city may apply for an order from a court of competent jurisdiction authorizing the removal and impoundment of the vehicle and, after the order has been granted, the city may then remove and impound the vehicle.

§ 96.19 SALE; WAITING PERIODS.

(A) *Sale after 15 days.* An impounded vehicle is eligible for disposal or sale under § 96.23, 15 days after notice to the owner, if the vehicle is determined to be:

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

(2) An abandoned vehicle.

(B) *Sale after 45 days.* An impounded vehicle is eligible for disposal or sale under § 96.23, 45 days after notice to the owner, if the vehicle is determined to be an unauthorized vehicle or upon the date of a voluntary written title transfer by the registered owner to the impound lot operator.

§ 96.20 NOTICE OF TAKING AND SALE.

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

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

(2) Inform the owner and any lien holders of their right to reclaim the vehicle under § 96.21; and

(3) State that failure of the owner or lien holders to exercise their right to reclaim the vehicle and contents within the appropriate time allowed under § 96.19 shall be deemed a waiver by them of all right, title and interest in the vehicle and contents and a consent to the transfer of title to and disposal or sale of the vehicle and contents pursuant to § 96.23.

(4) State that the vehicle owner who provides to the impound lot operator documentation from a government or nonprofit agency or legal aid office that the owner is homeless, receives relief based on need, is eligible for legal aid services, or has a household income at or below 50% of the state median income has the unencumbered right to retrieve any and all contents of the vehicle without charge.

(B) *Notice by mail or publication.* The notice shall be sent by mail to the registered owner, if any, of an impounded vehicle and to all readily identifiable lien holders of record. The Department makes

this information available to impound lot operators for notification purposes. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lien holders, the notice shall be published once in a newspaper of general circulation in the area where the motor vehicle was towed from or abandoned. Published notices may be grouped together for convenience and economy.

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

§ 96.21 RIGHT TO RECLAIM.

(A) *Payment of charges.* The owner or any lien holder of an impounded vehicle shall have a right to reclaim the vehicle from the city or impound lot operator taking it into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within 15 or 45 days, as applicable under § 96.19, after the date of the notice required by § 96.20.

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

(C) At any time before the expiration of the waiting periods provided in § 96.21 a registered owner who provides documentation from a government or nonprofit agency or legal aid office that the registered owner is homeless, receives relief based on need, is eligible for legal aid service, or has a household income at or below 50% of state median income has the unencumbered right to retrieve any and all contents without charge and regardless of whether the registered owner pays incurred charges or fees, transfers title, or reclaims the vehicle. For the purposes of this section:

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

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

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

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

- (1) 25 days storage for a vehicle described in § 96.19(A); and
- (2) 55 days storage for a vehicle described in § 96.19(B).

(B) *Implied consent to sale.* A registered owner who fails to claim the impounded vehicle within the applicable time period allowed under § 96.19 is deemed to waive any right to reclaim the vehicle and consents to the disposal or sale of the vehicle and its contents and transfer of title. The failure to exercise rights to claim contents under § 96.21(C) constitutes a waiver of all right, title and interest in the contents of the vehicle and a consent to the transfer of title to and disposal or sale of the contents.

§ 96.23 DISPOSITION BY IMPOUND LOT.

(A) *Auction or sale.*

(1) If an abandoned or unauthorized vehicle and contents taken into custody by the city or any impound lot is not reclaimed under § 96.21, it may be disposed of or sold at auction or sale when eligible pursuant to §§ 96.20 and 96.21.

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

(B) *Unsold vehicles.* Abandoned or junk vehicles not sold by the city or public impound lots pursuant to division (A) of this section shall be disposed of in accordance with § 96.24.

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

(D) *Sale proceeds; nonpublic impound lots.* The operator of a nonpublic impound lot may retain any proceeds derived from a sale conducted under the authority of division (A) of this section. The operator may retain all proceeds from sale of any personal belongings and contents in the vehicle that

were not claimed by the owner or the owner's agent before the sale, except that any suspected contraband or other items that likely would be subject to forfeiture in a criminal trial must be turned over to the appropriate law enforcement agency.

§ 96.24 DISPOSAL AUTHORITY.

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

§ 96.25 CONTRACTS; REIMBURSEMENT BY MPCA.

(A) *MPCA review and approval.* If the city proposes to enter into a contract with a person licensed by the MPCA pursuant to this section or a contract pursuant to § 96.24, the MPCA may review the proposed contract before it is entered into by the city, to determine whether it conforms to the MPCA's plan for solid waste management and is in compliance with MPCA rules. A contract that does so conform may be approved by the MPCA and entered into by the city. Where a contract has been approved, the MPCA may reimburse the city for the costs incurred under the contract that have not been reimbursed under § 96.23. Except as otherwise provided in § 96.24, the MPCA shall not approve any contract that has been entered into without prior notice to and without a request for bids from all persons duly licensed by the MPCA to be a party to a disposal contract pursuant to M.S. § 116.07, as it may be amended from time to time; nor that does not provide for a full performance bond; or does not provide for total collection and transportation of abandoned motor vehicles, except that the MPCA may approve a contract covering solely collection or transportation of abandoned motor vehicles where the MPCA determines total collection and transportation to be impracticable and where all other requirements herein have been met and the unit of government, after proper notice and request for bids, has not received any bid for total collection and transportation of abandoned motor vehicles.

(B) *The city may perform work.* If the city utilizes its own equipment and personnel pursuant to its authority under § 96.24, and the use of the equipment and personnel conforms to the MPCA's plan for solid waste management and is in compliance with MPCA rules, the city may be reimbursed by the MPCA for reasonable costs incurred which are not reimbursed under § 96.23.

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

CITY EMPLOYEE PURCHASE OF ABANDONED PROPERTY OR ABANDONED VEHICLES**§ 96.40 MAY PURCHASE AT AUCTION.**

Pursuant to M.S. § 15.054, as it may be amended from time to time, no officer or employee of the city shall sell or procure for sale or possess or control for sale to any other officer or employee of the city, any property or materials owned by the city except pursuant to conditions provided in this section. Property or materials owned by the city and not needed for public purposes, may be sold to an employee of the city after reasonable public notice at a public auction or by sealed response, if the employee is not directly involved in the auction or process pertaining to the administration and collection of sealed responses. Prior to such auction or collection of sealed responses, public notice of at least one week's published notice must be provided. An employee of the city may purchase no more than one motor vehicle from the city at any one auction. This section shall not apply to the sale of property or materials acquired or produced by the city for sale to the general public in the ordinary course of business. Nothing in this section shall prohibit an employee of the city from selling or possessing for sale public property if the sale or possession for sale is in the ordinary course of business or normal course of the employee's duties.

UNCLAIMED PROPERTY**§ 96.55 DEFINITION.**

The term ***ABANDONED PROPERTY*** means tangible or intangible property that has lawfully come into the possession of the city in the course of municipal operations, remains unclaimed by the owner, and has been in the possession of the city for at least 60 days and has been declared such by a resolution of the Council.

(Prior Code, § 2.70)

§ 96.56 PRELIMINARY NOTICE.

If the City Administrator knows the identity and whereabouts of the owner, he or she shall serve written notice upon him or her at least 30 days prior to a declaration of abandonment by the Council. If the city acquired possession from a prior holder, the identity and whereabouts of whom are known by the City Administrator, notice shall also be served upon him or her. The notice shall describe the property and state that unless it is claimed and proof of ownership, or entitlement to possession established, the matter of declaring it abandoned property will be brought to the attention of the Council after the expiration of 30 days from the date of the notice.

(Prior Code, § 2.70)

§ 96.57 NOTICE AND SALE.

Upon adoption of a resolution declaring certain property to be abandoned property, the City Administrator shall publish a notice thereof describing the same, together with the names (if known) and addresses (if known) of prior owners and holders thereof, and including a brief description of the property. The text of the notice shall also state the time, place and manner of sale of all property, except cash and negotiables. The notice shall be published once in a legal newspaper at least ten days prior to the sale. Sale shall be made to the highest bidder at public auction or sale or by a non-profit organization with a significant mission of community service in a private sale in the manner authorized by statute. (Prior Code, § 2.70)

§ 96.58 FUNDS AND CLAIMS THEREON.

Expenses shall be paid from the proceeds of the sale. The balance of the proceeds shall be paid into the General Fund of the city if the property was disposed of by a public auction or sale or private sale. Proceeds after expenses may be paid to the non-profit organization authorized by the City Council to conduct the sale or to the former owner, if he or she makes claim within six months from the date the non-profit organization was authorized to conduct the sale. The former owner, if he or she makes claim within six months from the date of publication of the notice herein provided, and upon application and satisfactory proof of ownership, may be paid the amount of cash or negotiables or, in the case of property sold, the amount received therefor, less a pro rata share of the expenses of storage, publication of notice and sale expenses, but without interest. (Prior Code, § 2.70) (Ord. 102, 2nd Series, eff. 7-29-1998)

EXCESS PROPERTY/EQUIPMENT**§ 96.70 DEFINITIONS.**

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

DONATION. To contribute, donate or give surplus property/equipment at no cost to a governmental agency or nonprofit organization that serves a public purpose and benefits its community as a whole.

ELIGIBLE ORGANIZATION. A governmental agency or nonprofit organization serving one or more of the following functions: cultural, historical, educational, safety, social services, environmental or economic.

EXCESS/SURPLUS PROPERTY/EQUIPMENT. Property/equipment used by the city's departments, and cellular phones and emergency medical and firefighting property/equipment that is no longer needed by the city because it does not meet industry standards for emergency medical services, police, fire or other departments or has minimal or no resale value.

FAIR MARKET VALUE. The price at which property/equipment would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of all relevant facts.

NONPROFIT ORGANIZATION. An organization formed under Section 501(c)(3) of the Internal Revenue Code.
(Ord. 166, 2nd Series, passed 9-5-2017)

§ 96.71 DECLARATION OF SURPLUS; AUTHORIZING SALE OR DONATION OF PROPERTY/EQUIPMENT.

The City Administrator may, from time to time, recommend to the Council that certain personal property/equipment (chattels) owned by the city is no longer needed for a municipal purpose and should be sold or donated to an eligible organization. By action of the Council, the property/equipment shall be declared surplus, the fair market value estimated, and the City Administrator authorized to dispose of the property/equipment by donation to an eligible organization, as set forth in the city policy adopted by the City Council, or by sale in the manner stated herein.
(Ord. 166, 2nd Series, passed 9-5-2017)

§ 96.72 SURPLUS PROPERTY/EQUIPMENT WITH A TOTAL ESTIMATED VALUE OF LESS THAN \$1,000.

The City Administrator may sell surplus property/equipment with a total value of less than \$1,000 through negotiated sale.
(Ord. 166, 2nd Series, passed 9-5-2017)

§ 96.73 SURPLUS PROPERTY/EQUIPMENT WITH A TOTAL ESTIMATED VALUE OVER \$1,000.

The City Administrator shall offer for public sale, to the highest bidder, surplus property/equipment with a total estimated value over \$1,000. Notice of the public sale shall be given stating time and place of sale and generally describing property/equipment to be sold at least ten days prior to the date of sale by publication once in the official newspaper. The sale shall be to the person submitting the highest bid.
(Ord. 166, 2nd Series, passed 9-5-2017)

§ 96.74 RECEIPTS FROM SALES OF SURPLUS PROPERTY/EQUIPMENT.

All receipts from sales of surplus property/equipment under this chapter shall be placed in the general fund.

(Ord. 166, 2nd Series, passed 9-5-2017)

